

**Neutral Citation No. - 2023:AHC:178289**

**AFR**

**Reserved On:- 21.8.2023**

**Delivered On:- 15.9.2023**

**Court No. - 90**

**Case :-** APPLICATION U/S 482 No. - 6533 of 2023

**Applicant :-** Virendra Kumar Kushwaha And 4 Others

**Opposite Party :-** State of U.P. and Another

**Counsel for Applicant :-** Raj Kumar Kesari

**Counsel for Opposite Party :-** G.A.,Deepesh Kumar Ojha,Prashant  
Drivedi

**Hon'ble Dinesh Pathak,J.**

1. Heard Sri Raj Kumar Kesari, learned counsel for the applicants, Sri Prashant Dwivedi, learned counsel for the opposite party no.2 as well as learned AGA for the State.

2. The applicants have invoked the inherent jurisdiction of this Court assailing the impugned summoning order dated 5.4.2021 passed by the learned Civil Judge (Sr. Division), Kaushambi and order dated 3.12.2022 passed by the learned Civil Judge (Sr. Division)/ FTC/ ACJM Kaushambi under Section 23 of Protection of Women from Domestic Violence Act, 2005 (in brevity D.V.Act) in Complaint Case No. 369 of 2021 (Ritu Kumari Vs. Virendra Kushwaha & Ors.) under Section 12 of the D.V. Act.

3. Facts culled out from the avertments made in the instant application are that marriage of respondent no.2 was solemnized with applicant no.1 in the year 2019. It appears that owing to matrimonial bickering, respondent no.2 has moved a complaint dated 24.3.2021 against her husband and in-laws (mother-in-law, father-in-law and two

sisters-in-law) under Section 12 of D.V. Act. The learned trial court, vide order dated 5.4.2021, has issued summons against the present applicants and directed the Probation/Protection Officer for submitting his report. In pursuance of the order dated 5.4.2021, the Probation/Protection Officer has submitted inquiry report/formal incident report dated 16.11.2021 in Form-I as required under Rule (5) of Domestic Violence Rules 2006. District Probation Officer in his report dated 16.11.2022 has mentioned the statements of complainant, husband, mother-in-law and father-in-law. During pendency of proceeding under Section 12 of D.V. Act, learned court has passed an ex-parte order dated 3.12.2022 under Section 23 of D.V. Act granting interim maintenance to the tune of Rs. 3000/- per mensem in favour the respondent no.2 (wife). Having been aggrieved, instant application has been filed assailing the order of interim maintenance dated 3.12.2022 and the summoning order dated 5.4.2021.

4. Learned counsel for the applicants has submitted that summoning order has illegally been issued in a very perfunctory manner without proper appreciating the facts of the complaint in the light of the provisions as enunciated under the D.V. Act. He has made emphasized on the maintainability of the present application against applicant nos. 4 and 5 who are sisters-in-law of respondent no.2. As per the averments made in the affidavit, applicant no.4 is unmarried sister-in-law and doing private job of Nurse at NOIDA, however, applicant no.5 is married and living separately with her in-laws. It is further submitted that learned court below has illegally assumed the income of the husband (applicant no.1) and granted interim maintenance to the tune of Rs. 3000/- per mensem without any justification. The applicant no.1 has no sufficient source of income to comply the order passed by the court below. It is further submitted that applicant no.1 is willing to keep his wife/respondent no.2 with him, however, she herself deserted the society of applicant no.1 and refused to live with him. It is next submitted that the order passed by the learned trial court is illegal and unwarranted

under the law and tainted with regularities, therefore, the same is liable to be quashed.

5. Per contra, learned counsel for the respondent no.2 has vehemently opposed the submission of learned counsel for the applicant and contended that on the face of record, prima facie, the complicity of the present applicant in the commission of offence under D.V. Act cannot be ruled out. He has supported the summoning order dated 5.4.2021 and the order of interim maintenance dated 3.12.2022. It is next contended that considering the desertion of the respondent no.2, learned trial court has rightly passed the ex-parte order under Section 23 of D.V. Act in absence of applicant no.1 who has deliberately ignored the court proceeding despite the service of notice. The interim maintenance granted in favour of respondent no.2 to the tune of Rs.3000/- per mensem cannot be said to be exorbitant considering the notional income of applicant no.1. It is next contended that the present application is liable to be rejected being misconceived and devoid of merit.

6. Having considered the rival submissions advanced by the learned counsel for the parties and perusal of the record, it reveals that matrimonial status between applicant no.1 and respondent no.2 being husband-wife and the relationship of respondent no.2 with the applicant nos. 2 to 5 being in-laws have not been denied. In her complaint filed under Section 12 of D.V. Act, respondent no.2 has sought relief under Section 18,19, 20 and 22 of D.V. Act arraying the present applicants as respondents. Allegation of domestic violence has been levelled against respondents (applicants herein) in perfunctory manner without referring any particular incident of domestic violence attributing to any of them. The Probation/Protection Officer, while submitted his report, has recorded the statement of complainant (respondent no.2 herein) and the statements of respondent nos. 1,2 and 3 of the complaint (applicant nos. 1, 2, and 3 herein) to show his prima facie satisfaction qua cognizance of the case under Section 12 of D.V. Act. In clause-2 of the report as

submitted in Form- I under Section 5(1) of the Domestic Violence Rules, names of all the applicants are mentioned. In clause-4, date of violence has been shown to be March 24, 2021 which was allegedly commissioned against the Ritu Kumari, (respondent no.2) wherein, as mentioned in remark column, she has allegedly been abused and pounded. Nature of violence has been shown as a demand of dowry, harassment, insult, radical and humiliation etc. A four wheeler and cash amounting Rs. 1 lakh has been also shown to be demanded from the respondent no.2. In her statement recorded before the District Probation Officer, she has stated that her marriage was solemnized with the applicant no.1 on 9.3.2019 according to hindu rites and rituals. Her father has expended about Rs. 8 lakhs in marriage which includes one lakh cash given in Tilak ceremony. In marriage ceremony, two gold finger rings, one motorcycle along with household goods and Stridhan have been gifted as well. While she came her in-laws house, one four wheeler and cash amounting Rs.1 lakh has been demand by her husband, father-in-law, mother-in-law and two sisters-in-law. She has been abused, thrashed and thrown out from her matrimonial house on 16.1.2021 for want of fulfillment of dowry. In the meantime, she gave birth to a boy on 28th September, 2020 out of wedlock with applicant no.1. Behavior of husband was not good towards the child to whom he disown and expressed his desire to solemnize second marriage. It is further stated by respondent no.2 that all her in-laws, as arrayed in the complaint being respondents, have thrashed, abused and kicked her out for demand of additional dowry. She has narrated her ordeals to her parents who came and took her along with her child in private vehicle. Thereafter, she made a complaint of such incident in women police station, where both the parties have been called upon for amicable settlement, however, husband has refused to toe the line, therefore, she has resorted to legal recourse. As per her statement, husband (applicant no.1) is earning about Rs.30,000/- per month by operating Autorikshaw and running a Kharad shop.

7. Husband, respondent no.1 (applicant no.1 herein) has stated before District Probation Officer that the complainant was not happy with the marriage and used to said that the marriage has been solemnized against her own volition. She was interested to marry with some other boy, however, he used to ignore all these facts. Despite birth of a boy child, no change emanates in her behavior. On 18.01.2021, she took one neckless, payal, math bindiya (forehead dot), rings, waist belt, six payal chain and Rs.10,000/- cash from the almirah of the house and went to her maternal home without informing to her husband and in-laws. On 17th March, 2021, he along his mother went to the maternal house of the complainant to bring her back, however, her parents have misbehaved and refused to sent the complainant along with them. On a complaint moved by the complainant in women police station, applicant no.1 has been called upon and, after settlement, she became ready to live with the applicant no.1 and made promise that she will go to her matrimonial house on April 2, 2021, however, on the said date, she did not turn up. Applicant no.1 has instituted a case for restitution of conjugal rights under Section 9 of Hindu Marriage Act. He has never harassed physically and mentally to his wife for demand of dowry. He is still ready to keep his wife with him.

8. Applicant no.2 being respondent no.2 in the complaint (father-in-law) has made his statement that marriage of the applicant no.1 and respondent no.2 was solemnized without any dowry. She was not happy with the marriage on the pretext that her marriage was solemnized without her own volition. She fled to her maternal home along with her Stridhan, however, ever after several efforts being made she any how returned to her in-laws house. On 18.1.2021 she again went to her maternal home without informing to any one. On 17th March, 2021, while his son went to bring complainant back, she refused to come with him. Despite the amicable settlement took place in the women police station she never turned up. His son has filed a case of restitution of

conjugal rights under Section 9 of Hindu Marriage Act. He has further stated that she has never been tortured or harassed for demand of dowry and a false case has been instituted against the applicants. His daughter is residing in NOIDA.

9. Applicant no.3, who is respondent no.3 in the complaint, (mother-in-law) has reiterated the facts as stated by her husband (applicant no.2) that the false and malicious prosecution has been instituted by respondent no.2 who has never been subjected to torture and cruelty for demand of dowry. Despite best efforts being made by applicants, respondent no.2 has refused to come back to her matrimonial house. Her daughter is residing in NOIDA and doing job of nursing in J.P. Hospital.

10. Applicant Nos. 4 and 5 (respondent nos. 4 and 5 in complaint), sisters-in-law of the respondent no.2, have not appeared before the District Probation Officer to get their statements recorded. District Probation Officer has observed that despite notices have been sent thrice, they did not turn up.

11. Considering the contents of the application under Section 12 D.V. Act, in light of the report submitted by the District Probation Officer and the statement of the complainant made before the District Probation Officer, it reveals that the names of all the family members of the husband has been taken by the complainant in casual manner on omnibus allegations without citing any particular incident attributing to any of the respondents (applicants herein). Mere domestic relationship between the parties is not sufficient to inculcate the person who is in the domestic relation with aggrieved person unless there is a specific incidents of domestic violence as defined under Section 3 of the D.V. Act. The District Probation Officer has submitted the domestic incident report form-1 in printed format wherein illustrations of the domestic violation are already mentioned and over some of the illustrations tick marks are made. In her statement, respondent no.2 has not whispered any particular incident as to how she has been subjected to the verbal and emotional

abuse as marked in the form-1 by her in-laws who have been arrayed as respondents in the complaint.

12. Under Section 2(q) of the D.V. Act, phrase "respondent" has been defined wherein any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act will come within definition of respondent. As per dictum of the Hon'ble Apex Court in the matter **Sandhya Manoj Wankhede Vs. Manoj Bhimrao Wankhede, (2011) 3 SCC 650**, female relatives of husband are fall as well under the definition of respondent. The applicants herein, who have been arrayed as respondents in the complaint, may be treated to be a person under the definition of the respondents as enunciated under Section 2(q) of the D.V. Act, however, mere arraying the present applicants, particularly applicant nos. 4 & 5, being respondents in complaint, against whom aggrieved person (respondent no.2) has sought relief under D.V. Act, cannot be treated to be a paramount consideration for initiation of the penal proceeding unless case of the domestic violence as enunciated under Section 3 of the D.V. Act, prima facie, is made out and domestic relationship, as defined under Section 2 (f) of the D.V. Act is established with the aggrieved person from the complaint coupled with the domestic incident report submitted by the District Probation Officer.

13. Notably, complainant (respondent no.2) has named the family member of her husband including him by referring their names in a casual manner based on omnibus allegations, particularly names of the respondent nos. 4 and 5, sisters-in-law of respondent no.2, who are residing separately. Respondent no.4 is a Nurse by profession and doing a job in a hospital at NOIDA and respondent no.5 is married women living alongwith her in-laws. In this backdrops of the case, learned counsel for the applicant has urged to allow this application and rejected the complaint under Section 12 of the D.V. Act, so far as, it relates to the applicant nos. 4 and 5.

14. The power conferred under Section 482 Cr.P.C. is very specific and wide to secure the ends of justice or to prevent the abuse of the process of any Court or to make such orders as may be necessary to give effect to any order under this Code. No provision of this Code is deemed to limit or effect such inherent power of the High Court.

15. It has been held by the Apex Court in the cases of **R.P. Kapur Vs. State of Punjab : AIR 1960 SC 866; State of Haryana and Ors. Vs. Bhajan Lal and Others : 1992 Supp (1) SCC 335; Trisuns Chemical Industry Vs. Rajesh Agarwal and Ors. : (1999) 8 SCC 686 3; M. Krishnan Vs. Vijay Singh & Anr. : (2001) 8 SCC 645; Joseph Salvaraj A. Vs. State of Gujarat and Ors. : (2011) 7 SCC 59; Arun Bhandari Vs. State of Uttar Pradesh and Ors. : (2013) 2 SCC 801; Anand Kumar Mohatta and Anr. Vs. State (NCT of Delhi), Department of Home and Anr. : (2019) 11 SCC 706** that exercise of inherent power of the High Court under Section 482 of the Code of Criminal Procedure is an exceptional one. Great care should be taken by the High Court before embarking to scrutinise the complaint/FIR/charge-sheet in deciding whether the rarest of the rare case is made out to scuttle the prosecution in its inception.

16. In the case of **Gian Singh vs. State of Punjab, (2012) 10 SCC 303**, Hon'ble Supreme Court has made the following observation in Paragraph 61 which is quoted herein below :-

*"61. The position that emerges from the above discussion can be summarised thus: the power of the High Court in quashing a criminal proceeding or an FIR or a complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under Section 320 of the Code. Inherent power is of wide plentitude with no statutory limitation but it has to be exercised in accord with the guideline en-grafted in such power viz.: (i) to secure the ends of justice, or (ii) to prevent abuse of the process of any court."*

17. In Criminal Appeal No. 675 of 2019 arising out of **SLP (Crl.) No. 1151 of 2018, Mohd. Allauddin Khan v. State of Bihar and others, 2019 (6) SCC 107**, the Apex Court has held that the High Court had no jurisdiction to appreciate the evidences of the proceedings under Section 482 Cr.P.C. because where there are contradictions or the inconsistencies in the statements of the witnesses, is essentially an issue relating to appreciation of evidences and the same can be gone into by the Judicial Magistrate during trial, when the entire evidence is adduced by the parties. The same view has also been reiterated in judgment dated 31.07.2019 passed by Apex Court in Criminal Appeal No.1082 of 2019, arising out of **SLP (Crl.) No.10762 of 2018, Chilakamarthi Venkateswarlu and Another v. State of Andhra Pradesh and Another.**

18. In the case of **Priti Saraf & anr. Vs. State of NCT of Delhi & anr. Criminal Appeal No(s). 296 of 2021 (Arising out of SLP(Crl.) No(s). 6364 of 2019] (judgment dated March 10, 2021) : 2021 SCC Online SC 206** the Apex Court while considering the powers under Section 482 Cr.P.C. has held as follows:

*"23. It being a settled principle of law that to exercise powers under Section 482 CrPC, the complaint in its entirety shall have to be examined on the basis of the allegation made in the complaint/ FIR/charge-sheet and the High Court at that stage was not under an obligation to go into the matter or examine its correctness. Whatever appears on the face of the complaint/FIR/charge-sheet shall be taken into consideration without any critical examination of the same. The offence ought to appear ex facie on the complaint/FIR/charge-sheet and other documentary evidence, if any, on record.*

19. The scope and ambit of the inherent jurisdiction of the High Court under Section 482 CrPC has been examined in detail by Hon'ble Apex Court in **State of Haryana and Others Vs. Bhajan Lal and Others, (1992 Suppl (1) SCC 335)**. The relevant para is mentioned hereunder:-

*"102. In the backdrop of the interpretation of the various relevant*

*provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.*

*(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*

*(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.*

*(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*

*(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.*

*(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*

*(6) Where there is an express legal bar engrafted in any of the*

*provisions of the Code on the concerned Act (under which a criminal proceeding is instituted to the institution and continuance of the proceedings and or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.*

*(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."*

20. It has been further elucidated recently by Hon'ble Apex Court in **Arnab Manoranjan Goswami Vs. State of Maharashtra and Others, 2020 SCC Online SC 964** where jurisdiction of the High Court under Article 226 of the Constitution of India and Section 482 CrPC has been analysed at great length.

21. Further, in the case of **M/s Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra and others** reported in **AIR 2021 SC 1918**, Full Bench of the Apex Court while considering the powers of quashing under Section 482 of the Criminal Procedure Code and/or Article 226 of the Constitution of India has illustrated the circumstances under which quashing of a criminal case can be done and/or interim order can be granted.

22. The Hon'ble Supreme Court has shown his concern in number of cases qua institution of criminal proceedings against the husband and his relatives on omnibus allegations by referring their name in a casual manner. In the matter of **Geeta Mehrotra Vs. State of U.P., (2012)10 SCC 471** and the Case of **Kahkashan Kausar @ Sonam Vs. State of Bihar, (2022) 6 SCC 599**, Hon'ble Apex Court has expounded that omnibus allegation by referring the name of the relatives of the husband in a casual manner are not sufficient to implicate them in criminal cases. Considering the ratio decided by the Hon'ble Supreme Court in the given circumstances of the present case, I am of the considered view that

inculcating the applicant nos.4 and 5 in the complaint, who are sisters-in-law of the respondent no.2, is not justifiable in the eye of law. Enforcing them to face trial in mechanical manner would amount of abuse of judicial process.

23. Applicant nos.1, 2 and 3 have come with the specific plea in their statement before the District Probation Officer that applicant no.4 is residing in NOIDA. In paragraph nos. 11 and 15 of the affidavit filed in support of instant application, applicants came with specific plea that respondent no.4 is unmarried and doing her job in NOIDA and with respect to the applicant no.5 it has clearly been mentioned that she is married woman living separately alongwith her in-laws. There is no specific denial in the counter affidavit to the averments made in paragraph nos. 11 and 15 of the affidavit filed in support of instant application. Moreover, in the connected application filed by the applicant nos. 1 to 4 herein being Application u/s 482 Cr.P.C. No. 10036 of 2022, they have assailed the summoning order passed against them under Section 498-A, 323 IPC and 3/4 D.P. Act. In the aforesaid matter, while passing the summoning order dated 14.09.2021, learned Magistrate has exempted the Rubi Kushwaha (applicant no.5 herein). In the said application as well, applicants have come with specific plea that Priya Kushwaha (applicant no.4) is doing job of Nurse in J.P. Hospital at NOIDA. In support of their contention, applicants have filed registration certificate of the applicant no.4 showing diploma in "General Nursing and Midwifery" which was issued on 14.12.20218 after completion of three years training course from September 2015 to September 2018. They have also filed Attendance Report and Certificate dated April 05, 2022 issued from the authority concerned of J.P. Hospital, NOIDA to show that since 14.09.2020 she was throughout working in J.P. Hospital NOIDA. In the attendance report she has been shown present on the date of alleged incident i.e. on 16.01.2021. In reply to an averment of the applicants in this regard as mentioned in paragraph no.12 of affidavit

filed in support of the application under Section 482 Cr.P.C. No. 10036 of 2022, no specific denial has been made by the respondent no.2 in the counter affidavit. Marital status of the applicant no.4 and her professional work being a Nurse has not been specifically denied.

24. In the present matter as well, which is arising out of the proceeding under Section 12 of D.V. Act, the marital status of applicant no.5 and professional status of applicant no.4 as Nurse have not been denied by respondent no.2 in her counter affidavit. Respondent no.2 has made omnibus allegation against all the family members of her husband by referring their names casually in her statement before the District Probation Officer, who has recorded her statement and submitted the domestic incident report in form-1, which is a printed format, as required under Section 5 of Domestic Violence Rules. In the matter of **Preeti Gupta and Another vs. State of Jharkhand and Another, (2010) 7 SCC 667**, the Hon'ble Supreme Court has acknowledged the tendency to implicate the husband and all his immediate relatives in complaint arising out of matrimonial discord. Hon'ble Supreme Court has expounded that the court's have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities in the consideration while dealing with the matrimonial cases, as allegations of harassment by husband's close relatives, who are living in different city and never visited or rarely visited the place where the complainant resided, would add an entirely different complexion and such allegations would have to be scrutinized with great care and circumspection. In the given circumstances it is a specific case of applicants that the applicant no.4 is doing job being a Nurse in J.P. Hospital at NOIDA and applicant no.5 is a married woman and residing with her in-laws at matrimonial house. There is no justification to force the applicant nos.4 and 5 to face complicated penal provisions under the D.V. Act in a mechanical manner on the basis of omnibus allegation as allegedly mentioned by the respondent no.2 in perfunctory manner. Sisters-in-law who are residing

outside and managing their own affairs could hardly be believed to abuse respondent no.2 verbally or emotionally for the purpose of making out a case of domestic violence as enunciated under Section 3 of D.V. Act. No particular instance has been given attributing to the overt act of applicant nos.4 and 5 to make out a case of domestic violence against them. In the complaint under Section 12 of the D.V. Act nothing has been whispered against the present applicants except arraying them in the cause title of the complaint. Even before the District Probation Officer no specific allegation has been made against applicant Nos. 4 & 5. Names of all the applicants have been taken in casual manner to anyhow trap them in the complication of the legal provisions as enunciated under the D.V. Act. Inculcating the present applicants under the D.V. Act is nothing but to abuse of process of the court which is, in my opinion, liable to be discouraged to secure the ends of justice.

25. So far as granting an interim maintenance, by order impugned dated 3.12.2022, is concerned I found no illegality or perversity in the said order which has been passed ex-parte against the present applicant no.1. Perusal of the order-sheet of Case No. 369 of 2021, as appended with this application, reveals that the learned trial court has treated the services of notice sufficient upon respondent no. 1 to 5, vide order dated 19.4.2022, and by subsequent order dated 22.8.2022 matter was ordered to be proceeded ex-parte against the present applicants by stopping their opportunity of defence. Vide order dated 2.11.2022, further date was fixed for ex-parte evidence of the complainant. In the affidavit filed in support of the instant application, applicants have not whispered anything qua ex-parte proceedings. They have simply assailed the order dated 3.12.2022 qua amount of interim maintenance. Considering the high price of living the amount of Rs. 3000/- per mensem cannot be said to be exorbitant. Learned trial court has granted interim maintenance considering the notional income of the applicant no.1, prima facie, which cannot said to be excessive. He has still an opportunity to contest the

case and put his defence before the trial court to prove his innocence.

26. In the peculiar facts and circumstances of the present case, I am of the considered view that the allegations as made against applicant nos. 4 and 5 are wholly insufficient and, prima facie, do not make out a case of domestic violence against them under the provision as enunciated in D.V. Act. Moreover, the allegation made against applicant nos.4 and 5 are far-fetched and improbable that no prudent person can conclude that there are sufficient grounds to proceed with the matter under the D.V. Act against the applicant nos.4 and 5. In effect, the matter in hand falls squarely in categories (1) and (5) as set out in the case of **Bhajan Lal (Supra)**. Permitting the proceeding to go on against the applicant nos.4 and 5 in such a situation would, therefore, result in clear and patent injustice. Therefore, it is fit case to quash the proceeding under D.V. Act in exercise of inherent jurisdiction under Section 482 Cr.P.C. so far as it relates to the applicant nos.4 and 5.

27. Resultantly, the instant application is **partly allowed** and summoning order dated 05.04.2021 passed by the learned Civil Judge (Senior Division) Kaushambi in Complaint Case No. 369 of 2021 under Section 12 of D.V. Act, so far as it relates to the applicant nos. 4 and 5, is here by quashed. Further proceeding will go on against the remaining applicant i.e. applicant nos. 1, 2 and 3.

28. It is made clear that the instant application is rejected against the order dated 03.12.2022 passed by Civil Judge (Senior Division)/F.T.C./Additional Chief Judicial Magistrate, Kaushambi under Section 23 of the D.V. Act, by which an interim maintenance has been granted in favour of the respondent no.2.

29. Before parting the matter, learned counsel for the applicants has prayed to give an opportunity to the present applicants for filing detailed objection in proceeding under Section 12 of D.V. Act and to issue a direction for expeditious disposal of the said proceeding. Though, the applicants have not assailed the order dated 22.8.2022 whereby the case

was ordered to be proceeded ex-parte and order dated 2.11.2022 whereby the complainant was permitted to adduce her evidence ex-parte, this Court is of the view, in the interest of justice, that it would be befitting to modify orders dated 22.8.2022 and 2.11.2022 to the extent that the opportunity may be given to the present applicants for filing their detailed objection and adduce the evidence in proceeding under Section 12 of D.V. Act. As such, in exercise of inherent power, in order to secure the ends of justice, the orders dated 22.8.2022 and 2.11.2022 are hereby modified to the extent that the present applicants are at liberty to file detailed objection and adduce evidence, if any, before the trial court in original proceeding under Section 12 of D.V. Act within a period of three weeks from today and the same shall be considered and decided in accordance with law after giving due opportunity of hearing to the parties concerned within statutory period as enunciated under Section 12 (5) of D.V. Act.

**Order Date :- 15.09.2023**

Akbar