

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Crl. Misc. No. M-20302 of 2014(O&M)

Date of decision : 24.04.2015

Ishwar Singh

..... Petitioner

versus

Shweta Sharma and others

... Respondents

CORAM:- HON'BLE MRS. JUSTICE ANITA CHAUDHRY

1. Whether Reporters of the local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ? Yes
3. Whether the judgment should be reported in the Digest ?

**Present: Mr. V. Ramswaroop, Advocate
for the petitioner**

**Ms. Priyanka, Advocate
for respondent No. 1**

None for respondents No. 2 and 3

ANITA CHAUDHRY, J.

This petition has been filed under Section 482 Cr.P.C. for quashing complaint No. 79 dated 28.04.2014 titled **Shweta Sharma vs. Abhishek Sharma and others**, pending in the Court of Judicial Magistrate 1st Class Dera Bassi, as well as, the subsequent proceedings thereto.

The petitioner is a security guard with a private company at Panchkula. His wife works in the house owned by Abhishek Sharma – respondent No. 2 who left for Australia five years ago. The house is situated at Zirakpur (Baltana), Tehsil Dera Bassi. The petitioner alongwith his wife and children live in a one room set as a care taker.

Shweta Sharma – respondent No. 1 is the real sister of Abhishek. She was married to Pradeep Kumar of Ambala Cantt. in June 2005 and lived with him till June 2011. Respondent No. 1 took a divorce from Pradeep Kumar on 24.09.2012 and married Naveen Gusain on 26.01.2013 and was living with her husband in House No. 148, Krishna Enclave, Dhakoli, Near Zirakpur, Tehsil Dera Bassi.

The petitioner has pleaded that he is not in any domestic relationship with the complainant nor related to respondent No. 1 or 2, therefore, the complaint filed against him under Section 12 of the Protection of Women from Domestic Violence Act, 2005 was not maintainable. The petitioner was shocked to receive a notice of the complaint. It is pleaded that the allegations against the petitioner in para 12 of the complaint only were that on the asking of the Abhishek, the complainant had been thrown out of the house. It was pleaded that after the marriage of respondent No. 1 with Naveen Gusain on 26.01.2013, she was living with her husband and the complaint was totally false and it was a case of misuse of the process of the Court.

Notice of the petition was given to the respondents. Respondent No. 2 had filed her reply pleading that the petition under Section 482 Cr.P.C. was not maintainable and it was for the trial Court to embark upon an enquiry whether the accusation made in the petition could be sustained. It is pleaded that the complaint could not be quashed at the preliminary stage when only notice had been issued.

It was pleaded that respondent No. 1 was residing in the

shared household alongwith the petitioner and petitioner was in possession and in control of the goods owned by respondent No. 1. It was pleaded that it was at the behest of respondent No. 1 that the petitioner did not allow her to enter the shared household. It was pleaded that Abhishek had left India in 2008 and wife of the petitioner was working as a maid in the house since 2000 as a care taker and it was a years later that Ishwar Singh and his family joined the wife. It is pleaded that respondent No. 1 subjected her to move out of the shared household and deprived her of the legal right and the house belonged to their father. It was pleaded that Abhishek had illegally given the premises to the petitioner. To support her case, the respondent had filed her ID proof and the PAN Card. It was pleaded that she had been emotionally abused by Abhishek who was related to her consanguinity and had been economically abused and deprived of all her financial sources which she was entitled under law and custom.

I have considered the rival submissions. The main plank of the argument of the petitioner was that he was the care taker of the house and there was no domestic relationship between him and the complainant nor they were related by consanguinity or marriage, therefore, the complaint against him was not maintainable.

The argument put forth by respondent No. 1 was that the house belonged to the father of the complainant and though the petitioner was not related but he was in possession of the property in which the petitioner has the right and was thrown out by him on 23.01.2013.

Refuting the argument, counsel for the petitioner had urged that complainant's second marriage took place on 26.1.2013 which is evident from Annexure P-2 and this document is not disputed and the petitioner is a witness to the marriage and had there been any truth then he would not have been present in the marriage and the complainant had filed a complaint on concocted facts.

The offence under the Domestic Violence Act (hereinafter referred to as the DV Act”) could arise only when the parties are in domestic relationship as defined under Section 2(f) and there is a shared household which is defined in Section 2(s) of the DV Act. Admittedly, there is no domestic relationship between the petitioner and the complainant. They do not constitute a family nor they were living together. They are not related by blood or by consanguinity nor the complaint refers to any violence. It appears that the entire issue is with respect to the title of the property. The complaint against the care taker of the house was not maintainable. It is a fit case where the provisions of Section 482 Cr.P.C should be invoked to quash the complaint against the petitioner.

The petition is allowed. Consequently, impugned complaint and all other consequent proceedings arisen thereto, qua the petitioner are quashed.

April 24, 2015

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**(ANITA CHAUDHRY)
JUDGE**