

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Crl. Misc. No. M-24058 of 2014

Om Parkash Syngal and others

..... Petitioners

versus

Shimla Garg

... Respondent

Crl. Misc. No. M-28631 of 2014

Sham Lal Garg

..... Petitioner

versus

Shimla Garg

... Respondent

Date of decision : 01.12.2015

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. Vaibhav Sehgal, Advocate
for the petitioners**

**Mr. Ravi Kamal Gupta, Advocate
for the respondent**

ANITA CHAUDHRY, J. (ORAL)

The petitioners have been arrayed as respondents in a complaint filed by Shimla Garg under the Domestic Violence Act. They have been summoned in the complaint case. Two petitions have been filed for quashing of the Complaint No. 208 dated 07.05.2012.

Both the petitions are being disposed of by this order as they arise out of the same complaint. It is necessary to mention here

that Om Parkash Syngal - petitioner No. 1 in CRM No. M-24058 of 2014 had died during the pendency of the petition.

The facts may now be exposited. Shimla Garg was married to Sham Lal Garg in 1962. They had one son and four daughters. Arun Garg son of Shimla Garg was prosecuted for dowry death of his wife. Sham Lal and Shimla Garg were also arrayed as an accused but they were acquitted. All was well between Shimla and Sham Lal till 2001. All their children had got married by 1996. Sham Lal Garg retired from Government service in November 1996 and is a pensioner. Sham Lal and his wife Shimla were residing in the ground floor of the house. Their son and his family were residing on the first floor. The family moved to a house in Model Gram, Ludhiana.

On conviction Arun was sentenced to 10 years imprisonment. Arun Garg came out on parole but failed to surrender. Sham Lal his father informed the police and Arun was arrested. The relationship became less pleasant. On completion of the sentence, Arun returned home in August 2001. It was thereafter that differences arose and relations soured. Complaints were filed by Shimla Garg against her husband, daughters and son-in-laws under the Domestic Violence Act. Arun Garg's daughter Aditi also instituted separate complaint under the Domestic Violence Act against her grand father- Sham Lal Garg, her aunts and their husbands who are living in different districts of Punjab and Haryana.

It is now necessary to refer to the allegations made in the complaint Annexure P-2 filed by Shimla Garg. She was 71 years old

at the time of the institution of the complaint. She had pleaded that she was married in 1962 and her husband was high handed since the very beginning and she was tolerating as she had no option. The couple lived in rented house since 1974 and thereafter moved to their own house. From 1974 onwards they lived in the same house till 2001. The son alongwith his wife were living on the first floor while they were residing on the ground floor. The daughter-in-law died in March 1999. The complainant had alleged that false dowry death case was registered by the police against them and their only son and they were sent to jail and were ultimately acquitted in January 2001 but the son was convicted for 10 years imprisonment. It was averred that the son was released on bail in August 2001 and they sold the shared household and she alongwith her husband and son built a new house in Plot No. 40 and 41 in Central Town, Village Daad, District Ludhiana and started living in the house from 2002 onwards. It was pleaded that Plot No. 40 was a shared household and was in the joint names of the complainant and her husband whereas Plot No. 41 was in the joint name of their son and the father. The son surrendered to undergo the unexpired portion of his sentence after dismissal of his appeal in the year 2003. The complainant further alleged that her husband made an agreement for sale of Plot No. 41 which was the shared household and he pressurized his son to sign the sale deed but son refused to sign the same. It was pleaded that respondent No. 1 with active connivance with the other respondents started asking the complainant to give the power of attorney with respect to his share in Plot No. 40 in order to

facilitate him to mortgage/sell the shared household for starting business. The complainant refused to give the Power of Attorney. It was pleaded that taking advantage of the absence of the son her husband in connivance with other respondents started subjecting her and her grand children to grave domestic violence and physical mental harassment and stopped contributing towards day-to-day home expenses. It was pleaded that the complainant was looking after her two minor grand children and herself. It was pleaded that a complaint was made to Senior Superintendent of Police, Ludhiana. Her son came home on 13.08.2011 and her husband stopped giving her monthly expenses from May 2012 under a pre-planned conspiracy. Her husband had retired from Government service and had received Rs. 10 lacs as pensionary benefits in the year 1997, it was pleaded that interest would have accrued. The husband had also received a share in the ancestral property and his income was more and she required minimum amount of Rs. 65,000/- per month or 50% of the monthly gross income towards maintenance and the husband was legally bound to maintain her. It was pleaded that complaint had been given to Punjab State Woman Commission, Chandigarh.

The complainant had sought relief of Residence order under Section 19 of the Act besides Rs. 10 lacs in lump-sum for the loss of earnings, medical expenses, loss due to destruction/damage or removal of property from the control of the aggrieved person and other losses during the period from the year 2005 onwards, Rs. 50 lacs towards damages for the injuries, including mental torture and

emotional distress suffered by her on account of domestic violence committed by the respondent in shape of compensation and also a sum of Rs. 10,000/- per month as monetary relief. It was pleaded that two separate applications under Section 125 Cr.P.C. were pending before the Court which were at pre litigation stage.

On these broad allegations the Magistrate issued notice to all the respondents arrayed in the complaint which has been challenged by the petitioners.

In CRM No. M- 24058 of 2014 the petitioners had pleaded that the petition against them was not maintainable as the necessary ingredients for maintaining a petition under the Domestic Violence Act were squarely missing nor any relationship as defined in the Act existed between the parties and the petitioners were living separately. It was pleaded that the petition had been filed at the instigation of Arun Garg. It was pleaded that an agreement had been entered into where Sham Lal had agreed to pay Rs. 6500/- to his wife and he had honoured the commitment and payments were being made till April 2012 but thereafter the wife refused to receive the payment on the asking of Arun Garg. A copy of the compromise Annexure P-4 and the receipts Annexure P-5 were appended alongwith the petition.

In CRM No. M-28631 of 2014, Sham Lal Garg had pleaded that the petition had been filed at the instigation of the son in order to compel him to transfer his assets to Arun Garg. It was pleaded that he had been paying monthly maintenance and the complainant refused to receive the maintenance after July 2012. It

was pleaded that the petitioner had paid an amount of Rs. 8500/- from August 2010 and false allegations of harassment had been levelled by his wife. It was pleaded that the petitioners were being harassed at the hands of their son who used to throw water and urine upon the petitioner and he was forced to leave the house and was now living in a rented accommodation.

The parties were directed to appear before the Mediation and Conciliation Centre of this Court. A report was received from the Mediation Centre that the mediation between the parties had failed. No reply was filed by the respondent.

Both sides were heard at length.

The statement on behalf of the petitioners were that the relationship became strained as Sham Lal had informed the police as their son had failed to surrender at the end of his parole which annoyed the son and also the mother and the relations went bad to worse and on return to the house the son started harassing the father and he was forced to move out of the house. It was urged that there was no complaint from 1962 till 2011 and Shimla Garg had been living with her husband and had no complaint whatsoever and after the return of the son she has filed a complaint against her husband, daughters and their husbands and no domestic relationship existed between the parties nor any instances of any harassment have been mentioned and general and vague allegations had been made. It was urged that petitioner No. 4 & 5 are Government doctors and were residing in different Districts and the complaint is an abuse of process of Court. Reliance was placed upon ***Vijay Verma vs.***

State N.C.T. Of Delhi and another, 2010(7) RCR(Criminal) 1145, Adil and others vs. State and another, 2010(7) RCR (Criminal) 1510, Nandan Singh Manral vs. State and others, 2011(2) RCR (Criminal) 271, Bhupender Singh Mehra vs. State NCT of Delhi and another, 2011(2) RCR(Criminal) 360 and Ashish Dixit and others vs. State of U.P. And another, 2013(2) RCR(Criminal) 340.

On the other hand the submission made on behalf of the respondent was that a quashing petition was not maintainable as the proceedings under the Domestic Violence Act were civil proceedings and the civil proceedings could not be quashed in a petition under Section 482 Cr.P.C. It was urged that the proceedings under this Act is a remedy under the civil law. Reliance was placed upon ***Vijaya Bhaskar vs. Suganya Devi, Crl. O.P. (MD) No. 10280 of 2010 decided on 28.10.2010, Dr. V.K. Vijaylekshmi Amma vs. Bindu and others, Crl. MC. No. 2225 of 2009 decided on 2.12.2009, Narendrakumar @ Nitinbhai Manilal Shah and others vs. State of Gujarat and others, Crl. Misc. application No. 19853 of 2013 decided on 17.01.2014, Md. Abdul Haque vs. Srimati Jesmina Begum Choudhury and another, Crl. Petition No. 434 of 2010 decided on 25.04.2012, Gaddameedi Nagamani vs. State of Telangana, Crl. Petition No. 22371 of 2015 decided on 17.07.2015, Maya Devi vs. State of N.C.T. of Delhi, 2007(4) JCC 2819 and Dr. Vinod Parashar and others vs. State of U.P. and another, 2009(1) RCR(Criminal) 992.***

Responding to the arguments the submissions made on behalf of the petitioners were that there are contrary views taken by

some High Courts and there are judgments of the other High Courts taking a different view and Hon'ble Apex Court in ***Ashish Dixit's case (supra)*** had quashed the proceedings under the Domestic Violence Act and this Court has also quashed proceedings under the Domestic Violence Act in the petitions filed under Section 482 Cr.P.C. It was urged that the M.P. High Court had taken a view that proceedings under Section 482 Cr.P.C. could be filed.

A perusal of the complaint would show that allegations have been made by the wife against her husband, daughters, son-in-laws. She has demanded maintenance and lump sum amount from all the respondents. It is not disputed that she is living in the house with her son, the husband is presently not residing with her. Other respondents are living in different cities/districts. It is necessary to first refer to the provisions of Section 2(f) of the Domestic Violence Act, which reads as under:-

"(f) „domestic relationship“ means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family."

A perusal of the provisions make it clear that domestic relationship arises in respect of an aggrieved person if the aggrieved person had lived together with the respondent in a shared household. This living together can either be soon before filing of petition or 'at any point of time'. If there is a joint family where father has several

sons with daughters-in-law living in a house and ultimately sons, one by one or together, decide that they should live separate with their own families and they establish separate household and start living with their respective families separately at different places; it can not be said that wife of each of the sons can claim a right to live in the house of father- in-law because at one point of time she along with her husband had lived in the shared household. If this meaning is given to the shared household then the whole purpose of Domestic Violence Act shall stand defeated. Where a family member leaves the shared household to establish his/her own household, say daughter getting married and actually establishes her own household, she cannot claim to have a right to move an application under Section 12 of Protection of Women from Domestic Violence Act on the basis of domestic relationship. Domestic relationship would come to an end once the daughter gets married and establishes her own household with her husband. Such son, daughter, daughter-in-law, son-in-law, if they have any right in the property say because it is ancestral or because of inheritance, such right can be claimed by an independent civil suit and an application under Protection of Women from Domestic Violence Act cannot be filed by a person who has established his separate household and ceases to have a domestic relationship.

Domestic relationship continues so long as the parties live under the same roof and enjoy living together in a shared household. However, where the living together has been given up and a separate household is established and belongings are

removed, domestic relationship comes to an end and a relationship of being relatives of each other survives. This is very normal in families that a person whether, a male or a female attains self sufficiency completes the education or otherwise or take up a job outside and lives in some other city or country, he or she cannot be said to have domestic relationship with the persons whom they have left behind. His relationship of that of a brother and sister, father and son, father and daughter, father and daughter-in-law etc. survives but the domestic relationship of living in a joint household would not survive & comes to an end.

The purpose of the Act is to give remedy to the aggrieved persons against domestic violence. The domestic violence can take place only when one is living in shared household with the respondents. The acts of abuses, emotional, economic or physical if committed when one is living in the same shared household constitutes domestic violence. However, such acts of violence can be committed even otherwise when one is living separate. When such acts of violence take place when one is living separate, these may be punishable under different provisions of IPC or other penal laws, but, they cannot be covered under Domestic Violence Act. One has to make distinction between violence committed on a person living separate in a separate household and the violence committed on a person living in the shared household.

Only violence committed by a person while living in the shared household can constitute domestic violence. A person may be threatening another person who lives miles away, on telephone or on

whatsapp or text messages etc. This may amount to an offence under IPC, but, this cannot amount to domestic violence. Similarly, emotional blackmail, economic abuse and physical abuse can take place even when persons are living far away. Such abuses are not covered under Domestic Violence Act but they are liable to be punished under Penal laws. Domestic Violence is a violence which is committed when parties are in domestic relationship, sharing same household.

So far as the submission of the respondent regarding the maintainability of the petition is concerned Hon'ble Apex Court in ***Ashish Dixit and others vs. State of U.P. And another, 2013(2) RCR(Criminal) 340*** had quashed the proceedings under the Domestic Violence Act. This Court in ***Girish and others vs. Poonam, 2013(1) RCR(Criminal) 767*** had also quashed the proceedings under the Domestic Violence Act.

A perusal of the complaint would show that respondents No. 2 to 6 are living in different districts and are not living in the shared household nor I find that there are any allegations against them. The only allegation made against them is that they had connived with her husband and were supporting him. These are vague allegations and the complaint against them is nothing but a misuse of the process of the Court. Respondents No. 2 to 6 were not living in a joint household. The Magistrate without examining whether the domestic relationship existed or whether there was a shared household had issued notice. The trial Court without looking into the provision of the Act had summoned every body who was

arrayed as respondents without caring to examine whether the domestic relationship existed. As a result CRM No. M-24058 of 2014 is allowed. The complaint and the notice issued to these petitioners are quashed.

So far as the petition filed by the husband is concerned, the wife is seeking monetary relief under Section 20 of the Act which the trial Court can only examine after keeping their reply and examine the documents which the parties may like to submit.

It needs to be clarified here that resort to Domestic Violence Act can not be done to enforce property rights as for enforcement of property right the parties are supposed to approach the Civil Court. Resort to Domestic Violence Act can only be done where there is urgent requirement of the wife of maintenance or residence because of domestic violence and she has been rendered home less or has lost source of maintenance. In this case the husband had pleaded that he was giving monthly maintenance and the wife had refused to accept the same. The Magistrate shall consider all these aspect and consider the domestic incident report and contents of the application and then proceed with the case in accordance with law.

Thus, CRM No. M-24058 of 2014 is allowed and CRM No. M-28631 of 2014 is dismissed.

December 01, 2015

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**(ANITA CHAUDHRY)
JUDGE**