

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Crl. Misc. No. M-26327 of 2014

Om Parkash Syngal and others

..... Petitioners

versus

Aditi Garg

... Respondent

Crl. Misc. No. M-28656 of 2014

Sham Lal Garg

..... Petitioner

versus

Aditi 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)

Two separate petitions have been filed by the petitioners who have been summoned in a complaint filed under Section 12 of the Protection of Woman from Domestic Violence Act, 2005 titled as Aditi Garg vs. Sham Lal Garg and others bearing complaint No. 2688 of 2014.

Aditi was just 17 years old when she filed the complaint.

The complaint had been filed through her father Arun Garg being the natural guardian. It was pleaded that she alongwith her grand

mother, father and mentally retarded minor brother were residing in a shared household which was in the joint name of her grand mother and grand father while plot No. 41 was in the joint name of her father and grand father. It was pleaded that grand father was subjecting her to domestic violence since long and the demand of the share in the shared household was being denied. It was pleaded that the grand father himself entered into an agreement for the sale of Plot No. 41 without the signature of her father and grand mother and pressurized her father to sign the sale agreement and he refused to sign the agreement and it had annoyed respondent No. 1. It was pleaded that respondent No. 1 took advantage of the absence of her father as he was undergoing imprisonment in the case related to the death of her mother, under conspiracy and in active connivance with the other respondents started subjecting her and her grand mother to grave domestic violence. It was pleaded that the grand mother was looking after the grand children alone and when she could not tolerate the domestic violence and the harassment, she started living in the upper portion of the house alongwith them and respondent No. 1 continued the harassment by coming to the first floor and a complaint was made to the police in 2009. It was pleaded that when her father returned on completion of his sentence in August 2011 respondent No. 1 was annoyed with him and under pre-planned conspiracy raised unnecessary quarrels and abused them and stated that they were sucking his blood by taking monthly expenses and threatened to commit suicide. It was pleaded that the domestic violence increased and she was a victim of grave domestic violence.

The petitioner had pleaded that she was entitled to Rs. 50 lacs as damages due to injuries including mental torture and Rs. 10,000/- per month as monthly relief.

The petition was filed in 2014. The Judicial Magistrate issued notice to all the respondents arrayed in the complaint.

It is necessary to mention here that Om Parkash Syngal – petitioner No. 1 has since died.

The petitioner's claim that no domestic relationship existed between the petitioners and the complainant and they have been summoned by the Court which was a misuse of the process of the Court and the proceedings should be quashed.

The uncle and aunts of the complainant and the grand father of the complainant have pleaded that the petition was not maintainable as they were living separately. They had pleaded that the petition was a clear example of gross misuse of abuse of the process of law and the petition had been got filed by the son and he was using the name of his daughter in order to settle the property dispute.

Upon notice, the respondent had appeared.

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.

I have heard both the sides at length.

The submissions on behalf of the petitioners were that no domestic relationship existed nor the parties were living in a shared

household and simply because they were related by blood was not a ground for lodging a complaint. It was urged that the complaint had been filed by the grand daughter through her father which was mere ruse and a way of pressurizing them to succumb to the pressure and give the property to the son and the dispute was the property dispute between father and the son and the Court below without even examining whether any domestic relationship existed between the aggrieved person and the respondent had issued notice. It was urged that the trial Court should have perused the allegations and should have demanded from the complainant, evidence with respect to the relationship and the title sheet would show that they were living in separate houses in different districts and not a single instance had been quoted which would constitute domestic violence and the complaint was a misuse and abuse of the process of law. It was urged that the grand daughter could not institute a complaint against grand father nor the grand father was bound to maintain the grand daughter in the presence of the father who were living separately. 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 the 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 provide 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.

Section 2(f) of the Domestic Violence Act 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 this provision makes 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. The living together can be either soon before filing of petition or 'at any point of time'.

The purpose of the Act is to give remedy to the aggrieved persons against domestic violence. Domestic violence can take place only when one is living in shared household with the respondents. The acts of abuses, emotional or economic, physical or sexual, verbal or nonverbal if committed when one is living in the same shared household constitute domestic violence. However, such acts of violence can be committed even otherwise also 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 a 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. The totality of the circumstances of the case show that the case is not covered within the meaning of the term 'Domestic Violence' as defined under Section 3 of the Act 2005.

The complainant was neither living with her grand father nor the grand father has to maintain grand daughter in the presence of her father. Similarly there was no domestic relationship between the complainant and the other respondents who are her aunts and uncles being related to her father. The complaint could not have been filed by the grand daughter against the grand father even to enforce the property rights. The complaint filed by Aditi was a gross misuse of the process of the Court. The Magistrate should have examined whether there existed a domestic relationship or whether there was a shared household. The complaint and the notice ordered by the Magistrate is quashed.

Both the petitions are allowed.

December 01, 2015

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**(ANITA CHAUDHRY)
JUDGE**