

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Crl. Misc. No. M-29910 of 2014(O&M)

Date of decision : 24.04.2015

Abhishek Sharma

..... Petitioner

versus

Shweta Sharma and another

... 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 respondent No. 2

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 resident of Australia and had left the country in 2008 alongwith his wife and children. He has been summoned in a complaint filed by his sister Shweta under the Domestic Violence Act. The petitioner has invoked the inherent jurisdiction of this Court for setting aside the summoning order and the complaint filed by respondent No. 1.

To understand the factual matrix, it would be appropriate to refer to few facts which emerge from the complaint. The complainant – Shweta Sharma filed a complaint against her brother and the care taker of the house, situated in Zirakpur (Baltana), Tehsil Dera Bassi.

The petitioner has pleaded that he was permanently settled in Australia and was on study visa and the complainant is his real sister who got married in 2005. That marriage ended in divorce in September 2012. Few months later Shweta married Naveen Gusain in January 2015 and was living with her husband in Krishna Enclave, Dhakoli, Near Zirakpur. His plea is that the dispute was civil in nature and it was not a case of domestic violence and the complainant had misused the process of law. It was pleaded that after marriage which was during the life time of their father, respondent No. 1 never came and stayed in the house in question and after divorce she stayed away as she was in service. It is pleaded that she had given up her share in the property years ago without any pressure and the property was ultimately transferred in the name of the petitioner, in 2008. An affidavit had been executed by Shweta. It was pleaded that the petitioner left for Australia in October 2008 and had never returned and the complaint had been filed only to pressurize him to share the property probably on account of the pressure of her second husband.

Upon notice, the respondent appeared and filed reply pleading that the petition was not maintainable and it was for the trial Court to hold an enquiry into the allegations and decide the matter on

the basis of evidence that may be led. It was pleaded that she was related to the petitioner being the real sister and she was enforcing her right to reside in the shared household. It was pleaded that petitioner had economically abused and deprived her of financial resources and was not allowing access to the shared household and threats came in the form of a public notice and alienation of the assets. The complainant admitting her first marriage in 2005, her father's death in 2006 and her brother living abroad since 2008. It was pleaded that she was alone but had no choice but to stay in the shared household.

Both the sides had placed on record some documents. The CDPO's report and the statement dated 25.8.2014 is available.

I have considered the submissions made by both the sides.

Learned counsel for the petitioner had contended that the petitioner had left India in 2008 and the complainant was married in 2006 and was living with her husband and she had give up her right in the property during the life time of her father and an affidavit in this regard was executed some time in 2008. It was urged that after the second marriage the complainant had changed her mind and wanted a share in the property and the petition had been filed merely to exert pressure. It was urged that civil rights are not to be decided in these proceedings. It was urged that neither the complainant nor the petitioner were living together for the last over 12 years and there is no reference to any act of violence. It was urged that violence can be committed while living in a shared household which can constitute

domestic violence and if there is any threat from a person who is living miles away then it may amount to an offence under any other law but not under the Domestic Violence Act. It was urged that the complaint had been filed as a blackmail tactic.

The submission on the other hand was that petition under Section 482 Cr.P.C. was not maintainable and whether any affidavit had been given or not it is for the trial Court to adjudicate and this petition was not maintainable. It was urged that though the complainant is a married but they have no house of their own and they are living from hand to mouth. It was urged that the complainant had been thrown out of the shared household through the care taker and affidavits were given by several persons, which are appended alongwith the reply.

A perusal of the CDPO report clearly shows that the Protection Officer has prepared the instant report without application of mind. Form I filled in by the complainant also makes an interesting reading. While referring to the verbal and emotional abuse, there are some paragraphs which relate to selling or pawing Stridhan, disposing Stridhan, not providing food, cloth and medicine, non-payment of rent, preventing a person from accessing or using any part of the house etc. The date of incident of domestic violence is stated to be 10th March. The year has not been disclosed. The complainant had given her permanent address as that of Krishna Enclave while that of the brother as Australia.

The complainant has made a statement in which speaks about her misadventure in the first marriage which ended in divorce.

The complainant had deposed that her brother did not support her and she was all alone. She has stated that her brother had promised to come to India soon but those were false assurances. She had stated that she was thrown out of house on 25.01.2013 and she performed the marriage on next day. She admits presence of the care taker in the marriage but stated that they had come to seek pardon. She stated that she and her husband were unable to pay the rent. She had also referred to the notice published at the instance of her brother. She has also stated that she wanted a share in the property of her father.

With this background, it is to be examined whether the inherent jurisdiction can be invoked. The inherent jurisdiction of this Court can be invoked to undo a wrong. It does not confer any extra jurisdiction or power but the High Court merely safeguards the existing inherent powers, necessary to secure the ends of justice, to prevent the abuse of process of any Court, to give effect to an order under the Code and lastly to secure the ends of justice.

It is not disputed that the petitioner is staying abroad for the last 10 years and has not returned to India. A domestic relationship can be between a husband and wife or any relative related by consanguinity. Domestic violence Act, 2005 gives a remedy by interdict to protect. It will be appropriate to look into the definition of domestic relationship and shared household as defined in Section 2(f) and 2(s):-

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(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;

.....

(s) "shared household" means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household;"

In *Harbans Lal Malik & Ors. v. Payal Malik, 2010(3)*

LRC 177(DEL), the Delhi High Court while dealing with the definition

of domestic relationship, it was held as under:

"12. It is apparent that domestic relationship arises between the two persons, who have lived together in a shared household and 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. The definition speaks of living together at any point of time however it does not speak of having relation at any point of time. Thus, if the domestic relationship continued and if the parties have lived together at any point of time in a shared household, the person can be a respondent but if the relationship does not continue and the relationship had been in the past and is not in the present, a person cannot be made respondent on the ground of a past relationship.

The domestic relationship between the aggrieved person and the respondent must be present and alive at the time when complaint under Domestic Violence Act is filed and if this relationship is not alive on the date when complaint is filed, the domestic relationship cannot be said to be there. The first respondent made by the wife in her complaint before the learned „MM“ in this case was husband with whom the wife had lived under the same roof in a shared household till 22nd August, 2008 in USA. She had not lived for last 7½ years with respondent No. 1

in India. Respondent No. 4 is Varun Malik who is brother of the husband. Under no circumstances it can be said that brother of husband, who was a major and independent, living separately from this husband and wife, had any kind of domestic relationship or moral or legal responsibility/obligations towards his brother's wife. He had not lived in domestic relationship with Payal Malik at any point of time. Merely because a person is brother of the husband he cannot be arrayed as a respondent, nor does an „MM“ gets authority over each and every relative of the husband, without going into the fact whether a domestic relationship or shared household was there between the aggrieved person and the respondent.

In *Vijay Verma v. State(NCT of Delhi)*, 2010(3) LRC 291

(DEL), it was held that only the violence committed by the person while living in the shared house can constitute domestic violence for the purpose of D.V. Act. Para 6 of the judgment is extracted hereunder:

“6. 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. This living together can be either soon before filing of petition or 'at any point of time'. The problem arises with the meaning of phrase "at any point of time". Does that mean that living together at any stage in the past would give right to a person to become aggrieved person to claim domestic relationship? I consider that "at any point of time" under the Act only means where an aggrieved person has been continuously living in the shared household as a matter of right but for some reason the aggrieved person has to leave the house temporarily and when she returns, she is not allowed to enjoy her right to live in the property. However, "at any point of time" cannot be defined as "at any point of time in the past" whether the right to live survives or not. For example 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; can it 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 own household, and actually establishes his own household, he 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 comes to an end once the son along with his family moved out of the joint family and established his own household or when a 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 of coparcenary 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 ceased 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. Only a compelled or temporarily going out by aggrieved person shall fall in phrase 'at any point of time', say, wife has gone to her parents house or to a relative or some other female member has gone to live with her some relative, and, all her articles and belongings remain within the same household and she has not left the household permanently, the domestic relationship continues. 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 after education or otherwise and takes a job lives in some other city or country, enjoys life there, settles home there. He cannot be said to have domestic relationship with the persons whom he left behind. His relationship 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 complainant did not refer to any specific instances of violence. The complaint was alleging emotional and economical abuse said to have been committed by a brother when he was

abroad.

The purpose of the Act was to give remedy to an aggrieved person against domestic violence. Domestic violence can take place only when one is living in the shared household. The acts of abuses, emotional or otherwise if committed when one is living in the same shared household constitute domestic violence. It is true that acts of violence can still be committed even otherwise also when one is living separately. When such acts of violence are committed when one is living separate, those may be punishable under the provisions of Indian Penal Code or other penal laws and can not be covered under the Domestic Violence Act. One has to make distinction between violence committed on a person living separate in a separate household and violence committed on a person living in the shared household. If violence is committed by issuing threats on telephone/mobile or by messages it may amount to an offence under the Indian Penal Code but not under the Domestic Violence Act. The petitioner and the complainant are living miles away. They are not sharing the same household for the last 8 to 10 years, therefore, the case does not fall under the Domestic Violence Act.

The petition is allowed. The complaint and the consequent proceedings are quashed.

April 24, 2015

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**(ANITA CHAUDHRY)
JUDGE**