

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**Crl. Misc. No. 36092 of 2016 in/and
Crl. Misc. No. M-20410 of 2016
Date of decision : 17.12.2016**

Naveen Kumar	versus	Petitioner
Salochana		...Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Shalender Mohan, Advocate
for the petitioner

RITU BAHRI, J.

Crl. Misc. No. 36092 of 2016

The present application seeking pre-ponement of the case from 15.02.2017 to some early date, is allowed and the matter is taken up on board by today itself.

Crl. Misc. No. M-20410 of 2016

The present petition under Section 482 Cr.P.C is for setting aside order dated 03.05.2016 (P-7) passed by learned Sessions Judge, Hisar and order dated 23.05.2014 passed by learned Chief Judicial Magistrate, Hisar

The marriage of the petitioner was solemnized with the complainant/respondent on 30.04.2005 and out of this wedlock, a male child was born on 24.02.2006. She left the matrimonial home in the year 2007 and is living separately since then. Thereafter, she filed a complaint under Section 12 of the Protection of Women from the Domestic Violence Act (for short 'the Act') on 03.02.2014 stating therein that the incident occurred in November, 2011 and she filed the complaint in the year 2014 (P-1).

Thereafter, petitioner made an application for dropping the

proceedings under Section 12 of the Act in which respondent filed reply and the learned Court below dismissed the application, vide impugned order dated 23.05.2014 (P-4).

Petitioner preferred the revision against the aforesaid order, which was also dismissed on 03.05.2016 (P-7). Hence the present petition.

Learned counsel contends that the impugned orders are liable to be set aside as the petition can be filed only within one year from the alleged incident. As per the respondent/complainant, the incident occurred in the year 2011 and she filed the petition in the year 2014.

Learned counsel further contends that no complaint was filed by the complainant after the incident and no medical was also conducted and thus, the impugned orders be set aside.

Heard learned counsel for the petitioner.

Both the Courts below had rightly passed the order by relying upon judgment of Hon'ble Apex Court in a case of ***Krishna Bhattacharjee vs. Satish Chaudhari and another, 2016(1) RCR (Civil) 151*** wherein it was held that the offence of harassment and criminal breach of trust are continuous offence for which no limitation has been prescribed and the complaint can be filed for the same at any point of time.

Further the judgment relied upon by learned counsel for the petitioner before the Court below of Hon'ble Apex Court in a case of ***Inderjit Singh Grewal vs. State of Punjab and another, 2011(3) Apex Court Judgments 37 (SC)*** was held to be not applicable as in that case, a decree of divorce was passed between the parties and their relationship came to an end. In the present case, relationship between the husband and wife is still subsisting.

In the present case, the complainant left the company of her husband in the year 2011 and filed the complaint in the year 2014 and thus she was compelled to file the application for stridhan.

In para No. 31 of ***Krishan Bhatacharjee's case (supra)***, Hon'ble the Supreme Court observed as under:-

31. Regard being had to the aforesaid statement of law, we have to see whether retention of stridhan by the husband or any other family members is a continuing offence or not. There can be no dispute that wife can file a suit for realization of the stridhan but it does not debar her to lodge a criminal complaint for criminal breach of trust. We must state that was the situation before the 2005 Act came into force. In the 2005 Act, the definition of "aggrieved person" clearly postulates about the status of any woman who has been subjected to domestic violence as defined under Section 3 of the said Act. "Economic abuse" as it has been defined in Section 3(iv) of the said Act has a large canvass. Section 12, relevant portion of which have been reproduced hereinbefore, provides for procedure for obtaining orders of reliefs. It has been held in Inderjit Singh Grewal (supra) that Section 498 of the Code of Criminal Procedure applies to the said case under the 2005 Act as envisaged under Sections 28 and 32 of the said Act read with Rule 15(6) of the Protection of Women from Domestic Violence Rules, 2006. We need not advert to the same as we are of the considered opinion that as long as the status of the aggrieved person remains and istridhan remains in the custody of the husband, the wife can always put forth her claim under Section

12 of the 2005 Act. We are disposed to think so as the status between the parties is not severed because of the decree of dissolution of marriage. The concept of “continuing offence” gets attracted from the date of deprivation of istridhan, for neither the husband nor any other family members can have any right over the stridhan and they remain the custodians. For the purpose of the 2005 Act, she can submit an application to the Protection Officer for one or more of the reliefs under the 2005 Act. In the present case, the wife had submitted the application on 22.05.2010 and the said authority had forwarded the same on 01.06.2010. In the application, the wife had mentioned that the husband had stopped payment of monthly maintenance from January 2010 and, therefore, she had been compelled to file the application for stridhan. Regard being had to the said concept of “continuing offence” and the demands made, we are disposed to think that the application was not barred by limitation and the courts below as well as the High Court had fallen into a grave error by dismissing the application being barred by limitation.

Applying the ratio of the above said judgment, no ground is made out to set aside order dated 03.05.2016 (P-7) and order dated 23.05.2014.

The present petition stands dismissed.

17.12.2016

G Arora

(RITU BAHRI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No