

In the High Court of Punjab and Haryana at Chandigarh

Crl. Misc. No. M-24081 of 2015

Date of Decision: 23.05.2016

Rajbala and others

.....Petitioners

Versus

Seema Gupta

.....Respondent

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

1. Whether Reporters of local papers may be allowed to see the judgment? Yes/No
2. To be referred to the Reporters or not? Yes/No
3. Whether the judgment should be reported in the digest? Yes/No

Present: Mr. Anshul Mangla, Advocate
for the petitioners.

Mr. Vivek Khatri, Advocate
for the respondent.

ANITA CHAUDHRY, J(ORAL)

1. This petition has been filed under Section 482 Cr.P.C. for quashing the criminal complaint bearing No. RBT-03-2 dated 6.6.2003 filed under Section 12, 17, 18, 19, 20, 21, 22 of the Protection of Women from Domestic Violence Act, 2005 (Annexure P-1) and the order dated 6.6.2013 and all the consequent proceedings arising out of the same.

2. The petitioners have been summoned in the complaint filed under the Domestic Violence Act, 2005 ('Act' for short). The petitioners are the relatives of the husband of the complainant. The husband of the complainant had died on 21.4.2010 in a road accident. The complaint was filed against the mother-in-law, father-in-law, three married sisters-in-law and their husbands. It has been filed 13 years after the marriage and three years after the death of the husband. The petitioners have pleaded that false allegations had been levelled and they had never claimed custody of the

minor children and the married sisters-in-law along with their husbands were residing separately and the petition has been filed only to harass them. The complainant was seeking maintenance and a separate residence as well as damages and a restraint order against any domestic violence. The complainant as per her allegations had left the matrimonial home on 1.11.2012. It was pleaded that she had been denied a right in the property.

3. The trial Magistrate issued notice to the respondents heard both the sides on the application claiming interim maintenance as well as interim order qua residence in the shared household. The trial Court recorded a finding that the respondent had failed to show that her husband had any right in the house, the property was in the name of the mother-in-law and relying upon the decision of the Apex Court in '***S.R.Batra and another versus Smt. Taruna Batra 2007(1) DMC 1(SC)***' interim maintenance and relief of residence was denied. The case was thereafter fixed for the presence of the remaining respondents.

4. I have heard the counsel for the parties and have perused the documents placed on record.

5. Counsel for the petitioners have vehemently contended that the petitioners are the close relatives of the husband and were living separately and there was no single instance of domestic violence and the complaint had been filed three years after the death. It was urged that the trial Magistrate without even ascertaining the correctness of the allegations and without ascertaining whether all of them were living together, had issued notice. It was urged that no specific instance has been given in the complaint and vague allegations of taunts and beatings and wild

allegations that the brothers-in-law and father-in-law pressurized her to maintain relations with them have been levelled. It was urged that the complainant and her husband were living in Chandigarh and petitioners No. 1 to 6 are living in different districts of Haryana, the sisters-in-law were living with her husbands in separate residence and the proceedings were only an abuse of the process of law. Reliance was placed upon ***Suo Motu versus Ushaben Kishorbhai Mistry 2016(2) R.C.R. (Criminal) 421, Om Parkash Syngal and others versus Aditi Garg 2016(2) R.C.R. (Criminal) 12, Chandrawati Devi and others versus State of Bihar and another 2014(4) ECRC 53, Inderjit Singh Grewal versus State of Punjab and another 2011(4) R.C.R. (Criminal) 1, Ashish Dixit and others versus State of U.P. and another 2013(2) R.C.R. (Criminal) 340, Devanand Baliram Wankhade and others versus State of Maharashtra and others 2015 All MR (Crl.) 3618, Anoop and others versus Vani Shree 2015(2) R.C.R. (Criminal) 989, Smt. Geeta and others versus State of U.P. and another 2014(5) R.C.R. (Criminal) 577 and Nandan Singh Manrai versus State and others 2011(2) R.C.R. (Criminal) 271.***

6. The submission on the other hand was that the remedy was available and the petitioners could approach the Magistrate and when a specific remedy is provided, the petition under Section 482 Cr.P.C. was not maintainable. It was also urged that the provisions of the Act provide for a remedy under the civil law and the petition under Section 482 Cr.P.C. could not have been resorted to.

7. A Division bench of the Gujrat High Court was faced with a similar objection. The Division Bench in '**Suo Motu versus Ushaben Kishorbhai Mistry 2016(2) R.C.R. (Criminal) 421**' examined the provisions of the Act and the judgments referred before it concluded as under:-

“27. In view of the aforesaid observations and discussion, the following conclusions:

(i) The provisions of the Act provide for remedial measures for civil rights of women but the machinery provided is through criminal court.

(ii) Initiation of proceedings under Section 12 or 18 or 19 or 20 or 21 or 22 or 23 or 31 of the Act would begin only when the Magistrate has passed any judicial order including of issuance of notice for hearing.

(iii) Any person affected by any proceedings under the Act, prior to initiation of proceedings under Section 12 of the Act may prefer Special Criminal Application under Article 226 of the Constitution if as per him, the proceedings are beyond the scope and ambit of the Act or without any authority in law. But this Court, while entertaining the petition under Article 226 of the Constitution may decline entertainment of the petition by way of self-imposed restriction in exercise of the judicial powers or may decline entertainment of the petition in exercise of its sound judicial discretion.

(iv) Once proceedings are initiated under Section 12 or 18 or 19 or 20 or 21 or 22 or 23 or 31 either

independently or jointly on account of any judicial order passed by the learned Magistrate including issuance of notice, such proceedings shall be governed by the Code of Criminal Procedure coupled with the power of the Court under Section 28(2) to lay down its own procedure for disposal of an application under Section 12 or under sub-section (2) of Section 23 of the Act.

(v) Once the applicability of the Code of Criminal Procedure has started on account of any judicial order passed by the learned Magistrate including issuance of notice either under Section 12 or 18 or 19 or 20 or 21 or 22 or 23 or 31 of the Act independently or jointly, remedial measures to the aggrieved person as provided under the Code of Criminal Procedure, 1973 can be said as available. But the higher forum under the Code of Criminal Procedure, may be the Court of Session or the High Court, may decline entertainment of such proceedings considering the facts and circumstances of the case and as per the settled principles of law and in accordance with law.

(vi) The aforesaid remedial measures provided under the Code of Criminal Procedure would also include the powers of this Court under Section 482 of the Code, but the Court may, in a given case, decline entertainment of the petition when there is express remedy provided under the Code of Criminal Procedure or no case is

*made out to prevent the abuse of process of any Court,
or no case is made out to secure the ends of justice.”*

This Court in '**Om Parkash Syngal and others versus Aditi Garg** reported in **2016(2) R.C.R. (Criminal) 12** had held that the violence committed by a person while living in the shared household can only constitute domestic violence and other acts of violence when one is living separate may be punishable under the different provisions of the Indian Penal Code and the other penal laws but cannot be covered under the Domestic Violence Act.

8. In **Chandrawati Devi's** case (supra), the complainant had never lived with the brother-in-law and the mother-in-law and had claimed a share in the property and money of the deceased husband. It was held that the matter could not be decided in a complaint filed under the Domestic Violence Act and the matter could be taken up in a partition suit and the proceedings were quashed. The issue of maintainability was also decided therein and it was held that the extra ordinary remedy and the inherent power under Section 482 Cr.P.C. could be invoked when it was to prevent the abuse of the process of law and to secure justice.

9. In the present complaint, the complainant had implead the in-laws and the distant relatives. The trial Court had summoned all the respondents without even waiting for the report of the Protection Officer. The trial Court should have applied its mind and should have examined the contents of the complaint before issuing notice to the distant relatives who were residing separately. There was no averment in the complaint that they had at any point of time lived together. The complaint had been filed three years after the death of the husband of the complainant. No specific instance of

domestic violence had been mentioned. As regards the share in the property there is a civil remedy and can not be gone into in these proceedings under the Domestic Violence Act. There is also the bar of limitation in the present fact situation. I have no hesitation in holding that continuation of the proceedings under the Act against the petitioners is an abuse of the process of law.

10. Therefore, the petition is allowed and the aforementioned complaint as well as the subsequent proceedings arising therefrom, are quashed.

**(ANITA CHAUDHRY)
JUDGE**

**May 23, 2016
Gurpreet**