

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-38728-2016

Date of Decision:- 27.10.2016

Sukhwinder Singh

....Petitioner

Versus

Sukhbir Kaur and another

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Amandeep Singh Manaise, Advocate,
for the petitioner.

RITU BAHRI, J. (Oral)

Present petition has been filed by the petitioner for seeking quashing of order dated 17.09.2016 (Annexure P-8), passed by learned Additional Sessions Judge, Gurdaspur whereby order passed by the learned JMJC, Gurdaspur dated 07.10.2015 (Annexure P-7) has been upheld and complainant-Sukhbir Kaur (respondent No.1) has been awarded an interim maintenance of ₹4000/- per month along with right of residence in complaint No.28 dated 01.08.2015 (Annexure P-4) under the Domestic Violence Act.

As per the complainant, she had solemnized marriage with petitioner on 01.11.2004 and she had one son, namely, Deepak Singh from this wedlock. Petitioner was earlier married to one Palwinder Kaur and this fact was not disclosed to her family members. An FIR No.68 dated

which all the accused were acquitted. The allegations of harassment on account of demand of dowry were not made out which led to the acquittal of the accused. Thereafter, the complaint under Section 12 of the Domestic Violence Act has been filed by her. The judgment of acquittal has not been challenged by the complainant-respondent in the Court of Sessions Judge, Gurdaspur and the same has attained finality to the effect that the marriage of complainant with the petitioner was not being proved. The complaint made under Section 12 of the Domestic Violence Act has been filed on 10.08.2015 and an interim maintenance of ₹4,000/- and right of residence has been given to the complainant.

Learned counsel for the petitioner has vehemently argued that the respondent has failed to prove the marriage solemnized between the parties and this was the main ground for acquittal in FIR of all the accused. He has referred to an order dated 25.07.2013 (Annexure P-2) whereby the application filed by respondents under Section 125 Cr.P.C. seeking maintenance has been dismissed. He has further referred to an order dated 01.05.2015 (Annexure P-3) whereby in revision petition against order dated 20.08.2013, passed by learned Judicial Magistrate 1st Class, Gurdaspur, she has been not held entitled any maintenance as she is the second wife of Sukhwinder Singh and the first marriage has not been dissolved and was subsisting. However, maintenance of ₹5,000/- has been awarded to the minor son, namely, Deepak. On a specific query, learned counsel states that the order with respect to the maintenance of child has attained finality.

Now, interim maintenance granted to the respondent No.1 in the complaint under Section 12 of D.V. Act, required to be examined in the

second marriage, the second wife cannot be denied maintenance on the ground that the marriage is null and void under the Domestic Violence Act.

The Supreme Court in Deoki Panjhiyara Vs. Shashi Bhushan Narayan Azad (SC), 2013(1) R.C.R. (Criminal) 338 has held that wife claiming maintenance from husband under Prevention of Domestic Violence Act, husband cannot deny claim on the ground that wife was previously married and the second marriage was void and husband should obtain a decree of nullity from competent Court. Wife entitled to claim maintenance, till the husband obtained a decree of nullity.

A Co-ordinate Bench of this Court in Poonam Vs. Vijay Kumar Jindal, 2015(4) RCR (Criminal) 300 held that if a married women living in domestic relationship though it is not in the nature of marriage, the aggrieved person can claim the monetary relief and will be covered under the Domestic Violence Act, 2005. For the purpose of granting maintenance under the Domestic Violence Act only relationship is to be approved and validity of the marriage not to be decided by the Court.

Moreover, the Supreme Court in Saraswathy Vs. Babu (SC) 2014(1) R.C.R. (Criminal) 167, has held that acts of domestic violence if occur prior to coming into force of Prevention of Domestic Violence Act, 2005 can be made basis to claim protection under Sections 18 and 19 of the PWD Act, 2005 along with the maintenance.

After hearing the learned counsel for the petitioner, going through the record, this Court is of the considered view that the physical and mental harassment within a family is a continued offence and an application under Domestic Violence Act cannot be dismissed on the ground of

limitation. Both the Courts below have rightly granted the interim

maintenance, after appreciating the evidence in the correct prospective and thus do not require any interference. Such orders, containing valid reasons, cannot possibly be interfered with by this Court, in exercise of jurisdiction of this Court under Section 482 Cr.P.C., unless and until, the same are illegal, perverse and without jurisdiction. Since, no such patent illegality or legal infirmity has been pointed out by the learned counsel for the petitioner, so, the impugned orders deserve to be and are hereby maintained in the obtaining circumstances of the case.

In the light of aforesaid reasons, as there is no merit, therefore, the instant petition is hereby dismissed as such.

October 27, 2016
naresh.k

(**RITU BAHRI**)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No