

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

**Crl. Misc. No.M-6765 of 2015 (O&M)
Date of decision : 14.03.2016**

Azad Singh Ghangas

.....Petitioner(s)

Versus

Suman Kumari

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. R.S. Kundu, Advocate
for the petitioner.

Mr. R.A. Sheoran, Advocate and
Mr. Sushil Sheoran, Advocate
for the respondent.

ANITA CHAUDHRY, J(ORAL)

The instant petition has been filed under Section 482 Cr.P.C. for quashing the complaint qua the petitioner who has been summoned in a complaint filed under the Domestic Violence Act.

The complainant had filed a petition under the Domestic Violence Act arraying the husband, mother in law and the brother of the father in law. The allegations against petitioner Azad Singh Ghangas were that he was a member of the joint family and was residing in the same house and there was a domestic relationship. It was further averred that Azad Singh used to throw taunt at the complainant that she had not brought sufficient dowry.

The submissions on behalf of the petitioner are that there was no domestic relationship and the petitioner was a resident of village Petwar in District Hisar and they had placed on record the ration card of Jatinder's family to show that he was not residing with them. It was urged that the telephone bills of the house occupied by Azad Singh in Village Petwar had also been produced. It was contended that the complaint did not contain any detail of any incident so far as the petitioner was concerned and the complaint was not maintainable against him and the Protection Officer has not specifically referred to his residence in the same house. The Court had summoned him without even calling for the report of the Protection Officer. It was urged that since the complainant did not live with the petitioner in the house hold along with her husband, therefore, no offence was made out and the proceedings against him should be quashed. It was urged that the petitioner was drawing his pension from Hisar. Reliance was placed upon ***Ashish Dixit and others Vs. State of U.P. and another 2013 AIR (SC) (Cri) 691, Girish and others Vs. Poonam 2012(4) Law Herald 3547, K. Narasimhan Vs. Smt. Rohini Devanathan 2010(2) AICLR 558 and Rama Singh Vs. Maya Singh and others 2012(4) MPHT 169.***

On the other hand, the submission was that there were specific allegations against the petitioner and he was living with the family since he was the elder of the family. It was pointed out that father in law of the complainant had died and he was the head of the family.

The petitioner had placed on record the telephone bills as well as the pension payment order and the copy of the voter list. These documents show that the petitioner was a voter of Bawani Khera in Bhiwani. The house number however is different. The petitioner is the elder brother of the father in law of the complainant. The complainant had alleged that there was a domestic relationship. The complainant was unable to place any document on record to show that the petitioner was residing with the complainant's husband. The complaint contains allegations which were mostly against the husband and the mother in law. In order to attract the provisions of the Domestic Violence Act and as per the definition of Section 2(s) of the Domestic Violence Act, the accused should have shared the house hold and unless it is shown that all the accused lived in the shared house hold with the complainant either jointly or individually, the question of attracting the Provisions of the Act do not arise.

The only allegation against the petitioner is that he used to taunt the complainant that she had not brought sufficient dowry which according to her is an emotional abuse. No specific date or year of incident was mentioned. It appears that the allegations have been made with an ulterior motive in order to rope in the rest of the family. The Magistrate should have taken into consideration all the facts before summoning the accused. There was no justification for summoning the petitioner. Making certain allegations against the petitioner would by itself would not amount to Domestic Violence in the absence of any material to show that they shared the house hold.

There is no proof that the petitioner was living with the complainant at

any point of time. In these circumstances, the proceedings initiated against the petitioner and also the complaint filed by the respondent against the petitioner is an abuse of the process of law. The proceedings pending before the trial Court so far as the petitioner is concerned are quashed. The petition is allowed. Record of the trial Court be sent back expeditiously.

14.03.2016

sunil

(ANITA CHAUDHRY)
JUDGE