

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

Criminal Misc. No.M- 23820 of 2016(O&M)

Date of Decision: February 22 , 2017.

Arvinder Singh PETITIONER (s)

Versus

Navjot Kaur and another RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Ms. Payel Mehta, Advocate
for the petitioner.

LISA GILL, J.

This petition has been filed for quashing of order dated 01.07.2014 passed by the learned Judicial Magistrate First Class, Patiala as well as order dated 05.04.2016 passed by the learned Additional Sessions Judge, Patiala whereby application moved by the petitioner seeking dismissal of the complaint filed by respondent No.1, was dismissed.

A complaint under Section 12 of the Protection of Women from Domestic Violence Act (for short 'the Act') was filed by respondent No.1 on 10.02.2014 seeking various reliefs. The petitioner filed an application dated 22.05.2014 for dismissal of the complaint being barred by limitation in view of the judgment passed by the Hon'ble Supreme Court in **Inderjit Singh Grewal v. State of Punjab and others, 2014(1) RCR(Crl.) 942** (Annexure P3). This

application was dismissed by the learned Judicial Magistrate First Class, Patiala on 01.07.2014 (Annexure P1) on the ground that the judgment cited by the petitioner was not applicable in this case for the simple reason that marriage between the parties was still subsisting. In the case of Inderjit Singh Grewal (supra) the Hon'ble Supreme Court held that limitation under Section 12 of the Act would be applicable in the case of a divorced wife, therefore the same was not applicable to the facts of the instant case. It was held by the learned trial court that in the present case there is no such averment of divorce having been granted in favour of the parties. The complainant was admittedly the legally wedded wife at the time of filing of the complaint. Therefore, the said application was rejected on this ground. Revision petition preferred by the petitioner against the said order was also dismissed by the learned Additional Sessions Judge, Patiala on 05.04.2016. Aggrieved therefrom this petition has been filed challenging both the orders dated 01.07.2014 and 05.04.2016.

Learned counsel for the petitioner vehemently argues that the bar of limitation under the Act would be applicable even in the case of subsisting marriage as the petitioner and respondent No.1 had last resided together in January 2013 and the complaint was filed on 10.02.2014. There was no domestic relation between them therefore, the impugned orders have been wrongly passed and deserve to be set aside. The complaint filed by respondent No.1 deserves to be dismissed on the ground of limitation. It is thus prayed that this petition be allowed.

I have heard learned counsel for the petitioner and have perused the file with her assistance.

Section 12 of the Act reads as under:-

“12. Application to the Magistrate. –

(1) An aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person may present an application to the Magistrate seeking one or more reliefs under this Act: Provided that before passing any order on such application, the Magistrate shall take into consideration any domestic incident report received by him from the Protection Officer or the service provider.

(2) The relief sought for under sub-section (1) may include a relief for issuance of an order for payment of compensation or damages without prejudice to the right of such person to institute a suit for compensation or damages for the injuries caused by the acts of domestic violence committed by the respondent: Provided that where a decree for any amount as compensation or damages has been passed by any court in favour of the aggrieved person, the amount, if any, paid or payable in pursuance of the order made by the Magistrate under this Act shall be set off against the amount payable under such decree and the decree shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), or any other law for the time being in force, be executable for the balance amount, if any, left after such set off.

(3) Every application under sub-section (1) shall be in such form and contain such particulars as may be prescribed or as nearly as possible thereto.

(4) The Magistrate shall fix the first date of hearing, which shall not ordinarily be beyond three days from the date of receipt of the application by the court.

(5) The Magistrate shall endeavour to dispose of every application made under sub-section (1) within a period of sixty days from the date of its first hearing.”

Section 2(a) of the Act defines “aggrieved person” as **any woman who is, or has been**, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent. Section 2(f) of the Act defines “domestic relationship” as 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.

In view of the specific provisions of law there is an inherent flaw in the argument raised by learned counsel that once the petitioner was not residing with respondent No.1-wife since 27.01.2013, respondent No.1 had no right to file the complaint in question after a lapse of one year. It is not disputed that marriage between the petitioner and respondent No.1 still subsists. There is no decree of divorce granted in favour of any of the parties by a court of competent jurisdiction.

The Hon'ble Supreme Court in Krishna Bhattacharjee v. Sarathi Choudhury and another, *2016(1) RCR(CrL) 152* has discussed the position in such cases. While referring to the decision in Inderjit Singh Grewal (supra) it was observed that “the said case has to be understood regard being had to the factual expose therein.” It has been specifically observed that having regard to the nature of the legislation a more sensitive approach is expected from the court than throwing out a petition at the threshold on the ground of maintainability. There has to be an apposite discussion and thorough deliberation on the issue raised. Even in a case where a decree of

judicial separation was passed, it was held that the wife does not cease to be an aggrieved person. Therefore, in the present case it cannot be held that the respondent – wife is not an aggrieved person or did not have 'domestic relationship' with the petitioner as defined under Section 2(f) of the Act, so as to entail the dismissal of her complaint being time barred at the threshold.

Learned counsel for the petitioner is unable to point out any illegality or infirmity in the impugned order dated 01.07.2014 passed by the learned Judicial Magistrate First Class, Patiala as well as order dated 05.04.2016 passed by the learned Additional Sessions Judge, Patiala which calls for interference by this Court.

Consequently, this petition is dismissed.

February 22 , 2017.
'om'

(LISA GILL)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No