

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

Crl. Rev. No. 2840 of 2016 (O&M)

Date of Decision : March 14, 2017

Khushi Ram Petitioner

VERSUS

Surbhi Ahuja Respondent

CORAM : HON'BLE MRS. JUSTICE LISA GILL

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

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Present: Mr. Manuj Nagrath, Advocate
for the applicant/petitioner.

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LISA GILL, J. (Oral)

This petition has been filed challenging order dated 2.7.2015 passed by the learned Judicial Magistrate Ist Class, Yamuna Nagar at Jagadhri as well as order dated 18.2.2016 passed by the learned Additional Sessions Judge, Yamuna Nagar at Jagadhri.

The petitioner filed an application for initiation of action against the respondent (grand daughter-in-law of the petitioner) under Section 340 Cr.P.C. alleging that she filed a false affidavit in her petition under Section 12 of the Protection of Women from Domestic Violence Act, 2005. Due to matrimonial discord between the respondent and her husband

multifarious litigation is admittedly pending between the respondent and her in-laws. Proceedings under Sections 498-A IPC, 125 Cr.P.C. as well as Sections 17, 18, 19, 20, 22 and 23 of the Protection of Women from Domestic Violence Act, 2005 are stated to be pending.

It is contended that interim orders dated 16.10.2013 (Annexure P4), 9.12.2013 (not annexed with this petition) and 10.12.2014 (Annexure P2, wrongly mentioned as P4 in the grounds of revision) in the proceedings under the Protection of Women from Domestic Violence Act, 2005 were obtained by the respondent by raising false claims and allegations. The respondent merely wishes to gain access, occupy and obtain possession of the petitioner's property illegally. It is submitted that vide the above said orders right of residence was afforded to the respondent to the extent of a one room set in a shared household at E-260, Greater Kailash-I, New Delhi. The petitioner was restrained from alienating his property. However, this property belongs to the petitioner exclusively, thus it does not fall in the definition of 'shared household' in any manner. The petitioner is the grand father-in-law of the respondent and therefore cannot be made liable in any manner to provide residence to the respondent in his exclusive property. The petitioner's son, daughter-in-law and grand son are living in Singapore. The petitioner is in India therefore he is being unnecessarily harassed.

Learned counsel for the petitioner vehemently argues that the impugned orders have been incorrectly passed inasmuch as it is mentioned that the certified copies of orders dated 16.10.2013 and 9.12.2013 have not been placed on record and neither has the certified copy of the allegedly false affidavit executed by the respondent filed. Learned counsel for the petitioner while specifically referring to para 5 of the affidavit dated

30.9.2015 (Annexure P3 wrongly mentioned as Annexure P5 in the grounds of appeal) filed by the respondent submits that the respondent has falsely tried to project the petitioner's house to be a shared household. The respondent did not even implead the petitioner as a party to the proceedings but sought relief qua his property. The petitioner is unnecessarily being dragged into this litigation to build pressure. Therefore, it is prayed that the impugned orders be set aside and an inquiry under Section 340 Cr.P.C. be initiated and the respondent be proceeded against for filing a false affidavit (dated 30.9.2015).

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

Section 340 Cr.P.C. reads as under:-

“340. Procedure in cases mentioned in section 195. -

(1) When, upon an application made to it in this behalf or otherwise, any Court is of opinion that it is expedient in the interests of justice that an inquiry should be made into any offence referred to in clause (b) of sub- section (1) of section 195, which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary,-

(a) record a finding to that effect;

(b) make a complaint thereof in writing;

(c) send it to a Magistrate of the first class having jurisdiction;

(d) take sufficient security for the appearance of the accused before such Magistrate, or if the alleged offence

is non- bailable and the Court thinks it necessary so to do, send the accused in custody to such Magistrate; and

(e) bind over any person to appear and give evidence before such Magistrate.

(2) The power conferred on a Court by sub- section (1) in respect of an offence may, in any case where that Court has neither made a complaint under sub- section (1) in respect of that offence nor rejected an application for the making of such complaint, be exercised by the Court to which such former Court is subordinate within the meaning of sub- section (4) of section 195.

(3) A complaint made under this section shall be signed,-

(a) where the Court making the complaint is a High Court, by such officer of the Court as the Court may appoint;

(b) in any other case, by the presiding officer of the Court.

(4) In this section, " Court" has the same meaning as in section 195.

A copy of the affidavit dated 30.9.2015 alleged to be false and incorrect is available on the file as Annexure P3. I have gone through the same. Para 5 of the said affidavit reads as under:-

“5. That the “DOLI” of the said couple on the very first instance was ritually transported to E-260, Greater Kailash-I, New Delhi, India on 1st March 2011 thereupon, henceforth the above mentioned New Delhi residence emphatically justifies the Matrimonial Home of the deponent legally, technically,

naturally and constitutionally.

Matrimonial Home as per defined by 'Hon'ble Supreme Court of India' by squarely matching the four corners of the Statutes contemplating thereby in various Acts and judgments made E-260 GK-I, New Delhi as the Matrimonial Home of the deponent.

The said address viz-E-260 GK-I New Delhi has been occupied as a registered owner by the parent in laws of the deponent consolidate their deep rooted links with New Delhi, India from last number of decades.

That the deponent stayed at her matrimonial house (recorded in the name of Grand father in law of the deponent) for few days with the above mentioned the deponent stayed with her in laws upto 08.03.2011 and thereafter the deponent along with the respondent No.1 came at Yamuna Nagar for performing phera ceremony as well as for registration of marriage.”

The Hon'ble Supreme Court in ***Pritish v. State of Maharashtra*** **2002 (2) Cr.Court Case Page 174** has held that the Court is to decide whether it is expedient in the interest of justice to inquire into the offence which appears to have been committed. It is not peremptory that a preliminary enquiry should be held. Furthermore, even if the Court forms such an opinion it is not mandatory that the Court should make a complaint.

In the present case, the learned trial Court dismissed the application preferred by the petitioner under Section 340 Cr.P.C. after taking into consideration the entire facts and circumstances of the case.

Learned Additional Sessions Judge, Yamuna Nagar at Jagadhri, while dismissing the appeal preferred by the petitioner observed as under:-

“7. The present appeal has been filed by Khushi Ram against respondent-Surbhi Ahuja. The appellant is stated to be grandfather of the husband of respondent-Ms. Surbhi Ahuja. Admittedly, the husband and wife have locked their horns and are indulged in multifarious litigations against each other leveling allegations and counter allegations therein. The wife-Ms. Surbhi Ahuja has staked claim in complaint filed under the provisions of Protection of Women from Domestic Violence Act. She has also filed divorce petition on the grounds alleged therein. All the litigations are pending trial and no definite or conclusive findings have been given by any Court on appraisal of evidence. The parties are yet to prove their claims. Thus, at this stage, Court cannot find it expedient to order any enquiry at the asking of appellant-Khushi Ram, who is not even the party to the litigations between husband and wife.

.....9. In the present case, no Court has given finding that the statements of Ms. Surbhi Ahuja, as alleged by appellant-Khushi Ram, are false and the same amounts to perjury. It is rightly held that the applicant has failed to furnish substantive and legally admissible facts on record, which warrants the exercise of power of the Court u/s 340 Cr.P.C. It is rightly held that the order, alleged to have been obtained by making false statement, are not shown to have been set aside in appeal/revision on this particular ground. The averments made

in her affidavit in complaint filed under D.V.Act are also not shown to have been declared false by the Court. Mere giving different address on the divorce petition would not go on to show that she made false statement and committed perjury. Moreso, the said claim of respondent-Surbhi Ahuja is pending trial.”

It has thus been specifically held by both the learned Courts below that no ground was made out for initiating action under Section 340 Cr.P.C. Learned counsel for the petitioner has fairly submitted that the petitioner has moved an application in the pending proceedings for being impleaded as a party. Arguments raised on behalf of the petitioner in respect to the property of the petitioner being self acquired and hence not covered under the definition of 'shared household' are not required to be addressed at this stage in the present proceedings. The petitioner is at liberty to raise all pleas in this respect before the appropriate forum. Learned counsel for the petitioner is unable to indicate any infirmity or illegality in the impugned orders which call for interference by this Court at this stage. There is no ground to proceed against the respondent under Section 340 Cr.P.C. at this stage.

There is a delay of 77 days in filing of this revision petition. As the matter has been dealt with on merits, the question of condonation of delay has been rendered academic.

14.3.2017
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(LISA GILL)
JUDGE

Note: Whether speaking/reasoned

Yes / No

Whether Reportable:

Yes / No