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IN THE HIGH COURT OF DELHI AT NEW DELHI

DECIDED ON : MAY 18, 2017

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CRL.M.C. 4255/2016 & CRL.M.A.No.17746/16

SUMITTRA RAY & ORS.

..... Petitioners

Through : Mr.Bijan Ghosh, Advocate with
Mr.P.Jegan, Advocate.

VERSUS

NCT OF DELHI & ANR.

..... Respondents

Through : Mr.G.M.Farooqui, APP.
Mr.Ashok Singh, Advocate for R2.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J. (ORAL)

1. Present petition under Section 482 Cr.P.C. has been filed by the petitioners for quashing of Complaint Case No.27/DV/2015 filed by respondent No.2 against them under Sections 12(1), 18, 20 and 22 of Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as 'D.V.Act'). The petition is contested by the complainant/respondent No.2.

2. I have heard the learned counsel for the parties and have examined the file. Undisputedly, the petitioner No.4 was married to respondent No.2 on 27.1.2005. No child was born out of this wedlock.

3. It is informed that respondent No.2 went back to her parents' house on her own in December, 2012. On 14.01.2013 she decided for dissolution of marriage; came back to the matrimonial home and took her *istridhan*. It is alleged that settlement to seek divorce by mutual consent took place. ₹40,00,000/- were paid to the complainant in full and final satisfaction through bank transactions. On 20.8.2013, petition for mutual divorce was filed at Kolkata which was affirmed by both the parties. On 7.7.2014, the respondent No.2 did not appear and the divorce petition filed for mutual divorce was dismissed due to her non-appearance.

4. It is further informed that on 18.9.2014, petitioner No.2, respondent No.2's father in law, filed criminal complaint case against her and her father for commission of offences punishable under Section 120B/420 IPC. Cognizance was taken and they were summoned to face trial. On 26.9.2014, the petitioner No.4 filed a divorce petition under Section 27 (1) (b) (d) of Special Marriage Act, 1954 at Kolkata. On 3.2.2015, respondent No.2 filed the instant petition under D.V.Act against the petitioners after more than twenty four months of her leaving the matrimonial home without any complaint to any authority, whatsoever. In May, 2015 she also filed divorce petition before Family Court, Bandra, Mumbai, Mat Suit No.A/2015 of 2015.

5. By an order dated 16.11.2015, all the matters were transferred to Patiala House Court, by the Hon'ble Supreme Court. It is informed that respondent No.2 has filed an application for maintenance pendent-lite in the divorce petition.

6. Learned counsel for the petitioners urged that the allegations made in the complaint case under D.V.Act are false. Respondent No.2

concealed the material fact of receiving ₹40,00,000/- in full and final settlement of all her claims in seeking divorce. Subsequently, she changed her mind and did not appear for Second motion. She has already taken away all her jewellery and *istridhan*. There was no genuine and legal cause of action to file the complaint under D.V.Act. Delay in filing the complaint case has not been explained. The complaint case is not maintainable as the parties were living separate by mutual consent and there was no scope of perpetrating any domestic violence upon the complainant. Learned counsel for the respondent No.2 has controverted the contentions. He urged that the petitioners' conduct even prior to separation can be taken into consideration.

7. Respondent No.2 has admitted receipt of ₹40,00,000/- towards seeking divorce by mutual consent. Her contention, however, is that the fraud was committed upon her. It was in an oral settlement and it was agreed that the petitioners would pay ₹1,70,00,000/- to her in full and final satisfaction of her claims. Since the settled/agreed amount was not given by the petitioners, divorce by mutual consent could not take place.

8. Since the petitioners have not placed on record any document in writing showing that respondent No.2 had agreed to give consent for mutual consent on receipt of ₹40,00,000/- in full and final satisfaction of her claims, the controversy cannot be adjudicated in the present proceedings. Both the parties are involved in various litigations as referred above.

9. Since no specific order in the complaint case under D.V.Act is under challenge on any specific ground, filing of the complaint case by respondent No.2 on specific allegations against the petitioners constituting 'domestic violence' cannot be thrown away at this initial stage. The respondent/complainant cannot be denied to exercise her right to institute a

complaint under D.V.Act. Complaint case filed by her, prima facie, discloses ingredients of commission of offences under the D.V.Act and the complaint case without giving opportunity to the parties to prove and establish their respective contentions cannot be suspected. Truthfulness and falsity of the allegations contained in the complaint cannot be gone through at this stage. It is a matter of trial. All above pleas can be raised by the petitioners before the Trial Court. As and when any order under the Act is passed by the Trial Court, of course, the petitioners would be at liberty to challenge it, if so advised.

10. It is pertinent to note that the instant complaint case was filed in the court of Metropolitan Magistrate, Mumbai and summoning order (the copy of which is on record) was never challenged there. Only after the transfer of the present petition to Delhi, the instant petition has been filed under Section 482 Cr.P.C. It is unclear if after transfer of the petition, the learned Trial Court has passed any adverse order against the petitioners in the said proceedings.

11. In view of the above discussion, I find no merit in the present petition; it is dismissed. Pending application also stands disposed of.

12. Observations in the order shall have no impact on merits of the case.

(S.P.GARG)
JUDGE

MAY 18, 2017
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