

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

CRM-M-30243-2016

Date of decision:-20.9.2018

Manoj Garg and others

...Petitioners

Versus

Sonika Gupta and others

...Respondents

CORAM : HON'BLE MR. JUSTICE H.S. MADAAN

Present : Mr.Rakesh Gupta, Advocate
for the petitioners.

None for the respondents.

H.S. MADAAN, J.(ORAL)

This petition under Section 482 Cr.P.C. seeking quashing of complaint bearing filing No.466/2016 dated 17.5.2016 and registration No.33/2016 filed under Section 12 read with Section 18 to 23 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as *the Act*) and consequent proceedings arising therefrom has been filed by petitioners Manoj Garg, his mother Santosh and father Jagdish Rai.

Inter alia in the petition, it is contended that they are aggrieved with initiation of proceedings under the Act at the behest of respondent No.1 Sonika Gupta wife of petitioner No.1 Manoj Garg, who had filed a complaint under Section 12 of the Act. According to the petitioners, the marriage between petitioner No.1 Manoj Garg and respondent No.1 Sonika Gupta took place at Ambala and thereafter the

spouses started residing together in the matrimonial home at Khanori Mandi, Tehsil Moonak; that the parents of petitioner No.1 had been residing with them and petitioner No.1 has been running a small shop at that place; the spouses were blessed with a minor daughter Hitashi, presently aged about 3 years; that respondent No.1 was not interested to reside with petitioner No.1 and she openly proclaimed that petitioner No.1 was not of her liking; her attitude towards petitioner No.1 was non-co-operative and arrogant; she even used to leave matrimonial home without the consent of her husband and his parents; though she used to go by saying that she was going to her parental house at Ambala but in fact she used to go with one Akshay Kumar Goyal, arrayed as respondent No.3 in the petition. According to the petitioners, the respondent No.1 had developed illicit relations with respondent No.3 and she finally eloped with him on 30.10.2015 taking minor daughter of petitioner No.1 and such respondent No.1 with her in Skoda Car bearing No.HR26-6336 owned by respondent No.3; that petitioner No.1 had lodged a DDR with the Police Station Khanori immediately mentioning therein that respondent No.1 had taken away gold ornaments, cash etc.; the record of Toll Plaza shows that respondent No.1 had gone with respondent No.3 in the Skoda Car; the respondent No.1 along with her daughter were recovered from Khanori, where the matter was got compromised between the parties and it was decided by the Panchayat that respondent No.1 should be permitted to reside with respondent No.3 and petitioner No.1 would get divorce from such respondent; the statements of petitioner No.1 and respondent No.1 and respondent No.3 were recorded; that respondent No.1 had specifically agreed to get

divorce from petitioner No.1 and the spouses had filed a petition in the Court under Section 13-B of Hindu Marriage Act; that respondent No.1 had agreed that she would not claim any maintenance of for the past, present and future from the petitioners and would have no concern or connection with petitioner No.1; that she had executed an affidavit in that regard; that after filing of the petition under Section 13-B of Hindu Marriage Act, statements of both the petitioners were recorded, however, when the case was adjourned to 13.5.2016 for recording statements of both the petitioners on second motion, respondent No.1 backed out and refused to give her consent for divorce, therefore, the petition in question was dismissed on 13.5.2016; thereafter, respondents No.1 and 2 have filed the complaint in question before Sub Divisional Judicial Magistrate, Amloh and notice had been given to the petitioners to put in appearance there.

The petitioners pray that the complaint along with ancillary proceedings be quashed.

Notice of the petition was issued to the respondents but there is no representation on their behalf.

I have heard learned counsel for the petitioners and I find merit in the petition.

The allegations levelled in the petition are that complainant Sonika Gupta had eloped with Akshay Kumar Goyal and in terms of the Panchayati decision, it was decided that in future, she along with her daughter would reside with Akshay Kumar Goyal, after getting divorce from Manoj Kumar. The statement of Sonika Gupta Annexure P3 is to that effect so is her affidavit dated 6.11.2015 Annexure P4. It further

transpires that Sonika Gupta and Manoj Kumar had filed a petition under Section 13-B of Hindu Marriage Act for seeking divorce by mutual consent, which is dated 6.11.2015. Their statements were also recorded on first motion on that very day. There are no allegations with regard to the domestic violence in the petition under Section 13-B of Hindu Marriage Act or in the statement recorded on the first motion, now levelled in the complaint under the Act. Rather it is mentioned that Sonika Gupta had received her entire belongings, though in her statement recorded on 13.5.2016, she took a different stand stating that her dowry articles are in possession of Manoj Garg, which had not been given to her. The photographs placed on record by the petitioners also bely the contention of the complainant that she had been maltreated and harassed by her husband. The petitioners have placed on file copy of judgment and decree dated 5.4.2017 passed by learned Additional Sessions Judge, Sangrur vide which petition under Section 13(1) of Hindu Marriage Act filed by petitioner Manoj Kumar against his wife Sonika Gupta and Akshay Kumar Goyal was allowed *ex parte* and allegations of cruelty perpetrated by Sonika Gupta upon her husband Manoj Kumar and that of adultery for the reason of Sonika Gupta residing with respondent 3 Akshay Kumar Goyal were found to be proved. Therefore, the complaint in question is clearly an abuse of process of law.

Learned counsel for the petitioners has referred to authority **Amit Agarwal and others Versus Sanjay Aggarwal and others, 2016(3) Law Herald (Punjab and Haryana) 2279** by a Co-ordinate Bench of this Court, wherein it was observed that a complaint under Domestic

Violence Act can be quashed, if it is found that the complaint was an abuse of the process of the Court or has been filed only with a view to harass the other side.

Accordingly, the petition is allowed and the abovesaid complaint bearing filing No.466/2016 dated 17.5.2016 and registration No.33/2016 filed under the Act alongwith ancillary proceedings is hereby quashed.

20.9.2018
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No