

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

**CRM-M No. 33744 of 2018
DATE OF DECISION :- August 07, 2018**

Prabha Narayan Swami

...Petitioner

Versus

Vivek Nanak Kulkarni and another

...Respondents

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

Present:- Mr. Tejinder Pal Singh, Advocate for the petitioner.

By way of filing the present petition under Section 482 Cr.P.C., petitioner Prabha Narayan Swami seeks setting aside of order dated 13.6.2018 passed by JMIC, Gurugram vide which her application dated 17.3.2018 for placing on record additional evidence/documents in complaint filed by her against her husband had been declined.

Briefly stated the facts of the case are that petitioner Mrs. Prabha Narayan Swami had filed a complaint under Section 12 of the Protection of Women From Domestic Violence Act, 2005 against her husband Vivek Nanak Kulkarni and another. During the pendency of the complaint she moved an application for bringing on record additional documents to prove the incidents of domestic violence and matter of cruelty committed upon her by the respondent, adding that on 8.2.2018 at about 12 P.M., when complainant with one of her friends had gone to Pune at the apartment jointly owned by the complainant and respondent to fetch some

documents of video of Deepali Lalit Girdhar opening and closing the door as well as giving her name to the police is there which be allowed to be proved in evidence. The application was resisted by the respondents stating that it was the 5th application for leading additional evidence, the application has been filed under provisions of The Civil Procedure Code, though the present petition is under provisions of Protection of Women From Domestic Violence Act, 2005 where Criminal Procedure Code is applicable. The respondents prayed for dismissal of application.

After hearing, the learned trial Court dismissed the application with following observations :-

“Upon cogitating the arguments and careful perusal of record it is found that the present case is at the stage of complainant evidence which has been delayed for a considerably long time wherein many application has been made to lead additional evidence. At the very outset the question regarding the applicability of law upon the matters pertaining to The Protection of Women from Domestic Violence Act, 2005 is required to be dealt with. The Hon'ble Gujarat High Court has held in Jaydipsinh Prabhatishn Jhala and others Vs. State of Gujarat and others, 2010 CriLJ 2462 that the Magistrate in deciding the application under Section 12(1) of the Act is not bound by the straight jacket formulas or procedure laid down under Cr.P.C., it would be open for the Magistrate to make deviation thereof as may be found necessary in the interest of justice. Hence, it is clear that the proceedings of DV Act is of hybrid character and to meet the ends of justice, the Court is empowered to resort to adopt the procedure most suitable to the facts and circumstances of the case. Therefore, the argument of the learned counsel for the respondent that the provisions of Civil Procedure Code cannot be applied to the present case is

not sustainable in view of the discussion made above. Next coming to the relief sought by the complainant in the present application, it is seen that the complainant has already been examined and she has already deposed about the incident which has happened to her till the time of filing of the present application. However, now the complainant wants to bring on record the series of events which allegedly took place on 8.2.2018 at Pune which not only pertains to the respondent but also to a third person named as Deepali Lalit Girdhar. These are subsequent events and the happening of events in the natural course of living indispensable and the complainant cannot be given liberty to produce the evidence on each and every instances of life. This would lead to never ending proceedings of the case due to which the matter would not be finally adjudicated upon. Under the garb of leading additional evidence the complainant seeks to collect evidence against the respondent which do not really have any bearing upon the reliefs claimed by the complainant in the present application. Hence, the present application being devoid of merits stands dismissed.”

I find the order to be well reasoned one not suffering from any illegality or infirmity much less apparent on the face of the order which might have called for interference of this Court while exercising powers under Section 482 Cr.P.C. Additional evidence can be allowed by the Court under Section 311 Cr.P.C. It is discretionary power of the Court. Though the Court is bound to summon and examine or recall and re-examine any such person if that evidence appears to it to be essential to the just decision of the case. Here the trial Court came to the conclusion that the evidence sought to be led does not have any bearing on the reliefs claimed by the complainant. In that way, permission to grant additional evidence was declined. No fault

can be found with such order.

The Criminal Revision Petition is found to be without any merit
and is dismissed accordingly.

(H.S. MADAAN)
JUDGE

August 07, 2018
p.singh

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No