

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

CRM-M-33738-2016

Date of decision:-12.7.2018

Kashmir Singh Hayre

...Petitioner

Versus

Kirandeep Hayre and another

...Respondents

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

Present : Mr.S.P. Soi, Advocate
for the petitioner.

Mr.S.S. Chopra, Advocate
for the respondents.

H.S. MADAAN, J.(ORAL)

This petition under Section 482 Cr.P.C. for quashing of complaint dated 14.10.2015 titled 'Kirandeep Hayre and another Versus Joga Hayre and others' under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as '*the Act*') along with ancillary proceedings pending in the Court of Judicial Magistrate Ist Class, Ludhiana has been filed by petitioner - Kashmir Singh Hayre.

Briefly stated, facts of the case are that Kirandeep Hayre, the aggrieved person, who had filed complaint under the Act, was married with Joga Hayre s/o Kashmir Singh Hayre on 18.11.2012 at Royal Palace, Raj Guru Nagar, Ludhiana. According to version of the aggrieved wife, at the time of marriage, considerable gifts and dowry

articles were given and handed over to the accused, which formed *istridhan* of Kirandeep Hayre, who was known as Kirandeep Kaur Khaira, prior to her marriage. However, the husband and in-laws of the wife committed criminal breach of trust with regard to such dowry articles of the wife. The spouses had resided together at Nakodar for a week where they cohabited and thereafter left for Canada. It is alleged that during that period, husband and in-laws of Kirandeep had maltreated her and subjected her to humiliation, as they were not satisfied with the dowry articles brought by her and wanted her to bring more dowry articles. After the spouses started their marital life in Canada, even then wife was maltreated and harassed by her husband at the instance of his parents for the same reason.

The complaint under the Act had been filed by Kirandeep Hayre for herself and on behalf of minor children Zara Kaur Hayre, through her paternal uncle Yadwinder Singh as her attorney asking for grant of various reliefs.

On filing of that petition, an *ex parte* injunction restraining the respondent from alienating the suit property was granted, which left the present petitioner Kashmir Singh Hayre father-in-law of Kirandeep Hayre aggrieved and he has filed the present petition.

Inter alia, in the petition, it is contended that the complaint is complete abuse of process of law, since none of the parties resides at Ludhiana and no cause of action arose at Ludhiana as the parties to the complaint are putting up in Canada; that the petition at Ludhiana has been filed simply for the reason that the marriage took place at Royal Palace Rajguru Nagar, Ludhiana, however, the parties had left Ludhiana

on the same day and after residing at Nakodar for a week, they left for Canada, in that way, the matrimonial home is at Canada; that they never returned to India after marriage. It has further been contended that the petition has been filed through uncle of the complainant and as such is not maintainable. The petitioner further challenges the *ex parte* order dated 15.10.2015 restraining the petitioner, his son and wife from alienating their property besides seeking setting aside of order dated 22.7.2016 vide which the application filed by petitioner for dismissal of the petition under Section 12 of the Act on the ground of lack of jurisdiction had been declined, though the same Magistrate had dismissed the petition under Section 125 Cr.P.C. filed by respondent holding that Court at Ludhiana does not have territorial jurisdiction.

Notice of the petition was given to respondents, who put in appearance through counsel filing written reply controverting the assertions in the petition contending that although the parties had gone back to Canada after a week of marriage but during that short span of time, the petitioner and his family did not leave any stone unturned to humiliate and downgrade the respondent wife on account of not fulfilling their wishes of performing the marriage as per their alleged standards. It is further contended that the settlement between the spouses in Canada mainly relate to custody and parenting of the minor and further that though the acts of harassment and taunting were committed by the petitioner and his family at Nakodar in India but since the marriage was performed at Ludhiana, as such, the Court at Ludhiana did have the jurisdiction and the same has rightly been exercised by the passing the order. It is further contended that the parties to the marriage

also resided at shared house in Naokdar (Punjab) in India and the acts of domestic violence were committed during their short stay of a week there and the present petitioner was also a party. The respondents prayed for dismissal of the petition.

I have heard learned counsel for the parties besides going through the record.

Section 27 of the Act deals with jurisdiction. For ready reference, it is reproduced as under:

Jurisdiction.—(1) The court of Judicial Magistrate of the first class or the Metropolitan Magistrate, as the case may be, within the local limits of which—

(a) the person aggrieved permanently or temporarily resides or carries on business or is employed; or

(b) the respondent resides or carries on business or is employed; or

(c) the cause of action has arisen, shall be the competent court to grant a protection order and other orders under this Act and to try offences under this Act.

(2) Any order made under this Act shall be enforceable throughout India

Kirandeep Hayre, the petitioner in the complaint has been residing in Canada so has been her husband. Admittedly, the spouses had not resided together within the jurisdiction of Court at Ludhiana. Merely for the reason that their marriage was performed at Ludhiana does not bestow jurisdiction upon Court at Ludhiana to entertain and try

the petition. No cause of action had arisen to the wife at Ludhiana. Even a perusal of written reply filed by her in this case goes to show that it is mentioned that during the short span of time, the petitioner and his family did not leave any stone unturned to humiliate and downgrade the respondent wife on account of not fulfilling their wishes of performing the marriage as per their alleged standards. This is so pleaded in para No.6 of the reply. From the remaining paras of the reply, it comes out that the period of one week when the parties had resided together in India is with regards to Nakodar, District Jalandhar and not Ludhiana. Therefore, obviously Court at Ludhiana does not have jurisdiction to entertain and try the present petition.

Secondly, very interestingly, the parties are residing in Canada. The spouses having left for Canada after a week of their marriage on 18.11.2012 and never returning to India thereafter, however, a complaint under the various provisions of the Act has been filed in the Court in India with the parties residing in Canada since long; the petitioner wants the marital dispute between her and her husband to be settled in India, which cannot possibly be allowed. Rather it amounts to abuse of process of law. The litigation in the form of petition under Section 125 Cr.P.C. for maintenance has also been filed in the Court at Ludhiana when neither the petitioner therein nor the respondent therein reside within the jurisdiction of that Court, rather they are residing abroad in Canada. The marital dispute between Kirandeep Hayre – herein respondents is said to have been resolved in Supreme Court of British Columbia in terms of final agreement in respect of the matters arisen out of dissolution of their marriage which was achieved through

mediation. Those matters relate to custody and guardianship of their minor daughter as well as child support. It has been mentioned that if a dispute arises between the parties, then they would attempt to resolve it through mediation and if mediation fails to be determined by Court order. That settlement is dated 19.2.2016. As such, venue of litigation could not have been shifted to India by the petitioners. The petition as well as the ancillary proceedings being abuse of process of law deserves to be quashed.

Accordingly, the petition is allowed and the abovesaid complaint alongwith ancillary proceedings is hereby ordered to be quashed.

12.7.2018
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No