

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

CRM-M-34824-2015

Date of decision:-6.9.2018

Major Singh and another

...Petitioners

Versus

Sarabjit Kaur

...Respondent

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

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

Mr.Swarn Tiwana, Advocate
for the respondent.

H.S. MADAAN, J.

This petition under Section 482 Cr.P.C. seeking quashing of petition titled 'Sarabjit Kaur Versus Navrattan Singh and others' under Section 12 read with Sections 17, 18, 19, 20, 22, 23, 24 and 31 of Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as the Act) as well as summoning order dated 5.3.2015 and subsequent proceedings, pending in the Court of Judicial Magistrate Ist Class, Ludhiana has been filed by petitioner No.1 – Major Singh, father-in-law and petitioner No.2 - Baljit Kaur, mother-in-law of Sarabjit Kaur, petitioner (herein respondent).

Inter alia in the petition, the petitioners have contended that the marriage of Sarabjit Kaur – respondent was performed with their son Navrattan Singh on 17.1.2010 as per Sikh rites at District Fatehgarh Sahib; that soon after the marriage son of the petitioners moved to Austria with his wife – respondent since it had been so planned before marriage; that after moving to Austria, Navrattan Singh along with his wife – Sarabjit Kaur (respondent) started residing in his in-laws house; that the couple was blessed with two daughters Guneet Kaur, born on 9.12.2011 and Simrat Kaur, born on 25.5.2014, however, Sarabjit Kaur developed extra marital affair with one Manraj Singh Dhaliwal belonging to village Tusa, District Ludhiana; she used to spend her time in long telephonic conversation, Facebook chat and remaining out of home for long hours for spending her time through internet with Manraj Singh Dhaliwal; when Navrattan Singh learnt about such extra marital affair of Sarabjit Kaur, he decided to divorce her, ultimately it was agreed that both the spouses would file a petition for divorce by mutual consent in a Court in India; accordingly, such petition under Section 13-B of Hindu Marriage Act, 1955 was filed before District Judge, Fatehgarh Sahib on 30.9.2014 by Navrattan Singh and respondent, however, due to non-appearance of Sarabjit Kaur on the date fixed i.e. 1.10.2014, the petition was dismissed; that Navrattan Singh informed his father-in-law in that regard; that Navrattan Singh ultimately returned to Austria on 2.10.2014 and he moved out of house of his father-in-law; that the respondent had got the ticket cancelled as she was supposed to go along with her husband, rather she went to Ludhiana and stayed with her paramour; that petitioner No.1 – Major Singh had submitted an

application in the office of Senior Superintendent of Police, Fatehgarh Sahib for taking legal action against Manraj Singh Dhaliwal; that statement of Manraj Singh Dhaliwal was recorded there, subsequently father of Sarabjit Kaur had also furnished an affidavit dated 23.10.2014 supporting the version of petitioner No.1; that Navrattan Singh had filed a divorce petition before District Court Hernal on 4.12.2014; that after receiving notice of the petition, Sarabjit Kaur contacted Navrattan Singh asking him to withdraw the divorce petition, however, he refused to do so and then Sarabjit Kaur threatened Navrattan Singh that he would face the consequences in India; thereafter, she came to India and filed the petition in question on baseless grounds and the Court concerned without application of mind illegally exercising its jurisdiction not vested in it, issued notice to petitioners.

According to the petitioners, the petition in question is not maintainable against them because in terms of the provisions of the Act, an aggrieved person must have or have been in a domestic relationship with the respondent. Here the respondent soon after the marriage moved to Austria and did not share a joint house hold and also did not have domestic relationship with the petitioners. It is further contended the trial Court did not have jurisdiction to entertain the petition because the respondent before the marriage was residing at village Behlan, District Fatehgarh Sahib and after her marriage, she moved to Austria with her husband. Even the petitioners are permanent residents of District Fatehgarh Sahib.

Therefore, it is prayed that the petition be accepted.

On notice, the respondent appeared and filed written reply

contesting the petition challenging its maintainability, further contesting the petition on merits controverting the assertions therein, whereas contending that petitioners and their son have misappropriated the Istridhan articles of respondent and they maltreated and misbehaved with her in connection with demand of more dowry. She prayed for dismissal of the petition.

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

Admittedly, Sarabjit Kaur along with her parental family have been residing in Austria and she had come to India to get married with Navrattan Singh. Thereafter, she returned to Austria followed by Navrattan Singh. The marriage had taken place on 17.1.2010. Though according to respondent, she had resided with the petitioners in their house for about two months after her marriage and then went abroad on 14.3.2010 but then it does not appear to be a case of shared household and respondent having domestic relationship with the petitioners. The stay of respondent in house of petitioners was on temporary basis more like a guest and it cannot be said that she had shared household with the petitioners resulting in having domestic relationship with them. Though she has levelled allegations of petitioners along with their son harassing and maltreating her in connection with demand of dowry but interestingly before filing of the petition in question on 3.3.2015, she had not lodged any complaint in that regard with police or any other authority. If she had been harassed, tortured and maltreated by her husband and his parents that too in connection with demand of dowry, then respondent having been brought up in a foreign country with

western influence would not have kept quiet, not taking any action in the matter. It means that things went on smoothly when respondent resided in the house of her in-laws at village Chunni Khurd, Tehsil Bassi Pathana, District Fatehgarh Sahib. Thereafter, the couple had moved to Austria, where they seem to have developed a matrimonial discord. The petitioners have levelled serious allegations of the respondent having illicit relations with one Manraj Singh Dhaliwal and for that reason disturbance appearing in the matrimonial life of the couple leading to Navrattan Singh filing a divorce petition against the respondent in the Court at Austria. When all such events were happening in Austria though the couple had decided to file petition in the Court in India but then the respondent seems to have backed out. She had filed the present petition in the Court at Ludhiana when such Court is not shown to have jurisdiction. The parental place of respondent is stated to be within the jurisdiction of District Fatehgarh Sahib. The petitioners are also residents of that district. The marriage had taken place at Rich View Marriage Palace, Morinda Road, Chunni, then how could the respondent file the petition within jurisdiction of Court at Ludhiana is a question, which has been left unanswered. Merely for the reason that at a particular point, the complainant was at Ludhiana does not confer jurisdiction upon the Court at Ludhiana to entertain and try the petition.

Learned counsel for the petitioners has referred to authority *Sharad Kumar Pandey Versus Mamta Pandey, 2010(7) RCR(Criminal) 1389* by High Court of Delhi wherein dealing with the point of temporary resident, it was observed that it is such residence where an aggrieved person is compelled to take shelter or compelled to

take job or do some business in view of domestic violence perpetuated on her or she is either turned out of the matrimonial home or has to leave matrimonial home.

In that way, it cannot be said that the respondent was having temporary residence at Ludhiana.

Learned counsel for the petitioners further referred to authority *Vijay Verma Versus State N.C.T. Of Delhi and anr., 2010(7) RCR(Criminal)1145* wherein it was observed that domestic relationship comes to an end once the son along with his family moved out of the joint family and only a violence committed by a person while living in the shared household can constitute a domestic violence. As per the facts of that case, the petitioner had settled her separate house in America, she was doing job in America and had filed a suit for partition of property, filing of an application under Section 12 of the Act by her was held to be only a misuse and abuse of process of law.

Another authority referred to by learned counsel for the petitioners was *Anoop and others Versus Vani Shree, 2015(2) RCR(Civil) 1035* by a Co-ordinate Bench of this Court wherein it was observed that law with regard to Protection of Women from Domestic Violence Act is being used to terrorise the husbands, their families and distant relatives and this phenomenon has now acquired the name of 'Legal Terrorism' and rightly so given the extent of its misuse particularly against the distant relatives of the husband. It was observed that the phrase 'domestic violence' has to be understood in context of 'domestic relationship' and 'shared household' and therefore, the reliefs as aforesaid are meaningful only against the persons with whom the

person aggrieved shares a 'domestic relationship' and a 'shared household'.

In this case, the filing of the complaint appears to be as a pressure tactic to harass the petitioners in order to stop son of petitioners from filing and pursuing divorce petition against the respondent. The marriage between the spouses has since been dissolved as per translated copy of the order by District Court, Hernals, Austria, placed on record by the petitioners. The necessary ingredients of various provisions under the Act are not fulfilled. Therefore, the petition and the summoning order besides ancillary proceedings arising therefrom deserved to be quashed.

The petition is allowed accordingly.

6.9.2018
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No