

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

Crl. Misc. M-36295 of 2016 (O&M)
Date of Decision: September 11, 2018

Anumita Sharma and another

...Petitioners

Versus

State of Punjab and another

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. P.S. Ahluwalia, Advocate
for the petitioners.

Ms. Rajni Gupta, Senior DAG Punjab
for respondent No.1.

None for respondent No.2.

JAISHREE THAKUR, J.

1. The instant petition has been filed under Section 482 of Cr.P.C. seeking to set aside Criminal Complaint No.1814 dated 18.04.2016 instituted under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (for short 'the DV Act') as well as order dated 21.05.2016 passed by the Judicial Magistrate Ist Class, Patiala, with all consequential proceedings.

2. In brief, the facts of the case are that, a marriage was solemnized between complainant Neelam Rani d/o Shri Gian Chand and Varun Kotish on 12.03.2011 at Patiala. On account of matrimonial dispute

that arose between the parties, a complaint under Section 12 of Protection of Women from Domestic Violence Act, 2005 (for short 'the DV Act') was filed and in the said complaint husband-Varun Kotish, father-in-law Varinder Kumar, mother-in-law Subhash Kumari and the present petitioners namely Satvir Sharma s/o Naresh Kumar and Anumita Sharma w/o Satvir Sharma were arrayed as respondents No.4 and 5. The petitioners herein were summoned by the order dated 21.05.2016 along with aforesaid persons as respondents, in which order they were restrained from dispossessing the complainant from the shared household. Aggrieved against the said order, the petitioners herein (arrayed as respondents No.4 and 4 in the complaint filed under the DV Act) filed the instant petition challenging the summoning order as well as the complaint.

3. Mr. P.S. Ahluwalia, learned counsel appearing on behalf of the petitioners argues that the petitioners are not joint in residence with the complainant and that petitioner No.1 had married petitioner No.2 on 10.11.2009, much prior to the solemnization of the marriage of the complainant with the brother of petitioner No.1. It is submitted that the petitioners herein neither had any domestic relationship with the complainant nor had a shared household, as such, the complaint filed under the DV Act is nothing, but an abuse of process of law. In support of his arguments, learned counsel relied upon judgment rendered in **Renu Beniwal and others vs. Sarika Nehra Beniwal, 2018(3) RCR (Criminal) 280.**

4. Notice of motion was issued in the matter, pursuant to which a reply has been filed by the respondent No.2, in which it is averred that under

the DV Act, a complaint under the Act can be filed even against the relative of the husband. It is claimed that petitioner No.1 is not residing at her matrimonial home, rather, she is residing at Golden Enclave, Near Kabri, Backside of Amardeep Colony, Rajpura along with in-laws of the complainant i.e. her parents.

5. I have heard learned counsel for the petitioner, apart from perusing the record.

6. The complaint filed by the complainant under the DV Act has been annexed with this petition as Annexure P-1 and a perusal of the same goes on to show that husband, father-in-law and mother-in-law i.e. respondents No.1 to 3 therein have been shown to be residing at different address and respondents No.4 and 5 therein (petitioners herein) have been shown to be residing at a different place. In the entire complaint, only general allegations have been levelled against the petitioners herein. Petitioner No.1-Anumita Sharma is the married sister of husband of the complainant and petitioner No.2-Satvir Sharma is the husband of petitioner No.1 and they are residing separately in their matrimonial home.

7. The Protection of Women from Domestic Violence Act came to be enacted in the year 2005 when a need was felt that adequate protections were not being given to women, despite special provisions as provided under Section 498-A of Indian Penal Code. The legislature was of the opinion that there is abuse in a domestic relationship, which might be on account of dowry or otherwise and women were to be afforded protection in that relationship. The term 'abuse' was given a wide connotation, which could be sexual abuse, verbal and emotional abuse and economic abuse,

besides the physical abuse. Section 2(s) of the DV Act defines the term “**shared household**” as under;-

“ ‘shared household’ means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household.”

8. Section 2 (f) of the DV Act, defines the terms “**domestic relationship**” as under;

“domestic relationship” means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family”

9. Section 17 of the DV Act provides for right to reside in a shared household, which reads as under;-

17. Right to reside in a shared household-

“1. Notwithstanding anything contained in any other law for the time being in force, every woman in a domestic relationship shall have the right to reside in the shared household, whether or not she has any

right, title or beneficial interest in the same.

2. The aggrieved person shall not be evicted or excluded from the shared household or any part of it by the respondent save in accordance with the procedure established by law.”

10. Further, Section 19 of the DV Act states as under;

“19. Residence orders.—

1. While disposing of an application under sub-section (1) of section 12, the Magistrate may, on being satisfied that domestic violence has taken place, pass a residence order—

a. restraining the respondent from dispossessing or in any other manner disturbing the possession of the aggrieved person from the shared household, whether or not the respondent has a legal or equitable interest in the shared household;

b. directing the respondent to remove himself from the shared household;

c. restraining the respondent or any of his relatives from entering any portion of the shared household in which the aggrieved person resides;

d. restraining the respondent from alienating or disposing of the shared household or encumbering the same;

e. restraining the respondent from renouncing his rights in the shared household except with the leave of the Magistrate; or

f. directing the respondent to secure same level of alternate accommodation for the aggrieved person as enjoyed by her in the shared household or to pay rent for the same, if the circumstances so require:..”

11. In the instant case, respondent No.2 in order to maintain a complaint against petitioners No.1 and 2, has to establish that she was in a domestic relationship with petitioners No.1 and 2. In her complaint filed, the complainant has herself mentioned the addresses of petitioners No.1 and 2 herein to be of Village Sanaulia, Tehsil Ghanaur, District Patiala whereas, the other respondents are shown to be residing at Village Saidkheri Golden Enclave, Near Kabri Backside of Amardeep Colony, Rajpura District Patiala.

12. This court has inherent powers under Section 482 Cr.P.C. which can be exercised when it is found that the allegations are baseless or when in a given circumstances, continuation of the proceedings would tantamount to an abuse of process of law. In the case of **State of Haryana and others vs. Bhajan Lal and others, 1992 Supreme Court Cases (Cri) 426**, the Apex Court has reiterated the principle that the court can exercise its inherent jurisdiction of quashing a criminal proceeding only when the allegations made in the FIR/complaint do not disclose the commission of any offence and make out a case against the accused. In a latest pronouncement in the case of **Parbatbhai Aahir alias Parbatbhai Bhimsinhbhai Karmur and others vs. State of Gujarat and another, (2017) 9 Supreme Court Cases 641**, while discussing the various decisions of the Apex Court, the broad principles which emerge from the precedents on the subject, have been summarized as follows :

“(i) [Section 482](#) preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognises and preserves

powers which inhere in the High Court;

(ii) The invocation of the jurisdiction of the High Court to quash a First Information Report or a criminal proceeding on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence. While compounding an offence, the power of the court is governed by the provisions of [Section 320](#) of the Code of Criminal Procedure, 1973. The power to quash under [Section 482](#) is attracted even if the offence is non-compoundable.

(iii) In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under [Section 482](#), the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power;

(iv) While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised; (i) to secure the ends of justice or (ii) to prevent an abuse of the process of any court;

(v) The decision as to whether a complaint or First Information Report should be quashed on the ground that the offender and victim have settled the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulated;

(vi) In the exercise of the power under [Section 482](#) and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot appropriately be quashed though the victim or the family of the victim

have settled the dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences;

(vii) As distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant element of a civil dispute. They stand on a distinct footing in so far as the exercise of the inherent power to quash is concerned;

(viii) Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute;

(ix) In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice; and

(x) There is yet an exception to the principle set out in propositions (viii) and

(ix) above. Economic offences involving the financial and economic well-being of the state have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance.”

13. This High Court too in **Jasvir Kaur and another vs.**

Manpreet Kaur, CRM-M-29792 of 2011, decided on 01.04.2015, **Amit Aggarwal and others vs. Sanjay Aggarwal and others**, CRM-M-36736 of 2014, decided on 31.05.2016 and **Renu Beniwal and others vs. Sarika Nehra Beniwal (supra)** has allowed the petitions under Section 482 Cr.P.C. and quashed the complaints filed under the DV Act, holding them to be an abuse of process of law.

14. Therefore, from the above averments made in the complaint itself, it is abundantly clear that petitioners No.1 and 2 never resided or stayed together with respondent No.2 herein in a domestic relationship as defined in Section 2 (f) of the DV Act. Consequently, the complaint filed under the DV Act is clearly not maintainable against petitioners No.1 and 2 herein. Consequently, the complaint filed under the DV Act along with all the subsequent proceedings arising out of the same, including the impugned orders, are hereby quashed qua the petitioners No.1 and 2.

15. The petition in hand stands allowed accordingly.

September 11, 2018

vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No