

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

**CRM-M No. 39491 of 2012**

**DATE OF DECISION :- August 28, 2018**

**Rekha**

**...Petitioner**

**Versus**

**Parvesh Rathee and another**

**...Respondents**

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

**Present:-** Mr. Harsh Aggarwal, Advocate for the petitioner.

Mr. Rakesh Nehra, Advocate for the respondents.

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Briefly stated the facts of the case are that petitioner Rekha had brought a petition under Sections 12, 17, 20 and 23 of the Protection of Women from Domestic Violence Act, 2005 against her husband Parvesh Rathee and mother-in-law Kamlesh Devi-respondents for which she had sought residence in the shared house hold and maintenance of Rs.15,000/- per month, protection against domestic violence and a sum of Rs.5,000/- for books and sundry expenses. Notice of that petition was given to the respondents, who put in appearance and offered a contest. The parties were afforded opportunities to lead evidence. Petitioner did not lead any evidence and requested that the matter to be decided on basis of hearing of the parties and report of the Protection Officer. On the other hand, respondents have led evidence inasmuch as respondent no. 1 appeared in the witness box as RW1 and tendered in evidence his affidavit Ex.RW1/A. He also submitted copy of order dated 13.7.2011 passed by this Court Ex.RW1/B. With that evidence was closed.

After hearing arguments, the Judicial Magistrate Ist Class Rohtak vide judgment dated 13.12.2011 dismissed the petition. The reasoning given in the judgment is contained in para No. 10 which for ready reference is being reproduced as under :-

“10. After considering the rival contentions of the parties, this Court is of the considered view that the contentions put forth by the petitioner are not tenable. Although petitioner has leveled allegations of cruelty against the respondents, she has not even bothered to appear in the witness box and give any statement on oath. The allegations made in the complaint/petition are that the respondents are greedy type of persons who were not satisfied with the dowry articles. However, a perusal of order dated 13.07.2011 passed by the Hon'ble High Court which has been exhibited as Ex.RW1/B reveals that the respondents had returned all the dowry articles as well an amount of Rs.3,00,000/- in the present petition thereby satisfying the entire claim of the petitioner qua dowry articles. On the other hand, respondent has come in the witness box as RW1 and has made the entire allegations on oath while giving his affidavit Ex.RW1/A. Thus, allegations qua cruelty or harassment on account of insufficient dowry seem to untenable. As far as shared house hold is concerned, copy of the sale deed has been placed on record which shows that House No. 998, Sector-1, Rohtak was purchased in the name of father of respondent no. 1 which fact is not disputed by the petitioner. As such in view of the ruling relied upon by the respondents (Vimalben Ajitbhai Patel's case), it is evident that the petitioner cannot claim any right in the alleged shared house hold i.e. 998, Sector 1, Rohtak. There is nothing either on record to show that any Domestic Violence has occasioned to the petitioner. Even the report of Protection Officer does not in any confirm that the respondent meted out harassment on cruelty to the petitioner on account of insufficient dowry. As such, present petition is

dismissed with no order as to costs. Copy of judgment be supplied to the parties free of cost.”

The petitioner had challenged the said judgment by way of filing of appeal to the Court of Sessions at Rohtak. That appeal was assigned to Additional Sessions Judge, Rohtak, who vide judgment dated 28.9.2012 dismissed the same. As such still feeling aggrieved the petitioner has filed the present petition under Section 482 Cr.P.C. seeking quashing of judgments passed by the Courts below and acceptance of the complaint. Notice of this petition was given to the respondents, who put in appearance.

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

I find that there is no merit in the petition. Section 482 Cr.P.C. deals with saving of inherent powers of the High Court. It provides that nothing in the Code of Criminal Procedure shall be deemed to limit or effect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under Code or to prevent abuse of process of any Code or otherwise to secure the ends of justice.

The instant case does not fall within four corners of this provision. The orders passed by the Courts below are well reasoned based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein, which might have called for interference of this Court while exercising powers under Section 482 Cr.P.C. The crucial thing to be seen is that petitioner has not led even an iota of evidence in support of contentions raised in the complaint. Such contentions do not get proved ipso facto unless of course when there is any admission on the part of respondents. Here it is not so. The respondents rather led evidence in support of the pleas

taken by them before the trial Court. The petitioner had requested that the matter be decided on the basis of pleadings of the parties and report of Protection Officer. As already observed, if the respondents had admitted any part of the allegations the things would have been different since the fact which is admitted need not to be proved. But when the stand taken by the petitioner is contested petitioner is expected to lead evidence to prove her case and merely stating that case be decided on basis of pleadings of the parties and report of Protection Officer would not help her in proving her case and getting the relief claimed in the petition.

Learned Additional Sessions Judge, Rohtak in the judgment dismissing the appeal filed by the petitioner has referred to apex Court judgment in 'Gopal Krishanji versus Mohamed Haji Latif and others AIT 1968 Supreme Court 1418' wherein it was observed that a party in possession of best evidence which would throw light on the issue in controversy withholding it, then the Court ought to draw the adverse inference against him notwithstanding that onus of proof does not lie on him. He has placed reliance upon judgment of this Court in 'Singh Ram (deceased) versus Gian 1997(2) Latest Judicial Reports 53', 'Randhir Singh versus Ranjit Singh 2011(3) LJR 450' in that regard.

There is no merit in the petition, therefore, the same stands dismissed.

**(H.S. MADAAN)  
JUDGE**

**August 28, 2018**  
*p.singh*

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No