

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

CRM-M-39768-2016 (O&M)

Date of Decision: 02.08.2018

Vipinder Pal Singh Sidhu and others

....Petitioners

Versus

Jashanjeet Kaur

....Respondent

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Raman Mahajan, Advocate
for the petitioner(s).

Mr. Ashwani Sharma, Advocate
for the respondent.

ANITA CHAUDHRY, J

The instant petition has been filed under Section 482 Cr.P.C. for quashing the complaint filed under the Domestic Violence Act. Petitioner No.1 is the husband, petitioners No.2 and 3 are father-in-law and mother-in-law while petitioner No.4 is the sister-in-law of the respondent.

In brief the facts pleaded by the petitioners; respondent was married to petitioner No.1 on 19.11.2005. A daughter was born to them in November, 2008. The respondent and petitioner No.1, after marriage, stayed initially in a rented accommodation in Mohali and in May, 2006 they went to the parental house in Village Bidowali for two weeks. A close relative had died in an accident and they attended the bhog ceremony and thereafter the respondent did not go to the village. The petitioners claim that

petitioner No.1 and the respondent stayed at Mohali and respondent started working with Healthyway Immigration Services Limited, Sector-42, Chandigarh and in June, 2007 the couple shifted to Noida and the respondent started working in a School in Noida. The couple shifted to Mohali in August, 2009. It was pleaded that petitioner No.1 was finding it difficult to concentrate on his work as during their stay in Delhi, the respondent had been attending late night parties with her friends, returning home late drunk and she stopped taking care of the daughter. On return, the respondent opened her own boutique by the name of Temble/Tia Design Studio in September/October 2010 at parental house. It was pleaded that due to the conduct of the respondent, life of petitioner No.1 became hell and he moved out of the rented accommodation i.e. House No.2009, First Floor, Phase 10, Mohali w.e.f. 11.05.2011. It was claimed that the respondent also locked the house and moved along with the daughter and started living in her parental home in House No.2047, Phase-10, Mohali. Petitioner No.1 filed a divorce petition in March, 2012 which was dismissed in 2014. FAO was pending in the High Court. It was pleaded that a complaint was filed and notice was issued by the Magistrate without calling for the report of the protection officer and petitioner No.1 had filed his reply detailing the factual position on 19.07.2013 and even at that time, the report from the CDPO had not been received. The petitioners had appended the photographs, copy of the divorce petition and documents relating to the Tia Design Studio set up by the respondent. It was pleaded that the respondent had filed a complaint against the petitioners and after recording preliminary evidence, petitioners were summoned. It was pleaded that petitioners No.2, 3 and 4 had filed an application dropping the proceedings against them and

the respondent had filed reply to the application. Meanwhile, CDPO appeared before the Judicial Magistrate and sought time to file report and the case was adjourned and the CDPO had filed the reply but the respondent failed to respond to the application filed by them and the case was adjourned time and again and the Magistrate allowed maintenance of Rs.25,000/- without deciding the application. It was pleaded that the Court below did not consider the fact that the respondent was not in the domestic relationship with the petitioners and the respondent had made false allegations accusing petitioner No.1 forcing her to watch pornography or forcing her to get money from her parents while they were staying at Noida. It was pleaded that the respondent concealed the fact that she was admitted in Max Hospital for one day on account of food poisoning and not on account of overdose of sedatives. It was pleaded that the rented accommodation was kept locked and the respondent removed all her belongings and shifted to her parent's house and the Court did not appreciate the fact that they were not in a domestic relationship with either of the petitioners. It was pleaded that respondent No.1 had got married in February, 2004. It was pleaded that the general and vague allegations had been levelled. It was pleaded that petitioner No.1 had been paying the rent though he had vacated the house in May 2011 and the respondent had moved to her parent's house. It was pleaded that an eviction petition was filed by the owner which was allowed and the key of the premises was handed over by the father of the respondent. It was pleaded that petitioner No.1 was continuously paying maintenance.

In the reply submitted by the respondent, it was admitted that initially the couple shifted to a rented accommodation. It was pleaded that couple shifted to the parental home in May, 2006 as petitioner No.1 was a

lawyer and wanted to start his practice in District Court, Bathinda but after sometime they returned to Mohali, It was admitted that she had started working with Healthyway Immigration Services Limited, Sector-42, Chandigarh and petitioner No.1 started his practice in the High Court. It was admitted that her close relative had died in May 2006. It was admitted that in June, 2007 they had shifted to Noida and it was admitted that they shifted back to Mohali in 2009. It was pleaded that divorce petition was dismissed and the FAO was pending. It was further averred that petitioner No.1 had deserted the respondent and his daughter and was not maintaining them and the order of eviction was passed in the eviction petition in collusion with the landlord. It was pleaded that she used to occasionally visit her parent's home as both of them were old. It was claimed that she gave a complaint to the police but no action was taken on the account of the influence exercised by the petitioner's family who were well connected. It was pleaded that notice could be issued in the Domestic Violence complaint without waiting for the report of the CDPO. It was pleaded that the Tia Design Studio was maintained by her mother and not by her and that business was closed down in 2012. It was admitted that maintenance of Rs.25,000/- was allowed on 09.12.2013. It was pleaded that she had vacated the rented accommodation and was presently residing in House No.1125, Sector-37B, Chandigarh on monthly rent and she had filed an application in the complaint for recovery of the rent. It was pleaded that she was still in domestic relationship with all the petitioners and the marriage is subsisting. It was pleaded that it was not necessary that the parties live together in a shared household and it is sufficient if they had lived together at any point of time in the past. It was claimed that false allegations have been levelled that she was admitted in

Max Hospital on account of food poisoning. It was pleaded that the order of maintenance was challenged however the appeal was dismissed with modification and it was ordered that petitioner No.1 alone would be responsible for payment of maintenance. It is pleaded that in the complaint had given incidents of domestic violence committed by the petitioners in Para 5(a) to (h) the respondent claimed that petitioner No.1 humiliated, harassed and maltreated her. It was pleaded that the child was not medically fit as was suffering from bone dis-function and was studying in Yadvindra Public School, Mohali.

I have heard both the sides.

The submission on behalf of the petitioners is that the couple was married in 2005 and they live together in a rented accommodation and had never stayed with the in-laws. It was urged that a complaint was filed which was sent to the police under Section 156 Cr.P.C. and the trial had ended in acquittal and the same incidents have been levelled in the complaint filed under the Domestic Violence Act. It was urged that the trial Court had issued notice to all the respondents in the complaint case without even verifying whether they were living in the shared household or that they have ever stayed together. It was urged that the complaint had been filed for harassment of the husband and his family members which included the married sister-in-law of the complainant. It was urged that petitioner No.4 was married in 2004 while petitioner No.1 was married to the complainant in 2005. It was contended that petitioners No.2 and 3 are the parents of petitioner No.1 and they were living in a different house and had never lived with the husband. It was urged that parents of petitioner No.1 and the sister-in-law had filed application before the Court below seeking dismissal of the

complaint as against them but the trial Court kept on adjourning the matter and did not hear arguments on their application and decided the application filed for interim maintenance. It was urged that the complaint under the Domestic Violence Act would be maintainable if there was a domestic relationship which is not in this case and the filing of the complaint is abuse of the process of the Court. Reliance was placed upon '**Sanjay Hindwan Vs. State Information Commission and others, 2016(3) RCR (Civil).**'

On the other hand, the submission on behalf of the respondent is that the allegations against all the petitioners and complaint under the Domestic Violence Act would be maintainable even where the FIR or complaint had been filed under Section 498-A IPC as relief claimed are different and this issue had been examined in '**Geeta Kapoor and another Vs. State of Haryana 2014(1) RCR(Criminal) 942**'. It was urged that a wife can claim maintenance from the husband even where she has filed a petition under Section 125 Cr.P.C. as held in *Criminal Revision No.783 of 2017* titled as '**Sanjay Gulati Vs. Harsh Lata**' decided by this Court on 26.04.2018. It was contended that the Magistrate had allowed the maintenance and acquittal in the complaint under the Indian Penal Code would not have any effect as they are claiming monetary relief and residence order and it is for the trial Court to examine these questions.

It is not disputed that the parties were married in 2005 and they have two daughters which were born in 2009 and 2012. A complaint was given to the police in March, 2013 which led to registration of the FIR and after the complete trial, acquittal was recorded.

It is not in dispute that the couple lived in the rented accommodation in Mohali. The complainant had alleged that she was

subjected to continuous domestic violence and she had suffered mental trauma on account of his unnatural behaviour. She made allegations of physical assault in 2008 and had referred to miscarriage which occurred in 2008. It is not disputed that the husband had left the rented accommodation in May 2011 while the complainant continued to live in those premises. The allegations are that the husband stopped paying rent and proceedings for eviction were initiated and a suit for recovery was filed by the landlord which was allowed in February, 2018. A copy of the judgment dated 07.02.2018 was placed on record by the respondent. Allegations in the complaint so far as the relatives of the husband are concerned are that *Istridhan* was pawned by them. The complainant had asserted her right to live in the shared household. It is not in dispute that a divorce petition had been filed by the husband.

The relief claimed by the petitioner primarily was that the respondent should not give any threat, respondent should be ordered to pay the rent, electricity charges of the rented accommodation, the respondent should be restrained from entering the rented accommodation and for monetary relief.

The above would show that the main relief sought for are against the husband. The petitioners have placed on record material to show that the parents had disowned their son vide Annexure P-8 and it appears from the pleadings that the respondent had never stayed with the in-laws nor their house was the matrimonial home. The parents were living separately in a different house and that was not the shared household. The sister-in-law is married and living separately as is evident from the memo of parties given in the complaint. Their addresses are mentioned. There is no plea by the

complainant that all of them have lived together in the same house after marriage. It appears that the complainant had impleaded the parents and the sister-in-law with a view to harass them or to pressurize the husband to give in and it is an abuse of the process of the Court.

Petitioners No.2 to 4 had rightly pleaded that the complaint against them was not maintainable as it did not have necessary ingredients on maintaining a petition under the Domestic Violence Act as there was no relationship as defined in the Act. The purpose of the Act is to provide relief to the aggrieved person against domestic violence and domestic violence can take place where some or one of them had lived together in a shared household. Violence committed by a person while living in the shared household would only constitute domestic violence. If a threat is given or a demand is made through any other electronic device then it would be an offence under the Indian Penal Code and would not amount to domestic violence. Similarly, the economic abuse and physical abuse can take place when the persons are living together. If the persons are living far away such abuses would not be covered under the Domestic Violence Act.

A perusal of the complaint would show that petitioners No.2 to 4 were living in different houses and were not living in a shared household nor I find that there are no allegations against them which need to be tried. The allegations are vague as against them. The complaint against them is nothing but a misuse of the process of the Court. The Magistrate without examining whether the domestic relationship existed or whether there was a shared household, issued notice without looking into the provisions of the Act. Therefore the complaint and the notice issued to these petitioners i.e. petitioners No.2 to 4 are quashed.

So far as the petition filed by the husband is concerned, the wife is seeking monetary relief, a right of residence. It is true that she was claiming residence in a rented accommodation but the premises were vacated as there was litigation at the behest of the landlord but those are matters which the trial Court can only examine after considering the reply and examining the documents which the parties may submit.

So far as the maintenance is concerned, no doubt the wife can file and claim under the different Acts but ultimately the Court while awarding maintenance subsequently has to consider and take into account the maintenance which has already been awarded under any other Act. There are certain conditions which the wife would fulfill when she can get an order under Section 20 of the Act and those have to be proved. It is for the trial Court to examine as to whether the complainant was able to prove any act of violence at the hands of the husband.

As a consequence to the above, the petition is partly allowed and the complaint and summoning order *qua* petitioners No.2 to 4 is quashed. Petition *qua* petitioner No.1 is dismissed.

02 August, 2018

ps-I

**(ANITA CHAUDHRY)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No