

In the High Court of Punjab and Haryana at Chandigarh

Crl. Misc. No. M-43582 of 2016

Date of Decision: 05.2.2018

Rajwant Kaur

.....Petitioner

Versus

Narinder Singh

.....Respondent

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Atul Lakhanpal, Senior Advocate with
Mr. R.S.Chahal, Advocate
for the petitioner.

Mr. Veneet Sharma, Advocate
for the respondent.

ANITA CHAUDHRY, J

This petition has been filed assailing the orders dated 5.5.2015 (Annexure P-8) passed by the Judicial Magistrate Ist Class, Gurdaspur and the order dated 4.10.2016 (Annexure P-9) passed by Additional Sessions Judge, Gurdaspur.

Few facts would be necessary. The parties were married in 1998 and they have a son who was born in June 2000. It is claimed that the son fell ill when he was eight months old and is handicapped. Differences arose between the couple. Efforts for compromise were made but failed. A petition under Section 9 of the Hindu Marriage Act was filed by the husband. It was claimed that the said petition has been filed to harass the petitioner and her child as they were summoned to attend the Court at Tarn Taran and it was only a cover up because a complaint had been given against him to the police. The petitioner is a government teacher. It is claimed that she was unable to bear the medical expenses and filed an

application under Section 125 Cr.P.C. for maintenance for the child. The petitioner also filed an application under Section 24 of the Hindu Marriage Act in the petition filed under Section 9 of the Hindu Marriage Act. It was claimed that the husband was earning Rs. 3.00 lacs per annum and was running a school. Additionally he had agricultural income. The petitioner has pleaded that she has filed a complaint under the Domestic Violence Act and also moved an application for maintenance and had given the disability certificate to show that the child was suffering from permanent disability. It was pleaded that in the application filed under Section 24 of the Hindu Marriage Act maintenance was awarded to the child besides litigation expenses. Aggrieved by that order a revision was filed by the husband. The petitioner also filed a revision seeking modification of the order and sought enhancement. It was pleaded that in the revision both the parties were present and a compromise was effected as the husband had agreed to take back the wife and they were to live together and the husband made a statement that he would keep the wife and child with him. The petitioner was also ready and willing to join the husband in the matrimonial home and on the basis of those statements made by the parties both the revision petitions were disposed of as infructuous and it was also ordered that both the petitions i.e. one filed under Section 9 of the Hindu Marriage Act and the other filed under Section 125 Cr.P.C. would be deemed to be as dismissed as infructuous.

The petitioner claims that she lived with her husband only for a few days and then joined her duty on 12.2.2009. When she went back in the evening, she was not allowed to enter the house and the main gate was closed and the respondent and his parents locked the house and went away.

The police was called and a compromise was effected where the father-in-law agreed to construct a separate portion for the couple within a month i.e. before 13.3.2009 and during this period integrum it was agreed that the petitioner would go back to stay with her parents for a month. The petitioner then received the summons in a suit filed by her mother-in-law wherein she sought permanent injunction against her and her brother and it was disclosed that the father-in-law had executed a sale deed with respect to his 1/3rd share in favour of his wife i.e. Balbir Kaur (her mother-in-law). It is pleaded that the petitioner and her minor son were thrown out of the matrimonial home and in order to defeat the rights of the petitioner, a sale deed was executed within 1½ month of the incident. It was pleaded that in view of this background, the petitioner had filed an application for recall of the order but the lower Court held that since the order had been passed by the High Court therefore, the application for recall could not be entertained by it. The petitioner approached the High Court seeking review which was dismissed. The petitioner also approached the Supreme Court but her petition was dismissed. It was pleaded that the petitioner had become a victim of fraud practiced by the respondent. The petitioner filed an application seeking interim maintenance in the complaint filed under the Domestic Violence Act but the trial Court has dismissed the application solely on the ground that the application filed under Section 125 Cr.P.C. had been dismissed.

I have heard both the sides.

The challenge in this petition is to the order passed on the application filed in the complaint filed under the Domestic Violence Act.

Though, the complaint was filed in 2007 but the application for

maintenance was moved in 2014. The trial Court while disposing the application referred to the application filed under Section 125 Cr.P.C. and the subsequent orders and events and the compromise, the recall applications and the case preferred in the Supreme Court and dismissed it. It failed to decide the application on merits.

Section 20 of the Domestic Violence Act lists the monetary reliefs which can be granted while disposing of the application filed under Section 12 of Domestic Violence Act. The provisions of Section 20(1)(d) are clear. The trial Court should have passed the order on merits considering the merits of the application.

We are told that the evidence is complete and the case is now fixed for final arguments. It is for the trial Court to see whether any monetary relief is to be granted and for which period. We are also told that the case had been adjourned 2-3 times and arguments have only to be led. It is expected that the arguments shall be led by both the sides on the next date of hearing.

Impugned orders dated 5.5.2015 (Annexure P-8) and the order dated 4.10.2016 (Annexure P-9) are set aside. The matter is remanded back to the trial Court.

The petition is allowed.

(ANITA CHAUDHRY)
JUDGE

February 05, 2018
Gurpreet

Whether speaking/reasoned	:	Yes
Whether reportable	:	No