

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

Crl. Misc. M-8565 of 2014 (O&M)
Date of Decision: April 23, 2018

Vijay Kumar Malhotra and another

...Petitioners

Versus

Poonam

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Ashish Bakshi, Advocate
for the petitioners.

None for the respondent.

JAISHREE THAKUR, J.

1. The instant petition has been filed under Section 482 Cr.P.C. for quashing the RBT Act Complaint Case No.103/12, DV Act No.75 dated 06.12.2012 titled as “Poonam vs. Sanjeev Kumar Malhotra and others” under Section 12 of Protection of Women from Domestic Violence Act, 2015 (for short 'the DV Act') pending in the court of Judicial Magistrate Ist Class, Hoshiarpur as well as summoning order dated 03.04.2014 and the subsequent proceedings.

2. In nutshell, a marriage was solemnized between the respondent-complainant and petitioners' son namely Sanjeev Kumar Malhotra on 04.03.2010 at Hoshiarpur, Punjab, which was a second marriage of both of

them. After some time of the marriage, the respondent-complainant and the petitioners' son started living separately in a rented accommodation from the petitioners and have also taken away all the dowry articles/good related to them. It is submitted that while leaving the house of the petitioners, both the respondent-complainant and the petitioners' son sworn a joint affidavit before the Executive Magistrate, Ludhiana, Punjab on 07.09.2011 to this effect. However, the matrimonial life of the respondent-complainant and the petitioners' son could not survive the test of time, which resulted in filing the complaints under the DV Act as well as under Section 125 Cr.P.C. It is mentioned that petitioner No.1 has also disowned the complainant and his son on 15.09.2011 by way of a newspaper publication.

3. Learned counsel appearing on behalf of the petitioners argues that a perusal of the complaint filed by the respondent-complainant under the DV Act, would not make out any offence against the petitioner herein. It is submitted that no specific allegations have been levelled against the petitioners herein with regard to any act of harassment or cruelty at any point of time. Rather, in the complaint, there is no mention of date of marriage, date of desertion or of any domestic incidence, if any occurred against the respondent-complainant, apart from filing the said complaint without an affidavit in support thereof. It is contended that the joint affidavit sworn by both the respondent-complainant as well as petitioners' son before the Executive Magistrate, Ludhiana, clearly mentioned that they have no concern with the petitioners in any manner and have also taken away all the dowry articles/goods belonging to them. It is argued that the trial court has issued the impugned summoning order, without considering

any domestic incident report or without considering that whether any domestic relationship subsist or not between the parties. In support of his arguments, learned counsel relies upon judgments rendered in **Rashmi Jain vs. State of U.P. and another**, 2014(1) Scale 415, **Jaswinder Kaur and others vs. State of Punjab and another**, 2014(1) Crimes 442 and **Rama Singh vs. Maya Singh and others**, 2013(1) RCR (Criminal) 846.

4. Notice of motion was issued in the matter, pursuant to which Mr. Bhanu Pratap Singh, Advocate caused appearance on behalf of the respondent-complainant. In the order dated 10.08.2015, passed by this court, it is noted that the respondent did not want to file reply to the instant petition. On 24.04.2017, there was no appearance on behalf of the respondent-complainant and the matter was fixed for arguments. Thereafter, on 21.11.2017, on the request of learned counsel appearing on behalf of the respondent, the matter was adjourned to 07.03.2018. On 07.03.2018, once again no one had put in appearance on behalf of the respondent-complainant and the matter was listed for today for final disposal. Even today, no one puts in appearance on behalf of the respondent-complainant to address arguments.

5. I have heard learned counsel for the petitioners and have also perused the record as well as judgments cited.

6. 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 (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”

7. 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.”

8. This High Court too in **Jasvir Kaur and another vs. Manpreet Kaur**, CRM-M-29792 of 2011, decided on 01.04.2015 and **Amit Aggarwal and others vs. Sanjay Aggarwal and others**, CRM-M-36736 of 2014, decided on 31.05.2016, 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.

9. In the case in hand, the marriage between the respondent-complainant and the petitioners' son was solemnized on 04.03.2010 and thereafter, they started living separately from the petitioners herein in a rented accommodation and also taken away all the dowry articles/goods related to them and also sworn a joint affidavit to this effect before the Executive Magistrate, Ludhiana on 07.09.2011 (Annexure P-2). In the said joint affidavit dated 07.09.2011, it is clearly mentioned that the respondent-complainant and the petitioners' son have left with no concern with the petitioners herein. It is also mentioned therein that as per compromise dated 09.07.2011, all her ornaments have been received by the respondent-complainant, apart from dowry articles/istridhan. It is further mentioned therein that the respondent-complainant and her husband have separated their mess and residence from petitioner No.1. Till the time, the respondent-complainant and her husband separate from the petitioners herein, there is no complaint of domestic violence made by the respondent-complainant. This court has also minutely gone through the complaint filed by the respondent-complainant under the DV Act (Annexure P-1) which does not find mention any allegations qua the petitioners herein either specific or

general, which forced the respondent-complainant to invoke the provisions of the DV Act qua the petitioners herein. Moreover, no reply has been filed on behalf of the respondent-complainant to the instant petition and even despite several opportunities being granted, no one put in appearance on behalf of the respondent-complainant to address arguments on her behalf. Therefore, from the averments made in the complaint itself, it is abundantly clear that there is no reference as to how and in what manner, a domestic relationship exists between the respondent-complainant and the petitioners herein as defined in Section 2 (f) of the DV Act. Consequently, the complaint filed under the DV Act is clearly not maintainable against petitioners herein.

10. In view of the foregoing discussion and ratio of law, the petition in hand stands allowed. Consequently, the complaint filed under the DV Act along with all the subsequent proceedings arising out of the same, including the impugned summoning order, are hereby quashed qua the petitioners herein.

April 23, 2018

vijay saini

(JAISHREE THAKUR)

JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No