

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

CRR-4949-2015

Date of decision:-30.8.2018

Kuldesch

...Petitioner

Versus

Haripal

...Respondent

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

Present: Mr.Vivek Khatri, Advocate
for the petitioner.

H.S. MADAAN, J.

Petitioner – Smt.Kuldesch had brought a petition against respondent Haripal under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as the Act) on the averments that marriage between the petitioner and respondent was solemnized on 18.1.2018 at Meham as per Hindu rites and ceremonies; that a huge amount was spent on her marriage and considerable dowry articles were given; that the respondent had played a big fraud with the petitioner since he had represented that he was a widower, but later on it came out that his first wife is still alive and he was having children from that wedlock; that from the very beginning, the respondent and his family members were not satisfied with the dowry articles, therefore, they started harassing, humiliating, taunting and abusing the petitioner on trivial matters; that the respondent had opened a bank account in the name of

petitioner and deposited a cheque in the sum of Rs.8 lakhs in the said account but after some time he had taken the thumb impressions of the petitioner and withdrew the amount; that he was having illicit relation with Bhaila, who had expired in an accident; that the respondent is a retired Colonel and getting Rs.25,000/- per month as pension and he has recently purchased one house at Surya Nagar, Hisar.

On notice, the respondent appeared and filed reply denying the relationship between the parties labelling the other allegations levelled by the petitioner as concocted denying that the parties ever resided together as husband and wife. It is further submitted that the petitioner has shown herself as wife of the respondent but in the bank record, she has submitted her voter identity card issued by Election Commission of India dated 11.10.1994, showing herself to be wife of Ram Dhari; that an account was opened with PNB Satrod and cheque obtained from the respondent by committing fraud, has been got encashed; that the respondent has lodged a complaint against the petitioner and other persons and FIR No.666 dated 8.7.2009 under Sections 420, 467, 468 and 471 IPC has been lodged against the petitioner. Refuting the remaining allegations the respondent prayed for the dismissal of the petition.

After affording the parties opportunities to lead evidence and hearing arguments Chief Judicial Magistrate, Hisar vide judgment dated 6.12.2011 dismissed the petition.

The trial Court in para No.17 has observed as under:

17. From the perusal of entire evidence brought on records by the petitioner, it is nowhere established that her

marriage was solemnized with respondent at any point of time. Even, she has failed to examine Pandit, who has performed ritual ceremonies and Photographs taken at the time of marriage have also not been placed on record. The complainant has shown herself as wife of respondent in the bank record but the complainant has submitted her voter identity card issued by Election Commission of India dated 11.10.1994, showing herself as wife of Ram Dhari, upon which, an account No.3130000101004085 has been opened at PNB Satrod, therefore, it creates a doubt as regards veracity of her version that she was married with respondent. Omnibus allegations had been made against the respondent in respect of demand of dowry, harassment, torture, beating given to her during the period she stayed with the respondent but no specific, date, month and year had been specified when these incidents had taken place.

For the said reason, the trial Magistrate observed that the present petition does not fall within the ambit of Domestic Violence as is contemplated under Section 2 of Domestic Violence Act, therefore, the petition of the petitioner under Section 12 of the Act was not maintainable and was dismissed.

The abovesaid order passed by the trial Magistrate was challenged by Smt.Kuldesb by way of filing an appeal to the Court of Sessions, which was assigned to the Court of learned Additional Sessions

Judge, Hisar, who vide judgment dated 6.11.2015 dismissed the appeal with following observations:

“From examination of record in light of aforesaid rival contention it is crystal clear that the aggrieved lady has adduced oral evidence regarding her marriage. Neither any photograph nor any documents regarding the marriage of aggrieved lady and respondent has been proved. Respondent is married. Ex.D12 and D13 show Indrawati Yadav as wife of respondent. As per ratio of judgment in Indra Sarma Vs. V.K. Sarma (supra) a woman entered into a live-in-relationship with the married person is not entitled to protection of Domestic Violence. In view of above material facts and well settled principle of law argument of learned counsel for appellant being devoid of merit are unsustainable. The impugned order does not suffer from any illegality or irregularity and deserves to be upheld.

As such, the present revision petition has been filed by Smt.Kuldes.

I have heard learned counsel for the petitioner besides going through the record.

The law is well settled that the revisional jurisdiction of this Court is quite limited. This Court is to interfere only if there is an illegality or infirmity apparent on the face of the judgment/order passed by a Court below or the same is perverse and not otherwise.

In the present case, I do not find any such illegality or

infirmity with the impugned judgments much less apparent on the face of it. The Courts below have returned a concurrent finding on the basis of evidence available on the record that marriage between the petitioner and Haripal is not established. It being so, the petitioner is not entitled to Protection of Domestic Violence Act. The judgments are certainly not in violation of settled principles of criminal jurisprudence. I do not see any reason to upset the impugned judgments.

Finding no merits in the revision petition, the same stands dismissed.

30.8.2018
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No