

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

206

CRM-M-4373-2019

Date of Decision:08.04.2019

Harmanjot Singh @ Harmandeep Singh

.....Petitioner

Versus

Amarjit Kaur

.....Respondent

CORAM: HON'BLE MR.JUSTICE HARI PAL VERMA.

Present: Mr. Abhijeet P.S. Chaudhary, Advocate,
for the petitioner.

None for the respondent.

HARI PAL VERMA, J.(Oral)

Petitioner-Harmanjot Singh @ Harmandeep Singh has filed the present petition under Section 482 Cr.P.C. for quashing of complaint No.25 dated 19.07.2016 (Annexure P-1) filed by respondent-Amarjit Kaur under Sections 12, 18, 19, 20, 22 & 23 of the Protection of Women from Domestic Violence Act, 2005 (for brevity “the Act”) pending before learned Judicial Magistrate 1st Class, Moga.

Challenge has also been laid down to the order dated 19.07.2016 (Annexure P-2), whereby the petitioner has been summoned along with other co-accused to face the trial in the case. Challenge is also to the order dated 10.12.2018 (Annexure P-5) passed by learned Judicial Magistrate 1st Class, Moga, whereby two applications i.e. one application to decide the maintainability of the complaint and the other application for reconsideration of the order of maintenance were decided by the trial Court.

Learned trial Court has held that the complaint filed by the respondents is maintainable and the husband is liable to make maintenance.

Learned counsel for the petitioner has argued that the petitioner is son of Gurdeep Singh's sister. Gurdeep Singh is real maternal uncle (Mama) of the petitioner. The respondent was married with Gurdeep Singh on 12.04.2015 according to sikh rites and rituals. At the time when the complaint was filed by the respondent, the petitioner was minor. But still he has falsely been implicated so as to harass the family and to put pressure. There is no allegation of violence against the present petitioner. The complaint filed by the respondent under the Act was not maintainable, but without adhering to the settled provisions of the Act, petitioner has been summoned to face trial in a mechanical manner. The order of summoning has been passed without appreciating the allegations. He refers to Section 2 (q) of the Act to contend that the complaint was not maintainable against the minor. On the relevant date when the complaint was filed, the petitioner was minor as he was 16 years of age.

Notice of motion was issued in the case, but no one has put in appearance on behalf of the respondent.

Office report suggests that notice issued to the respondent has been received back with the report written on its envelope that the respondent refused to accept notice. Thus, it is deemed service.

Having regard to the contention of the learned counsel for the petitioner as well as provisions of Section 2(q) of the Act, this Court finds that the petitioner who is Bhanja of Gurdeep Singh (husband of the respondent) was minor, about 16 years of age, at the time when the complaint was filed. Moreover, this fact has not been controverted as no

appearance has been caused on behalf of the respondent in the case despite service.

The relevant provision of Section 2(q) of the Act, is reproduced as under:-

“2(q) “respondent” means any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act:

Provided that an aggrieved wife or female living in a relationship in the nature of a marriage may also file a complaint against a relative of the husband or the male partner.”

Having considered the provision of Section 2(q) of the Act, which is reproduced as above, this Court finds that filing of complaint against the petitioner is a patent misuse of process of law. At the time when the complaint was filed by the respondent, the petitioner was minor and not 'adult'.

Accordingly, the present petition is hereby allowed. The summoning order dated 19.07.2016 (Annexure P-2) is set aside. Consequently, the complaint filed by the respondent qua the petitioner is also set aside.

April 08, 2019
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(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No