

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Criminal Misc. No. M-12228 of 2017 (O&M)
Date of decision : September 04, 2019

Om Parkash and others

....Petitioners

versus

Sushma @ Simi

....Respondent

Coram: Hon'ble Mr. Justice Fateh Deep Singh

Present : Mr. Manoj Kumar Taya, Advocate, for the petitioners

Mr. Japjit S. Johal, Advocate for
Mr. Vishal Garg Narwana, Advocate, for the respondent

Fateh Deep Singh, J. (Oral)

Petitioners Om Parkash his wife Sunita, sons Amit and Sumit through this petition under Section 482 Cr.P.C. sought quashment of application Annexure P/4 made by respondent Sushma @ Simi under the provisions of Sections 12, 18, 19, 20 & 23 of the Protection of Women from Domestic Violence Act, 2005 (in short the Act). The claim is based on the averments that marriage between petitioner Amit and respondent Sushma @ Simi was solemnized and subsequently, it was found out that the respondent

wife was involved in nefarious sex scandal popularly known as 'Apna Ghar' in which FIR No. RC-5(5)/2012/SCB/CHG dated 12.07.2012 under Sections 120-B read with Sections 109, 313, 323, 354, 374 and 506 IPC, Juvenile Justice (Care & Protection of Children) Act, 2000, CBI (Special Crime Branch, Chandigarh) and which led to their matrimonial dispute as a consequence of which the wife filed application misnomered as a complaint. The court of learned Additional Chief Judicial Magistrate, Rohtak on 23.2.2017 passed the following orders :-

“Petition under Section 12, 18, 19, 20, 22 & 23 of Protection of Women from Domestic Violence Act presented today. It be checked and registered. Now, notice of the petition be given to the respondents through protection officer for 28.03.2017.”

Aggrieved over the issuance of the notice, the petitioners have come up before this Court in this petition.

The very scheme of the Act lays down that upon information of domestic violence Service Provider or Magistrate, Protection Officer or a Police Officer can invoke the provisions of the Act to facilitate grant of amenities of shelter home, financial assistance etc. as provided under the Act. Being primarily

proceedings by way of civil nature unless and until there is disobedience of the court passed under the Act and therefore, every effort has been made to undo the damage that might have come about in the matrimonial life of the couple to the application so filed. The same can be resorted to by way of counselling and reconciliation and for which appropriate orders could be made by the Magistrate which are more by way of ministerial functions than of judicial orders. The notice so claimed to be the initiation of proceedings against the petitioners on close look of it shows that it is purely a ministerial function of the Magistrate and the Court is not embarking upon any inquiry and rather is a move to ensure that the couple might patch up and it is a different situation where a Court might pass orders as interim measures to ensure safeguarding the interest of the victim of this domestic violence.

To the specific query of this Court, learned counsel for the petitioners could not bring out what harm or prejudice has come about by such a ministerial function of the Magistrate when report of the Protection Officer is to be sought for the Magistrate to enlighten it over the situation between the parties. Though on behalf of the parties reliance has been sought to be placed on **Inderjit Singh Grewal vs State of Punjab and another, 2011(4) R.C.R. (Criminal) 1; Amit Agarwal and others vs Sanjay Aggarwal and**

others, 2016(3) R.C.R. (Criminal) 356; S.P.Changalvaraya Naidu (dead) by L.Rs. Vs Jagannath (dead) by L.Rs., 1994 AIR (SC) 853; Prabir Kumar Ghosh & Ors. Vs Jharna Ghosh & Anr., 2016 (2) R.C.R. (Criminal) 951 and T. Armstrong Changsan vs Neikol Changsan, 2018(2) GauLT 411. However, none of the parties can derive any benefit of the cited ratios as it is at a preliminary stage, the petitioners have rushed to this Court unmindful of the obligations that have to be performed by the Magistrate under the provisions of the Act and till any judicial order is passed which causes prejudice, no cause to show indulgence is made out. There is no urgency to show indulgence at this juncture and the matter is remanded back to the trial court to adopt procedure as prescribed under the Act.

The parties through their counsel are directed to appear before the trial court on 6.2.2020.

The petition stands disposed of.

September 04, 2019
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(Fateh Deep Singh)
Judge

Whether speaking/reasoned ?
Whether Reportable ?

Yes/No
Yes/No