

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Sr. No.123

CRM-M-10330-2019 (O&M)

Date of decision : 7.3.2019

Joginder Singh

..... Petitioner

VERSUS

Rita and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Rajesh Bansal, Advocate, for the petitioner.

SUDHIR MITTAL, J. (Oral)

The petitioner is the husband of respondent No.1. A complaint under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (for short 'the Act') was filed against him by respondent No.1, in which inter alia interim maintenance has been sought. An application under Section 23 of the Act, was also filed alongwith said petition.

Learned trial Court took cognizance of the petition and issued notice. On 15.1.2019, the petitioner filed a reply to the main petition as well as the application under Section 23 of the Act and vide order of even date, the trial Court directed the parties to file detailed affidavits regarding their income, expenditure, assets and other liabilities, in view of judgment dated 29.5.2017, passed by the Delhi High Court in FAO No.369 of 1996 titled as 'Kusum Sharma Vs. Mahinder Kumar Sharma.'

The matter was adjourned to 2.2.2019 and on the said date, an application was filed on behalf of the petitioner seeking exemption from filing of the aforementioned affidavit on the ground that the judgment of the Delhi High Court in Kusum Sharma's case (supra), was not binding upon the subordinate Courts in the State of Haryana. The request made on behalf of the petitioner was rejected vide order dated 2.2.2019 and costs of

Rs.20,000/- were imposed upon him. He was also directed to file an affidavit in terms of order dated 15.1.2019, on or before 14.3.2019. Thus, the present petition under Section 482 Cr.P.C., has been filed for quashing of order dated 15.1.2019 (P1) as well as order dated 2.2.2019 (P2) passed by JMIC, Panipat.

Learned counsel for the petitioner reiterates the argument raised on behalf of the petitioner before the trial Court. A copy of the judgment in Kusum Sharma's case (supra) has also been handed over in Court.

With the assistance of learned counsel for the petitioner, I have gone through the various provisions the Act. An aggrieved person is entitled to approach a Magistrate under Section 12 of the Act, for grant of one or more reliefs provided therein. Under Section 23 of the Act, the Magistrate is entitled to pass interim and ex parte orders. One of the reliefs which a Magistrate is entitled to grant under the Act is maintenance for aggrieved person as well as her children under Section 20(d) of the Act. Further, Section 28 of the Act, empowers a Magistrate to lay down his own procedure for disposal of an application under Section 12 or under sub-Section 2 of Section 23 of the Act. Thus, it is crystal clear that while deciding a petition under Section 12 of the Act, a Magistrate can adopt any procedure that he may deem appropriate which is in accordance with the principles of natural justice.

In the instant case, the trial Court has exercised the jurisdiction vested in it under Section 28 of the Act, and has laid down a procedure for deciding an application for grant of interim maintenance. He has asked the parties concerned to file affidavits of their income, expenditure, assets and

liabilities to enable him to effectively adjudicate the said application. The said procedure cannot be held to be violative of the principles of natural justice as both parties have adequate opportunity to submit evidence to contradict the affidavits filed by either side. Merely because the trial Court has placed reliance upon judgment in Kusum Sharma's case (supra), does not render his order illegal. In the impugned order, he has rightly observed that judgments of other High Courts have persuasive value and can be relied upon in the absence of any judgment of the jurisdictional High Court.

In view of the above, I do not find any error or infirmity in the impugned orders. The petition is accordingly, dismissed. The condition of payment of costs of Rs.20,000/- imposed upon the petitioner, vide order dated 2.2.2019, is however, set aside.

The Registrar General of this Court, is directed to send a copy of this order to all the District & Sessions Judges in the States of Punjab and Haryana as well as Union Territory, Chandigarh, alongwith a copy of judgment dated 29.5.2017, passed by the Delhi High Court in FAO No.369 of 1996 titled as 'Kusum Sharma Vs. Mahinder Kumar Sharma', so that direction may be issued to the concerned Courts, to adopt the procedure laid down therein.

(SUDHIR MITTAL)
JUDGE

7.3.2019

Ramandeep Singh

Whether speaking / reasoned

Yes / No

Whether Reportable

Yes/ No