

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

**CRM M-18607 of 2017
Date of Decision: August 22, 2019**

Anjana @ Savita and others	Versus	Petitioners
Reena Rani		 Respondent

CORAM : HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present : Mr. Akshay Jain, Advocate
for the petitioners.

Mr. Deepanshu Matya, Advocate
for the respondent.

FATEH DEEP SINGH, J. (Oral)

Complaint (Annexure P-1) under Sections 12, 18, 19, 20, 22, 23 and 28 of the Protection of Women from Domestic Violence Act, 2005 (for short, 'the Act') was filed by respondent Reena Rani against the petitioners before the learned Sub-Divisional Magistrate, Sohana, District Gurugram.

Report of the Protection Officer was sought and notices to the respondents were also issued, when the petitioners, who were respondents in the application moved for dropping of the proceedings.

The primary grounds are that the applicants/present petitioners were never in domestic relationship with applicant Reena Rani and, thus, have been wrongly brought before this Court to face the proceedings. The applicant/wife filed reply denying the averments and reiterating the stand taken in the application supporting out the reasons of this matrimonial disharmony between the couple and the rest of the family of the in-laws.

The Court of learned Sub-Divisional Judicial Magistrate Sohana, District Gurugram vide order dated 30.04.2017 dismissed the application and refused to drop the proceedings against these respondents then numbering 3 to 6. The same was assailed before this Court under Section 482 Cr.P.C.

Heard Mr. Akshay Jain, Advocate for the petitioners and Mr. Deepanshu Matya, Advocate for the respondent.

It needs to be appreciated that the Act is a mixture of civil and criminal proceedings. The Court on receipt of an application of domestic violence normally issues notice, which cannot be confused with that of summons being in pursuance of magisterial functioning of the Court with a view to call for the stand of the other side and make efforts for re-conciliation, counselling etc. It is only upon passing of a judicial order gives a right to the party to invoke the jurisdiction of the Court upon an

order passed under Section 25 of the Act. The application moved for dropping the proceedings is bereft of any reasons substantive enough to take cognizance of the same nor under what provisions the same has come about stand mentioned. More so, it is well enumerated in Section 29 of the Act that against any such order by Magistrate, an appeal shall lie. To the specific query of the Court, learned counsel for the petitioner could not convince if there had been any such resort to such a requirement of the Statute.

Thus, even by that analogy a petition under Section 482 Cr.P.C. does not sustain. Furthermore, in the light of the submissions of the two sides, the Court which is taking cognizance of the application is yet to carry on any judicial function when this petition has come about and more so, the Hon'ble Supreme Court in **State of Haryana and others v. Ch. Bhajan Lal and others** 1992 AIR SC 604, has detailed at length and enunciated the principles relating to the exercise of inherent powers under Section 482 Cr.P.C., which are reproduced as below to lay emphasis:-

- (1) Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case

against the accused;

- (2) Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;
- (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;
- (4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;
- (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent

person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

- (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;
- (7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

The Court has well enshrined principle of law that a Court is not supposed to call for the evidence in proceedings under Section 482 Cr.P.C. and has to merely adjudge on substantial evidence by way of documents etc., which are before it or based on the stands of the parties which is not so in the present case. In the stand of the petitioner that they are not in domestic relationship with applicant Reena Rani, nothing

substantial has been highlighted to this court necessitating its intervention. The case law Om Parkash Syngal and others Vs. Shimla Garg. 2015(5) Law Herald 4673 cited by learned counsel for the petitioner does not come to the aid of the petition on account of factual disparity.

Thus, finding no merit, the instant petition stands dismissed

August 22, 2019

amit rana

(FATEH DEEP SINGH)

JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No