

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

CRM-M-34650 of 2015.

Decided on:- July 18, 2019.

Lakhwinder Singh and others

.....Petitioners.

Versus

State of Punjab and another

.....Respondents.

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

\*\*\*\*\*

Present:- Mr. Inderjit Sharma, Advocate  
for the petitioners.

Mr. Sukhbeer Singh, A.A.G., Punjab.

Mr. P.K.S. Phoolka, Advocate  
for respondent No.2-complainant.

**HARI PAL VERMA, J.(Oral)**

Prayer in this petition filed under Section 482 Cr.PC is for quashing of complaint No.48 dated 21.10.2013 (Annexure P-1) under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (for short, the Domestic Violence Act) pending in the Court of learned Judicial Magistrate 1<sup>st</sup> Class, Bathinda as well as summoning order dated 21.10.2013 (Annexure P-2) and order dated 19.08.2015 (Annexure P-3) along with all other consequential proceedings arising therefrom.

At the outset, learned counsel for the petitioners has argued that the marriage between petitioner No.1 Lakhwinder Singh and respondent No.2 Chinderpal Kaur has already been dissolved by mutual consent under Section

13-B of the Hindu Marriage Act, 1955 vide judgment dated 03.10.2011 passed by learned District Judge, Sri Muktsar Sahib. Therefore, the application under Section 12 of the Domestic Violence Act filed by respondent No.2 before learned Magistrate on 21.10.2013 i.e. after more than two years of divorce, was not maintainable. When the relationship of husband and wife ceased to exist after obtaining a decree of divorce by way of mutual consent, the application filed by respondent No.2 under Section 12 of the Domestic Violence Act does not survive.

On the other hand, learned counsel for respondent No.2 has argued that the decree of divorce was obtained by petitioner No.1 by playing fraud upon respondent No.2. The petitioners have committed domestic violence upon the complainant, therefore, they have rightly been summoned to face trial by the Court.

He has further argued that even if it is assumed that the marriage between the parties had been dissolved under Section 13-B of the Hindu Marriage Act, 1955, it cannot deprive respondent No.2 from claiming maintenance in order to survive. The petitioner No.1 being able bodied person is duty bound to pay interim maintenance to respondent No.2 as ordered by learned Magistrate vide impugned order dated 19.08.2015 passed on an application filed under Section 23 of the Domestic Violence Act.

I have heard learned counsel for the parties.

Perusal of the judgment dated 03.10.2011 passed by learned District Judge, Sri Muktsar Sahib, whereby the marriage between petitioner No.1 and respondent No.2 was dissolved by way of mutual consent under Section 13-B of the Hindu Marriage Act, 1955, shows that the said petition

was jointly filed by petitioner No.1 Lakhwinder Singh and respondent No.2 Chinderpal Kaur before that Court. The statements of the parties on first motion were recorded on 20.03.2011 and thereafter, six months time was given to them to think over this matter. They again appeared in that Court and made their second motion statements on 01.10.2011 and sought divorce by mutual consent. It was specifically pleaded by them that they have been living separately from each other for the last about two years. Their marriage has irretrievably broken down and there is no chance of their living together in future. Accordingly, vide judgment dated 03.10.2011, the petition was accepted and the marriage between them was ordered to be dissolved by a decree of divorce by mutual consent under Section 13-B of the Hindu Marriage Act.

Thus, this Court finds that there is no force in the plea of respondent No.2 that the said divorce was obtained by petitioner No.1 by playing fraud upon her particularly when she had appeared in person before learned District Judge, Sri Muktsar Sahib at least two times i.e. on 20.03.2011 and 01.10.2011 and her statements were duly recorded on both these dates before the Court. When the marriage between the parties had already been dissolved on 03.10.2011 by a decree of divorce under Section 13-B of the Hindu Marriage Act, 1955, the petition under the Domestic Violence Act was not maintainable and, therefore, the same is liable to be quashed.

Therefore, having recourse to the provisions of Section 482 Cr.P.C., this Court finds that the complaint under the Domestic Violence Act against the petitioners is a total misuse of the process of law on the part of respondent No.2 as the same is filed after a decree of divorce under Section

13-B of the Hindu Marriage Act, 1955 and the parties have been staying separately.

Accordingly, the present petition is allowed and the complaint No.48 dated 21.10.2013 (Annexure P-1) under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (for short, the Domestic Violence Act) pending in the Court of learned Judicial Magistrate 1<sup>st</sup> Class, Bathinda as well as summoning order dated 21.10.2013 (Annexure P-2) and order dated 19.08.2015 (Annexure P-3) along with all other consequential proceedings arising therefrom qua the petitioners are hereby quashed.

However, so far as the argument of learned counsel for respondent No.2 that even if it is assumed that the marriage between the parties has been dissolved under Section 13-B of the Hindu Marriage Act, 1955, it cannot deprive respondent No.2 from claiming maintenance in order to survive, is concerned, it is ordered that the right to claim maintenance is an independent right of respondent No.2 and she can always claim the same, of course, by availing an appropriate remedy in accordance with law.

**July 18, 2019**  
Yag Dutt

**(HARI PAL VERMA)**  
**JUDGE**

Whether speaking/reasoned: Yes

Whether Reportable: No