

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Criminal Misc. No. M-37328 of 2017 (O&M)
Date of decision : November 01, 2019

Om Parkash Khullar and others

....Petitioners

versus

State of Punjab and another

....Respondents

Coram: Hon'ble Mr. Justice Fateh Deep Singh

Present : Mr. Iqbal Singh Saggu, Advocate, for the petitioners

Mr. Pawan Sharda, Sr. DAG Punjab for the State/
respondent no. 1

Mr. Gaurav Bhayyia, Advocate, for respondent no. 2

Fateh Deep Singh, J. (Oral)

A marriage between then applicant now respondent no. 2-Saloni Khosla was solemnized with Mayank Khosla (now deceased) on 5.5.2011. It is thereafter on 11.5.2017, Mayank Khosla died a natural death. It is thereafter a dispute arose between petitioners Om Parkash Khullar and Smt. Saroj Khullar (since deceased) who happened to be real maternal grand parents of

Mayank Khosla as well as Manish Khullar, his wife Jasmine Khullar who happened to be maternal uncle and his wife of the deceased husband of respondent no. 2 and petitioner Yash Dewan alias Happy. As a consequence of this the young widow filed an application bearing No. COMA 478 of 2017 under Sections 12, 18, 19, 20 and 22 of the Protection of Women from Domestic Violence Act, 2005 (in short, the Act) against the present petitioners seeking reliefs which are spelled out in the application Annexure P/1 and need not be reproduced here for the sake of brevity. As a consequence of which the court of learned Judicial Magistrate Ist Class, Jalandhar issued notice for appearance of the respondents, now petitioners, Annexure P/13 under Section 13 of the Act. Aggrieved over the service of this notice, the petitioners have assailed the same and come up before this Court in this petition under Section 482 Cr.P.C. seeking quashment of the proceedings including the application (wrongly referred to as a complaint) and all proceedings arising thereof.

Heard Mr. Iqbal Singh Saggu, Advocate, for the petitioners; Mr. Pawan Sharda, Sr. DAG Punjab for the State/respondent no. 1 and Mr. Gaurav Bhayyia, Advocate, for respondent no. 2 and perused the records.

The arguments of Mr. Saggu that there is no domestic relationship between the petitioners and the applicant widow and therefore, the application against them did not lie and was not maintainable for which reliance has been sought to be placed on **Amit Agarwal and others vs Sanjay Aggarwal and others, 2016 (3) R.C.R.(Criminal) 356; Om Parkash Syngal and others vs Shimla Garg, 206(3) R.C.R. (Criminal) 310; Ashish Dixit and others vs State of U.P. And another 2013(2) R.C.R. (Criminal) 340 and S.R.Batra and another vs Smt. Taruna Batra, 2007(1) R.C.R. (Criminal) 403.** It is contended that prior to his death the deceased husband of the applicant/respondent no. 2 had been living separately from the petitioners necessitating dismissal of the application.

To controvert the submissions, counsel for the respondent no. 2 has sought to argue that Mayank Khosla husband of deceased respondent no. 2 was born orphan as his parents had died and brought up by respondent present petitioner no. 1 and had been living together with all the petitioners and therefore, at this stage without adopting due procedure exercise of powers under Section 482 Cr.P.C. would be against the principles of justice.

Appreciating the submissions, Section 12 Chapter IV of

the Act provides the procedure to be followed by the courts dealing with the applications under this Act. Though by virtue of Section 28 of the Act such proceedings normally are governed by the Code of Criminal Procedure though nothing can come in the way to prevent the court trying such an application for laying down its own procedure for disposing of such applications. Under the scheme of the Act after a court receives application under Section 12 of the Act, a notice of date of hearing is to be issued by the Magistrate for service of notice which may be through the Protection Officer or any other mode. It is thereafter that the Magistrate is under obligation to adhere to requirements of Section 14 for counselling, Section 15 for assistance of Welfare Expert and Section 9 of the Act ensues that a domestic incident report is to be submitted to the Magistrate by the Protection Officer. In the present case, to the query of the Court, Mr. Saggu could not convince what prejudice has been caused for mere filing of a complaint by respondent no. 2 and issuance of notice dated 8.9.2017, copies of which are placed on the records as Annexures P/2 to P/5. The Court has yet to initiate the process and to have resort to the process of counselling seeking assistance of a Welfare Expert and thereafter upon hearing the parties to pass an order as the situation might deem it necessary. Thus, at this stage,

this Court is not convinced what order has come about by the court trying the application which is amenable to challenge before this Court. The cited ratios do not help the case of the petitioners on account of factual disparity. Further-more it is well enshrined principle of law that High Court is entitled to quash such proceedings with the aid of Section 482 Cr.P.C. only if it comes to the conclusion that allowing the proceedings to continue would be an abuse of process of the court and that the ends of justice requires that the proceedings ought to be quashed. Mere issuing of a process for the parties to appear and show cause why further proceedings be not held does not cause any prejudice to the petitioners necessitating intervention by this Court and rather to the mind of this Court, provisions of Section 482 Cr.P.C. which are to be sparingly used have been put into place as an exercise to stifle the legitimate proceedings under the Act. Nothing by way of gross injustice could be brought to the notice of this Court and therefore, courts need to be slow to interfere in such matters purely with the aid of Section 482 Cr.P.C. More-so, the question of **domestic relationship** is a matter of evidence to be adjudicated during the proceedings wherein the petitioners would have adequate opportunity to put forth this fact. This Court does not feel inclined to show indulgence. The

present petition being hopelessly without any merit stands dismissed.

November 01, 2019

(Fateh Deep Singh)
Judge

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Whether speaking/reasoned ?
Whether Reportable ?

Yes/No
Yes/No