

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Criminal Misc. No. M-37989 of 2017 (O&M)
Date of decision : August 27, 2019

Vijay Kapoor and others

....Petitioners

versus

Sudesh Kumari

....Respondent

Coram: Hon'ble Mr. Justice Fateh Deep Singh

Present : Mr. Sanjeev Kumar Arora, Advocate, for the petitioner
Mr. Avtar Singh, Advocate for
Mr. AS Virk, Advocate, for the respondent

Fateh Deep Singh, J. (Oral)

Respondent Sudesh Kumari filed against the present petitioner Vijay Kapoor, K.L.Kakkar, Jai Parkash and Latesh Madaan a complaint under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (in short, the Act) before the court of learned Judicial Magistrate Ist Class, Chandigarh.

The brief allegations that emanates from the submissions of the parties and the records are that a marriage between the complainant and Satkartar Kapoor was solemnized on 7.8.2011 and prior thereto out of his previous marriage, Satkartar Kapoor was having three children, petitioner no. 1-Vijay Kapoor and

two daughters namely Manju and Anju. All these children at the second wedding of Satkartar Kapoor were already married. Satkartar Kapoor died on 7.10.2014 on account of illness. It is the claim of the complainant that the house bearing No. 861 Sector 38-A, Chandigarh is the property of her deceased husband where she had been residing after the marriage and that the present petitioners are trying to oust the complainant from the house in question and hence instituted the complaint in question. During the course of proceedings, an application was moved by the present petitioners for dismissal of the complaint and the court of learned Judicial Magistrate 1st Class vide order dated 16.8.2017 dismissed the application. The petitioners have been aggrieved over the said order as well as orders dated 2.6.2015 Annexure P/9 whereby notice has been issued to the respondents on the complaint as well as interim maintenance application moved by Sudesh Kumari and have sought quashment of the complaint Annexure P/8 filed under Section 12 of the Act.

With all fairness, it is duly conceded to at the bar that Annexure P/12 is an order passed on interim application by the Court and thus by virtue of Section 29 of the Act, only appeal lies to the Court of Sessions against such an order passed by learned Judicial Magistrate. Thus, to the mind of this Court as has been

argued by the respondent side relief qua this order certainly is not sustainable. Further-more Annexure P/8 is purely a complaint which has been filed on which as has been a question posed to the counsel for the petitioner, no order has been passed by the court below and therefore, since no cognizance has been taken or order passed thereon, the very filing of a petition for invoking the jurisdiction of this Court under Section 482 Cr.P.C. does not appears to be appropriate at this juncture. A cursory look at the orders Annexure P/9, which is reproduced below to lay emphasis shows that merely on the filing of the complaint Annexure P/8 under Section 12 of the Act, a notice has been issued:-

“Fresh criminal application for protection against domestic Violence Act along with application for interim maintenance presented today. It be checked and registered. Let the notice to respondent be issued for 16.07.2015.”

Under the Act for such a complaint procedure as per Section 28 of the Act lays down that the same would be governed by the provisions of Code of Criminal Procedure, 1973. Since it is well settled principle that such proceedings are quasi civil in nature and are by way of welfare in nature with a specific purpose to be attained and under Rule 12 of the Protection of Women From Domestic Violence Rules, 2006 necessitates notice for appearance

of the parties and which also prescribed the means of service of notice and under Section 12 of the Act obtain domestic incident report from the Protection Officer concerned or the Service Provider and this stage as is apparent is yet to come about and merely by filing of the complaint whereby the complainant has sought certain reliefs does not gives the petitioners any locus standi to nip the same at this juncture. Rather what one can deduce that there has been total and gross misuse of the process of the court whereby the petitioners have sought to thwart being, step children to protect the rights of step children of complainant widow of deceased Satkartar Kapoor and oust the complainant widow from her right to claim inheritance to the estate of the deceased husband and which can only be gone about through proper procedure as envisaged under the law. Thus the petitioners have no cause to challenge these orders. As has been discussed above, finding the present petition to be devoid of any merit, the same stands dismissed.

August 27, 2019
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(Fateh Deep Singh)
Judge

Whether speaking/reasoned ?
Whether Reportable ?

Yes/No
Yes/No