

102.

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

I.

CRM-M-784-2016

Date of decision: 20.08.2019

TARANDEEP KAUR AND ANR

... Petitioners

versus

STATE OF PUNJAB AND ANR

.... Respondents

II.

CRM-M-3584-2016

MOHINDER SINGH AND ANR

... Petitioners

versus

STATE OF PUNJAB AND ANR

.... Respondents

III.

CRM-M-27287-2016

INDERJIT SINGH SIDHU

... Petitioner

versus

STATE OF PUNJAB AND ANR

.... Respondents

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Amandeep Singh Jawandha, Advocate,
for the petitioner (s).

Mr. Sukhbeer Singh, AAG, Punjab,
for respondent No.1.

None for respondent No.2.

HARI PAL VERMA, J.(Oral)

This order shall dispose of three petitions i.e. **CRM-M-784-**

2016 titled as *Tarandeep Kaur and another Versus State of Punjab and*

another, CRM-M-3584-2016 titled as *Mohinder Singh and another Versus*

State of Punjab and another and ***CRM-M-27287-2016*** titled as ***Inderjit Singh Sidhu Versus State of Punjab and another***, as all are arising out of the common complaint dated 15.07.2015.

CRM-M-784-2016 has been filed by Tarandeep Kaur, married sister-in-law (*nanad*) and Amrinder Singh, unmarried brother-in-law (*devar*) of the complainant whereas **CRM-M-3584-2016** has been filed by Mohinder Singh (father-in-law) and Gursharanjit Kaur (mother-in-law) of the complainant and **CRM-M-27287-2016** has been filed by Inderjit Singh Sidhu, who is husband of the complainant. However, for brevity, the facts have been taken from **CRM-M-784-2016**.

Prayer in all these petitions filed under Section 482 Cr.P.C. is for quashing of complaint No.4403/2015 dated 15.07.2015 filed by respondent No.2-Karamjit Kaur (Annexure P-1) and the summoning order dated 16.07.2015 (Annexure P-2), whereby the petitioners have been summoned under Sections 12, 17, 18, 19, 20, 22, and 23 of Protection of Women from Domestic Violence Act, 2005.

Respondent No.2-Karamjit Kaur had filed an application under Sections 12, 17, 18, 19, 20, 22 and 23 of the Protection of Women from Domestic Violence Act, 2005 against the petitioner(s) with the averments that she was married with Inderjit Singh Sidhu on 30.10.2011. After the marriage, both lived and cohabited together as husband and wife at Jagraon and Ludhiana for some time. Several dowry articles were given in the marriage by spending huge amount. Large number of costly gifts were also given to the husband in the shape of gold ornaments (*chain, kara, ring and watch*) and expensive clothes. Shagun of 2100 Canadian dollars was also

given to him. One gold set was given to Gursharanjit Kaur and a gold ring to Mohinder Singh.

When the petition was listed before this Court on 11.01.2016, following order was passed:-

“Learned counsel for the petitioners contends that the petitioners have falsely been implicated in the case, whereas, no offence is made out against them. Complainant-respondent No.2 is citizen of Canada and came to India only for the purpose of marriage. The provisions of Protection of Women from Domestic Violence Act, 2005 are not applicable to the petitioners but still they have been summoned. Learned counsel also contends that the present complaint is the counter blast to the divorce petition filed in Canada on 5.6.2015 by the brother of the petitioners.

Notice of motion for 8.4.2016.

Meanwhile, trial Court is directed to adjourn the case beyond the date given by this Court.”

Thereafter, the case was adjourned on different dates. On 20.04.2017, the case was adjourned to 29.08.2017 on the plea of counsel for respondent No.2-complainant that he wants to file reply. However, no reply was filed. On 29.11.2018, counsel for respondent No.2 sought some more time to file reply. Similarly, adjournment was also sought on 02.05.2019, but still reply was not filed despite availing various opportunities, and the case was adjourned to 25.07.2019, however, subject to payment of costs of Rs.5,000/- to be deposited with the High Court Bar Association in the Lawyers' Welfare Fund. On 25.07.2019, counsel for respondent No.2 had stated that he has tried to contact his client, but there is no response from her

While adjourning the case for today, this Court had made it clear that in case the costs is not deposited by the next date of hearing i.e. today, this Court will hear the matter and will decide it accordingly.

Today, neither anybody has come present on behalf of respondent No.2 nor the cost imposed by this Court has been deposited. Even reply has not been filed.

Counsel for the petitioners has argued that no doubt, marriage between Inderjit Singh Sidhu and Karamjit Kaur was solemnized on 30.11.2011 at Ludhiana, but both husband and wife are living in Canada. In fact, Inderjit Singh Sidhu, the husband, has filed a petition for divorce on 05.06.2015 and when respondent No.2 came to know that her husband has filed a petition for divorce before the Supreme Court of British Columbia, she came to India and filed the present complaint. He states that in addition thereto, she has also registered FIR No.3 dated 20.01.2016 under Section 420 IPC at Police Station NRI, Jagraon, wherein the police after conducting investigations, found the allegations to be false and accordingly submitted a cancellation report before the Illaqa Magistrate, which is pending consideration before learned Judicial Magistrate 1st Class, Jagraon.

He further states that in the divorce petition filed by the husband Inderjit Singh Sidhu, the Supreme Court of British Columbia has passed a final order on 22.01.2016 and passed a decree of divorce in favour of Inderjit Singh Sidhu (the petitioner in CRM-M-27287-2016). The filing of present complaint under the Domestic Violence Act is nothing but an attempt to harass the petitioners. Both, the husband and the complainant (i.e.

residing in Canada and it is for this reason, divorce was granted by the Canadian Court. The complainant has never stayed in the shared household with the parents-in-law, sister-in-law and brother-in-law. He also states that after filing of the divorce petition by Inderjit Singh Sidhu, they are not staying together and, therefore, there is no question of domestic violence.

Heard.

Despite there being repeated adjournments, neither any reply has been filed nor cost deposited by the complainant/respondent No.2. Even no one has put in appearance on behalf of respondent No.2 despite case having been passed over twice. On 25.07.2019, the counsel for respondent No.2 has shown his inability and stated that he tried to contact his client, but there being no response, the cost imposed by this Court could not be deposited.

Admittedly, the respondent has also got registered FIR No.3 dated 20.01.2016 under Section 420 IPC at Police Station NRI, Jagraon against her husband Inderjit Singh Sidhu and in that case, the police, after conducting investigation, has submitted cancellation report, which is pending consideration before Judicial Magistrate 1st Class, Jagraon. The marriage of the respondent No.2-complainant was solemnized on October 30, 2011 and she left for Canada in December 2011. Complainant herself in the complaint has stated that she was deserted by the respondent on 15.09.2012, however, present complaint has been filed on 15.07.2015, after the filing of divorce petition by the husband on 05.06.2015. The averments made in the present petitions remain un rebutted and, therefore, in the absence of any reply or any opposition by respondent No.2, this Court finds

that the filing of present complaint under the Domestic Violence Act against the petitioners is nothing but an abuse of process of law.

Hon'ble Apex Court in ***Geeta Mehrotra and another Versus State of U.P. and another, 2012(4) RC.R. (Criminal) 812*** has held that in criminal cases arising out of a matrimonial dispute, a fact borne out of experience cannot be overlooked that there is a tendency to involve the entire family members of the household in the domestic quarrel taking place in a matrimonial home.

Summoning of an accused is a serious offence. The Hon'ble Supreme Court in ***Pepsi Foods Limited and another Versus Special Judicial Magistrate and others-(1998) 5 Supreme Court Cases 749*** has held as under:-

“Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.”

In view of above, the present petitions are allowed and complaint No.4403/2015 dated 15.07.2015 (Annexure P-1) filed by respondent No.2-Karamjit Kaur and the summoning order dated 16.07.2015 (Annexure P-2), whereby the petitioners have been summoned under Sections 12, 17, 18, 19, 20, 22, and 23 of Protection of Women from Domestic Violence Act, 2005 are hereby set aside.

(HARI PAL VERMA)
JUDGE

20.08.2019
sanjeev

Whether speaking/reasoned?	Yes/No
Whether reportable?	Yes/No