

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Criminal Misc. No. M-24677 of 2019 (O&M)

Date of decision : May 28, 2019

Tej Singh Thakur and another

....Petitioners

versus

Anshul Suphia

....Respondent

Coram: Hon'ble Mr. Justice Fateh Deep Singh

Present : Mr. Arjun Singh Likhari, Advocate, for the petitioner

Fateh Deep Singh, J. (Oral)

A complaint under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (in short, the Act) was preferred by present respondent Anshul Suphia against present petitioner Tej Singh Thakur and Lalita Thakur who are in-laws besides others including Vikas Kumar Thakur husband and Tanu Thakur sister of the

husband wherein she has sought the following reliefs:-

“3. Orders required:

(i) Protection order U/s 18

(a) Prohibiting respondents from committing any act of domestic violence.

(b) Prohibiting respondents from adding or abetting in the commission of acts of domestic violence.

(c) Prohibiting any form of communication by the respondents with the complainant.

(d) Prohibiting alienation of assets (Gold, jewelry & other valuables) by the respondents.

(e) Directing the respondents to stay away from the complainant and her family.

(f) Any other order which this Hon'ble Court deems fit.

(ii) Residence order U/s 19

An order restraining respondents from

(a) Alienating/Disposing/Encumbering the house of the complainant.

(b) An order to direct respondents No. 1 & 3 to remove themselves from the house of the complainant.

(c) Respondent or any of his relative from entering any portion of the house of the aggrieved person is residing.

(d) An order entitling the complainant to continue access to her personal assets.

An order directing respondents to

(e) Any other order which this Hon'ble Court deems fit

(iii) Monetary reliefs U/s 20

(a) Medical expenses amount claimed 1,50,000/-

(b) Physical and mental injury because of Depression mental trauma 50,000/-

Any other order which this Hon'ble Court deems fit

(iv) Compensation order U/s 22

(a) Directing the respondents to pay compensation and Damages for the injuries including mental torture and emotional distress caused by the acts of domestic violence committed by the respondents (Rs Ten Lac only). 10,00,000/-

4. Details of previous complaints and litigation:-

(a) Complaints regarding the acts of domestic violence and the demand of dowry already filed before the SSP SAS Nagar (Mohali) dated 11-12-2018 which was forwarded to the Women Cell Mohali but no action has been taken by the police officials till date despite of the reminders and various new acts of violence filed before the concerned officials.

(b) A Divorce Petition was filed before the Hon'ble Additional District & Session Judge, Mohali, where the complainant in this present

petition was forced by the Respondent No.1 to give the statement regarding the mutual divorce petition, but due to cohabitation between both the parties in the given period of six months and withdrawal of the consent after six months of the complainant in this present case, the divorce petition under Section 13(b) was dismissed vide order dated 08-02-2019. A copy of the same is annexed herewith as Annexure P-1.”

The court of learned Chief Judicial Magistrate, SAS Nagar, Mohali vide orders dated 10.4.2019 passed the following orders:-

“Complaint under Section 12 presented before me being Illaqa Magistrate of PS Phase 1, SAS Nagar. It be checked and registered in the relevant register as well as in the CIS under rules.

Notice to respondents no. 1 to 4 through ordinary process be issued for 25.04.2019. Dasti summons be given, if desired.”

It is against this, the present petition under Section 482 Cr.P.C. has been filed by the present petitioners who are parents-in-law of the complainant seeking quashment of the complaint, all consequences thereof including the summoning order dated

10.4.2019.

Heard Mr. A.S.Likhari, learned counsel for the petitioners and perused the records.

The Magistrate had only upon filing of the complaint issued notice to the respondents for 25.4.2019. Though counsel for the petitioner with much vehemence has sought to place reliance on **Machindra & Anr. Vs The State of Maharashtra & Anr., Criminal Appeal No. 515 of 2019, decided on 15.3.2019 and Anup Singh vs Rajesh, Criminal Misc. No. M-44623 of 2007 decided by this Court on 6.2.2012** to derive home the point that where there is no apparent material to substantiate the allegations, in such a case proceedings needs to be quashed. However, with due apologies Section 12 of the Act deals with the procedure for obtaining orders of reliefs under which whenever an aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person may present an application to the Magistrate seeking one or more reliefs enumerated therein are sought by virtue of 13 of the Act issue notice of the date of hearing and which copy of the notice shall also be served through Protection Officer and thereafter by virtue of Section 14 of the Act, counselling is to be undergone between the parties and which is to the mind of the Court, the precise reason for passing of this order which is still at nascent stage of undergoing preliminaries

in the case. It is thereupon when the Magistrate after giving the aggrieved person and the respondent an opportunity of being heard being prima facie satisfied that domestic violence has taken place and is likely to take place pass a protection order in favour of the aggrieved person prohibiting the respondent by virtue of Section 18 of the Act and which stage to the mind of this Court is yet to come about. The petitioners in their endeavour to forego this appearance before the learned Magistrate to facilitate counselling and opportunity of being heard has directly come up before this Court obviously in oblivion that provisions of Section 482 Cr.P.C. are to be sparingly used to meet the ends of justice. Further-more Section 29 of the Act provides a forum of appeal from an order made by Magistrate which is served on the aggrieved person or the respondent and which has not been resorted to as per the own admission of the counsel for the petitioner. Thus, the present petition on the face of it is premature for this Court to take cognizance of the same and as such stands dismissed in limine.

May 28, 2019
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(Fateh Deep Singh)
Judge

Whether speaking/reasoned ?
Whether Reportable ?

Yes/No
Yes/No