

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Criminal Revision No. 2766 of 2017 (O&M)
Date of decision : September 05, 2019

Sandeep Bhardwaj

....Petitioner

versus

Seema Sharma

....Respondent

Coram: Hon'ble Mr. Justice Fateh Deep Singh

Present : Ms Aashna Gill, Advocate, for the petitioner
Mr. Amandeep Rana, Advocate, for the respondent

Fateh Deep Singh, J. (Oral)

As is there much in abundance reflected, marriage between the present petitioner Sandeep Bhardwaj with respondent wife Seema Sharma was solemnized on 12.12.2008 and the couple resided together till the year 2014. It is thereafter on account of this matrimonial disaccord the wife filed a complaint under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (in short, the Act) against the husband, his parents, brother and his wife. The court of learned Judicial Magistrate Ist Class, Gurugram

vide judgment order dated 9.5.2016 dismissed the complaint. Upon appeal under Section 29 of the Act, the court of learned Additional Sessions Judge, Gurugram allowed the appeal and reversing the orders of the learned Magistrate had directed respondent no. 1 to pay maintenance to the wife at the rate of Rs 10,000/- per month and further either to find out accommodation for the living of the wife or give her Rs 3000/- per month to enable her to have a roof over her head and besides this allowed Rs 3300/- as litigation expenses. In the back drop of these findings, the present revision has come about by the aggrieved husband.

I have heard Ms Aashna Gill, Advocate, for the petitioner; Mr. Amandeep Rana, Advocate, for the respondent and perused the records.

The complaint in this case was filed on 26.9.2014 before the learned Judicial Magistrate 1st Class, Gurugram. On the very first date of hearing, the court had dismissed the complaint against respondents no. 2 to 5 and issued notice to respondent no. 1-the husband. It is on 21.5.2015 reply was filed by the respondent and the court vide orders dated 4.9.2015 held that the complainant wife was not entitled to any interim relief and dismissed her application for that.

The complainant wife testified as CW1 and on the basis of her affidavit Ex. CW1/A proved pay slip Ex. CW1/I and after tendering documents Exs. CW1/A-B to CW1/J closed the evidence.

The respondent-husband examined RW1 Sahib Singh and RW2 Sushila and closed the evidence after tendering documents Ex. RW1/G and Ex. RW1/H. It is subsequent thereto these findings have come about by different courts.

Appreciating the submissions, the complainant wife in her complaint had sought the following reliefs:-

“(i) Protection Order under Section 18 prohibiting acts of domestic violence by granting an injunction against the respondents from:

(iii) Monetary reliefs under Section 20

(A) Rs 10,000/- per month towards maintenance for herself.

(B) Rs 22,000/- towards litigation expenses

(C) Compensation order under Section 22

(D) Direct the respondent to pay an amount Rs 11 lakhs towards compensation for damages under the Protection of Women from Domestic Violence Act, 2005

(E) Interim Relief under Section 23.”

The learned Magistrate has failed to spell out the reasons as to why and on what grounds the reliefs being sought in

the complaint are being denied to the complainant wife and has on its own held that the wife complainant has failed to prove the contents of her complaint quite in-oblivion to the evidence of the wife as CW1 who has categorically stated in her examination-in-chief by way of affidavit Ex. CW1/A the conduct of the husband and his family and has enumerated the aggression and abuse she has to face at the hands of her in-laws and the husband and had totally ignored the cross-examination of RW2 Sushila as well as of RW1 Sahib Singh. Further-more the husband did not step into witness box to rebut the case of the complainant wife and thus, invariably had failed to refute the averments so set up by the wife in her pleadings as well as the evidence. Section 3 of the Act defines domestic violence and covers for the purpose of the Act, any act, omission or commission or conduct of the respondent which would constitute domestic violence wherein it causes harm or injuries or endangers the health, safety, life, limb or well-being, whether mental or physical of the complainant and includes causing mental abuse, physical abuse, sexual abuse, verbal and emotional abuse and economic abuse. The court below has failed to adjudicate on this aspect of the pleadings and the evidence led by the parties and rather what one can gather, there is total non application of mind by

the two courts below. The claim that has sought to be raised by the husband side that divorce decree was obtained by the husband on 31.5.2014 and the complaint under the Act was filed on 26.9.2014 does not cuts much ice for the husband as the very wording of term domestic relationship ensures that where two persons live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family. In the present case it is the own stand of the parties that they had resided together from 12.12.2008 till 2014 as husband and wife under the same very roof and to the mind of this Court even after passing of the decree of divorce, the domestic relationship between the wife and the husband for the purpose of the Act still subsists out of their past joint living as legally wedded couple. Even otherwise, neither there is any pleadings in the reply of the husband nor the same was ever considered or agitated before the court below. More-over the term aggrieved persons defined in Section 2 of the Act means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent.

Though not argued under Chapter (IV) Section 12 of the

Act prescribes procedure whereby an aggrieved person herself or any Protection Officer or any of the person on behalf of the aggrieved person may present an application to the Magistrate seeking one or more reliefs under the Act. As per proviso to this Section, before passing an order on such an application, the Magistrate is under mandatory duty to take into consideration any domestic violence incident report received from the Protection Officer or the Service Provider. In the present case there has been total non adherence to this mandate of the Statute though Section 28 of the Act gives ample jurisdiction to the court trying such an application from laying down its own procedure and may even pass such an interim orders, it may deem just and proper. Since the learned Magistrate has lost sight of the procedural aspect which necessitates calling for the report of the domestic violence incident and applying his mind and without affording parties an opportunity on the reliefs/issues that were before it on the basis of the claims and counter-claims of the parties had rushed through the proceedings. Thus, the procedure adopted by the Magistrate which even went un-noticed by the appellate court whereby there has been non issuing a notice to the parties without considering domestic incident report, without going through the contents of the application

and without specifying as to which of the respondents named by the complainant was to be summoned has held contrary to the provisions enshrined in the Act. Thus, the entire procedure so adopted has resulted in a mistrial going to the roots of the case necessitating intervention by this Court by the exercise of inherent jurisdiction thereby setting aside the orders of the Magistrate which has merged in the orders of the learned appellate court as well as of the Appellate Court and thereby directing the trial court/Magistrate to call for the domestic incident report, consider the same and to process the same in accordance with law following principle of “Audi Alteram Partem” and pass appropriate orders. In the light of what has been detailed and discussed above, the present petition stands disposed of in the aforesaid terms.

Parties through their counsel are directed to appear before the trial court on 01.10.2019.

September 05, 2019
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(Fateh Deep Singh)
Judge

<i>Whether speaking/reasoned ?</i>	<i>Yes/No</i>
<i>Whether Reportable ?</i>	<i>Yes/No</i>