

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Order: January 08, 2019

+ CRL.M.C. 1439/2017 & CrI.M.A. 5927/2017

NAVEEN GUPTA & ANR. Petitioners

Through: Mr. Samarth Rai Sethi, Advocate

Versus

STATE & ANR. Respondents

Through: Ms Neelam Sharma, Additional
Public Prosecutor for respondent No.1-State
Mr. Dinesh S. Tripathi & Mr. Sunil K. Singh,
Advocates for respondent No.2

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

ORDER

(ORAL)

1. Vide impugned order of 17th November, 2016 (*Annexure P-1*), petitioners have been summoned in a complaint under Section 12 of *Protection of Women from Domestic Violence Act, 2005*.

2. The challenge to the impugned order by petitioner's counsel is on the ground that respondent No.2-wife had deserted petitioner-husband six years prior to filing of the complaint and petitioner has already obtained *ex parte* decree of divorce in August, 2016 and respondent-wife had abstained herself from appearing in divorce proceedings. It is submitted that this

complaint is a counter blast to divorce decree obtained by petitioner-husband, as it has been filed two months after *ex parte* decree of divorce has been passed. It is submitted that there has been no domestic relationship of petitioner-husband with respondent No.2-wife since 3rd July, 2010.

3. Counsel for second respondent submits that aspect of detention of *stridhan* is also involved, which is a continuing offence and therefore, bar of limitation does not operate. It is submitted by counsel for second respondent that in view of Section 2(f) of *Protection of Women from Domestic Violence Act, 2005*, domestic relationship need not subsist when the complaint is made. Counsel for second respondent submits that he has already filed an application for setting aside *ex parte* decree of divorce and the said application is still pending.

4. At this stage, petitioner's counsel submits that petitioner has a daughter aged 12 years from marriage with second respondent and petitioner feels the moral obligation to take care of his daughter and so, to prove the *bona fides*, petitioner is ready to make fixed deposit of ₹20,00,000/- in the name of his daughter, so that interest accrued thereupon takes care of her day to day needs.

5. Upon hearing and on perusal of impugned order of 17th November, 2016 (*Annexure P-1*), I find that trial court has applied its mind to the facts of this case and thereafter had summoned petitioners. Question of limitation is a mixed question of law and fact, which cannot be gone into in proceedings under Section 482 Cr.P.C. Aspect of desertion is also required to be gone into, in proceedings before the trial court and cannot be adjudicated upon in this petition.

6. In view of the aforesaid, finding no illegality or infirmity in the impugned order, this petition and pending application are dismissed with liberty to petitioner to make a deposit of ₹20,00,000/- in favour of his daughter. Needless to say, this Court has refrained to comment upon the merits, lest it may prejudice either side before the trial court.

भारतमेव जयते

(SUNIL GAUR)
JUDGE

JANUARY 08, 2019

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