

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

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**CRWP-6311-2021
Date of decision: 09.07.2021**

Sandeep Kaur and another

.....Petitioners

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. Rajesh Nain, Advocate for the petitioners.

ARUN KUMAR TYAGI, J (ORAL)

(The case has been taken up for hearing through video conferencing.)

1. Petitioner No.1-Sandeep Kaur aged 37 years and Balkar Singh aged 23 years have filed the present petition under Article 226 of the Constitution of India for issuance of a writ in the nature of mandamus directing respondents No.2 and 3 to protect the life and liberty of the petitioners and not to interfere in their peaceful life at the behest of respondents No.4 to 12 and to decide representation dated 06.07.2021 made by the petitioners to respondents No.2 and 3.

2. Briefly stated, the petition has been filed on the averments that the marriage of petitioner No.1 was solemnized with respondent No.4 in the year 2005. Respondent No.4 is habitual drunkard and due to harassment and torture by him petitioner No.1 came to her parental house after marriage but she was again sent to matrimonial home. Two children one daughter namely Gursimran Kaur aged about 15 years and one son namely Prabhjot Singh aged about 11 years were born out of the wedlock. Respondent No.4 did not mend his ways and continued to

harass and torture petitioner No.1. Petitioner No.1 asked her in-laws to make respondent No.4 understand and to leave drinking but they did not listen to her and told her that it was the lifestyle of respondent No.4 and they would not interfere in his life. Respondent No.4 under the influence of liquor threw petitioner No.1 out of the matrimonial house many times but every time petitioner No.1 returned to the matrimonial house in view of reputation of her parents and future of her children. Respondent No.4 under the influence of liquor turned petitioner No.1 out of the matrimonial house on 01.07.2021. Petitioner No.1 went to her parents but they showed their inability to help her. Petitioner No.1 is knowing petitioner No.2 for the last more than 2/3 years and they are good friends. Petitioner No.2 being friend is helping her to meet both the ends. When petitioner No.1 took shelter with petitioner No.2, respondents No.4 to 12 got annoyed and threatened to kill them and to implicate them in false cases. The petitioners made representation dated 06.07.2021 to respondents No.2 and 3 for protection of their life and liberty but no action has been taken on the basis thereof.

3. Learned Counsel for the petitioners has submitted that the petitioner No.1 being major is entitled to take shelter and reside with petitioner No.2. Respondents No.4 to 12 are interfering in the peaceful life of the petitioners and are threatening to kill them and implicate them in false cases. The State is duty bound to protect the life and liberty of the petitioners. No action for protection of the life and liberty of the petitioners has been taken by respondents No.2 and 3 on the basis of representation made to them and respondents No.2 and 3 may be directed to take appropriate action for protection of their life and

liberty.

4. Notice of motion restricted to respondents No.1 to 3 only.

5. Mr.P.S. Walia, Asstt. A.G., Punjab, who is present before this Court through video conferencing, has accepted notice on behalf of respondents No.1 to 3.

6. Learned State Counsel has submitted that petitioner No.1 is already married and is having two children. The petitioners have fundamental right to life and liberty and are entitled to protection of their life and liberty against threats of physical harm or false implication but the petitioners are not entitled to such protection for continuing and residing in live-in-relationship of adulterous nature which is against public policy as well as statutory rights of respondent No.4-husband of petitioner No.1 and her minor children who cannot be abandoned by petitioner No.1. Therefore, the petition may be dismissed.

7. On consideration of submissions made by learned Counsel for the petitioners and learned State Counsel for respondents No.1 to 3 and perusal of the material on record, I am of the considered view that the petition is devoid of any merit and deserves to be dismissed.

8. The Parliament, to provide more effective protection of rights of women guaranteed under the Constitution under Articles 14, 15 and 21, who are victims of violence of any kind occurring in the family, enacted the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as the PWDV Act).

9. Section 3 of the PWDV Act defines "domestic violence" as under :

"3. Definition of domestic violence. - For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it -

- (a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or
- (b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or
- (c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or
- (d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person.

Explanation I. - For the purposes of this section, -

- (i) "physical abuse" means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force;
- (ii) "sexual abuse" includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman;
- (iii) "verbal and emotional abuse" includes -
 - (a) insults, ridicule, humiliation, name calling and insults or ridicule specially with regard to not having a child or a male child; and
 - (b) repeated threats to cause physical pain to any person in whom the aggrieved person is interested.
- (iv) "economic abuse" includes -
 - (a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance;
 - (b) disposal of household effects, any alienation of assets whether movable or immovable, valuables,

shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person; and

(c) prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.

Explanation II. - For the purpose of determining whether any act, omission, commission or conduct of the respondent constitutes "domestic violence" under this section, the overall facts and circumstances of the case shall be taken into consideration."

10. Chapter IV is the heart and soul of the PWDV Act, which provides various reliefs to an 'aggrieved person', defined under Section 2(a) of the PWDV Act as 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. Section 2(q) of the PWDV Act defines 'respondent' as any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under the PWDV Act. The proviso to the above said definition empowers an aggrieved wife or female living in a relationship in the nature of marriage to file a complaint against the relative of the husband or the male partner. The aggrieved woman can file an application before Judicial Magistrate First Class or the Metropolitan Magistrate exercising jurisdiction under the Code of Criminal Procedure, 1973 (hereinafter referred to as the Cr.P.C.) in the area where the aggrieved person resides temporarily or otherwise or the

respondent resides or the domestic violence is alleged to have taken place, for one or more of the reliefs under the PWDV Act.

11. The PWDV Act empowers the Magistrate to grant the following reliefs to such aggrieved woman:

(i) The Magistrate can under Section 12 (2) of the PWDV Act order payment of compensation or damages without prejudice to the right of such aggrieved woman to institute a suit for compensation or damages for injuries caused by the acts of domestic violence committed by the adult male member, with a prayer for set off against the amount payable under any decree passed by any Court;

(ii) The Magistrate, under Section 18 of the PWDV Act, can pass a "protection order" in favour of the aggrieved person and prohibit the respondent from:

- (a) committing any act of domestic violence;
- (b) aiding or abetting in the commission of acts of domestic violence;
- (c) entering the place of employment of the aggrieved person or, if the person aggrieved is a child, its school or any other place frequented by the aggrieved person;
- (d) attempting to communicate in any form, whatsoever, with the aggrieved person, including personal, oral or written or electronic or telephonic contact;
- (e) alienating any assets, operating bank lockers or bank accounts used or held or enjoyed by both the parties, jointly by the aggrieved person and the respondent or singly by the respondent, including her stridhan or any other property held either jointly by the parties or separately by them without the leave of the Magistrate;
- (f) causing violence to the dependants, other relatives or any person who give the aggrieved person assistance from

domestic violence;

(g) committing any other act as specified in the protection order.

(iii) The Magistrate, while disposing of an application under Section 12(1) of the PWDV Act, can pass a "residence order" under Section 19 of the PWDV Act, -

(a) restraining the respondent from dispossessing or in any other manner disturbing the possession of the aggrieved person from the shared household, whether or not the respondent has a legal or equitable interest in the shared household;

(b) directing the respondent to remove himself from the shared household;

(c) restraining the respondent or any of his relatives from entering any portion of the shared household in which the aggrieved person resides;

(d) restraining the respondent from alienating or disposing off the shared household or encumbering the same;

(e) restraining the respondent from renouncing his rights in the shared household except with the leave of the Magistrate; or

(f) directing the respondent to secure same level of alternate accommodation for the aggrieved person as enjoyed by her in the shared household or to pay rent for the same, if the circumstances so require :

(iv) While disposing of an application under sub-section (1) of section 12, the Magistrate can under Section 20 of the PWDV Act direct the respondent to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of the domestic violence and such relief may include, but not limited to, -

- (a) the loss of earnings;
- (b) the medical expenses;
- (c) the loss caused due to the destruction, damage or removal of any property from the control of the aggrieved person; and
- (d) the maintenance for the aggrieved person as well as her children, if any, including an order under or in addition to an order of maintenance under section 125 of the Cr.P.C. or any other law for the time being in force.

The monetary reliefs granted under section 20 of the D.V.Act have to be adequate, fair, reasonable and consistent with the standard of living to which an aggrieved person is accustomed. The Magistrate First Class has the power to order an appropriate lump sum payment or monthly payments of maintenance.

(v) The Magistrate, under Section 21 of the PWDV Act, has the power to grant temporary custody of any child or children to the aggrieved person or the person making an application on her behalf and specify, if necessary, the arrangements for visit of such child or children by the respondent.

(vi) The Magistrate under Section 22 of the PWDV Act, can pass an order directing the respondent to pay compensation and damages for the injuries, including mental torture and emotional distress, caused by the acts of domestic violence committed by the respondent.

12. Section 26 of the PWDV Act provides that any relief available under Sections 18, 19, 20, 21 and 22 thereof may also be sought in any legal proceeding, before a Civil Court, family court or a criminal court, affecting the aggrieved person and the respondent whether such proceeding was initiated before or after the

commencement of the PWDV Act. Further, any relief referred to above may be sought for in addition to and along with any other reliefs that the aggrieved person may seek in such suit or legal proceeding before a civil or criminal court.

13. Admittedly, petitioner No.1 is married to respondent No.4 and the marriage has not been dissolved by any decree of divorce passed by competent Court and is still subsisting. Two children one daughter namely Gursimran Kaur aged about 15 years and one son namely Prabhjot Singh aged about 11 years were born out of the wedlock. Petitioner No.1 has claimed respondent No.4 to be a drunkard who had harassed/tortured her and turned her out of the matrimonial home number of times but admittedly petitioner No.1 did not make any complaint to the police, did not file any petition for judicial separation or divorce on the ground of cruelty and custody of her children and for payment of maintenance by respondent No.4 to petitioner No.1 as well as the minor children or any of the reliefs under the PWDV Act.

14. It may also be observed here that in view of subsistence of marriage, respondent No.4-husband is entitled to avail judicial remedy of restitution of conjugal rights against petitioner No.1. Even minor children will also be entitled to their care by petitioner No.1 and petitioner No.1 cannot abandon them in the manner as petitioner No.1 has done.

15. In the present case petitioner No.1 is at present residing with petitioner No.2 claiming him to be a good friend known to her for the last two/three years who is helping her both ends meet and petitioner No.1 is seeking protection from any harm at the instance of

respondents No.4 to 12 for living with petitioner No.2 but it is pertinent to observe that petitioner No.1 cannot be said to be living with petitioner No.2 in domestic relationship and will not be entitled to protection or grant of any relief against petitioner No.2 under the PWDV Act firstly because the petitioners have not themselves in so many words claimed their relationship to be live-in-relationship in the nature of marriage and secondly because in case of any such claim of live in relationship in the nature of marriage the same will not fall in the definition of domestic relationship as live in relationship in the nature of adulterous/bigamous marriage is not legally permissible and protected by the PWDV Act. Reliance in this regard may be placed on the observations made by Hon'ble Supreme Court in ***Indra Sarma Vs. V.K.V. Sarma : 2014(1) R.C.R.(Criminal) 179*** where the appellant Indra Sarma entered into a live-in-relationship with V.K.V. Sarma knowing that he was married person, with wife and two children, it was held by Hon'ble Supreme Court that they could not be said to have relationship in the nature of a marriage, and the status of the appellant was that of a concubine and the appellant was not entitled to protection of the PWDV Act. Grant of protection as prayed for by the petitioners will subject petitioner No.1 to complete mercy of petitioner No.2 as petitioner No.1 can not claim any right of protection, maintenance or residence against petitioner No.2.

16. In ***State of Jammu & Kashmir R.K. Zalpuri and others : 2016 AIR (SC) 3006*** Hon'ble Supreme Court observed that the Court while exercising its jurisdiction under Article 226 is duty-bound to consider whether : (a) adjudication of writ petition involves any

complex and disputed questions of facts and whether they can be satisfactorily resolved; (b) the petition reveals all material facts; (c) the petitioner has any alternative or effective remedy for the resolution of the dispute; (d) person invoking the jurisdiction is guilty of unexplained delay and laches; (e) ex facie barred by any laws of limitation; (f) grant of relief is against public policy or barred by any valid law; and host of other factors. In the present case Petitioner No. 1 has equally efficacious alternative judicial remedies of seeking one or more of the above referred reliefs of compensation, protection, residence, custody of children and maintenance under the PWDV Act against respondent No.4. Grant of protection by issuance of writ/direction in exercise of writ jurisdiction on the basis of any claim of live-in-relationship in the nature of marriage which has the character of adulterous/bigamous relationship will also be against public policy.

17. It is also pertinent to observe that the petitioners have claimed that when petitioner No.1 took shelter with petitioner No.2, respondents No.4 to 12 got annoyed and threatened to kill them and to implicate them in false cases but the petitioners have not disclosed when, where, in whose presence by whom and to whom any such threat was given. Further, despite the alleged threat constituting cognizable offence, the petitioners did not lodge any FIR or file any complaint before Judicial Magistrate First Class having jurisdiction regarding the same. The petitioners made representations to respondent No.2-Senior Superintendent of Police, Patiala and respondent No.3-Station House Officer, Police Station Sadar Samana, District Patiala on 06.07.2021 but filed the petition on the very next day on 07.07.2021. In the facts

and circumstances of the case the apprehension of the petitioners of danger from respondents No.4 to 12 can not be said to be reasonable and substantial so as to warrant issuance of a writ/direction by this Court in exercise writ jurisdiction as prayed for. The petitioners can approach respondents No.2 and 3 and in case of inaction on their part the Judicial Magistrate First Class having jurisdiction for redressal of their grievances.

18. In view of the above, the petitioners are not entitled to issuance of any writ or direction for protection of their life and liberty for residing in and continuing their relationship as prayed for as there is no reasonable and substantial apprehension of danger as alleged, the petitioners have equally efficacious alternative remedies and issuance of any writ or direction for such protection as claimed will also be violative of the statutory rights of respondent No.4 and minor children of petitioner No.1 and will also be against public policy as discussed above.

19. It follows from the above discussion that the petition being devoid of any merit is liable to be dismissed.

20. Accordingly, the petition is dismissed with no order as to costs.

09.07.2021

Vinay

(ARUN KUMAR TYAGI)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No