

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

115

CRWP-7346-2021

Date of decision: 06.08.2021

Muskan and another

.....Petitioners

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Ms. Sukhveer Kaur, Advocate for the petitioners.

ARUN KUMAR TYAGI, J (ORAL)

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

1. The petitioners, aged about 22 and 25 years respectively, have filed the present petition under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of mandamus directing respondents No.1 to 3 to protect their life and liberty and not to interfere in their peaceful life at the behest of respondent No.4 and to decide representation dated 30.07.2021 made by the petitioners to respondent No.2.

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 2015. No issue was born out of the wedlock. After marriage respondent No.4, who is drug addict, started harassing and torturing petitioner No.1 and forced her to make relation with his friends just to fulfill his needs of drugs. On finding opportunity, petitioner No.1 ran away from her matrimonial home and started living with his brother. After some time her brother also came in the charming

talk of her husband (respondent No.4) and forcibly sent her to her matrimonial home. Respondent No.4 did not mend his ways and continued to harass and torture petitioner No.1. On 15.01.2021 petitioner No.1 again ran away from her matrimonial home and came in contact of petitioner No.2, who gave shelter to her. Petitioners are living in live-in-relationship with their own free will and consent without any threat pressure or undue influence. When petitioner No.1 took shelter with petitioner No.2, respondent No.4 got annoyed and filed false and frivolous complaint against petitioner No.2. On 14.07.2021 respondent No.4 with some unidentified persons came to their house, raised hooliganism, broke household articles and tried to eliminate the petitioners who saved their lives by running away from the spot and concealing themselves in the house of their neighbour. The petitioners made representation dated 30.07.2021 to respondent No.2 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 petitioner No.1 left matrimonial home due to harassment and torture by her husband-respondent No.4 who is a drug addict and used to compel her to make relations with his friends to fulfil his needs for drugs. Petitioner No.1 took shelter with petitioner No.2 and now the petitioners, who are both major, are living in live-in-relationship with their own free will and consent. Respondent No.4 made false and frivolous complaint against petitioner No.2 with the allegation that petitioner No.2 has illegally kidnapped petitioner No.1. Respondents No.1 to 3 are bound to protect the life and liberty of the petitioners but

no action has been taken for protection of life and liberty of the petitioners on the basis of representation made by them to respondent No.2. Therefore, respondents No.2 and 3 may be directed to take appropriate action for protection of their life and liberty. In support of his arguments learned Counsel for the petitioners has placed reliance on the judgment of the Coordinate Bench of this Court in ***CRWP No.4537 of 2021 titled as 'Sonia and another Vs. State of Haryana and other'*** ***decided on 18.05.2021.***

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

5. Pursuant to supply of advance copy of the petition, Mr. P.S. Walia, Asstt. A.G., Punjab has accepted notice on behalf of respondents No.1 to 3.

6. Learned State Counsel has submitted that petitioner No.1 is already married. 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. 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 who are victims of

violence of any kind occurring within 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 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. Petitioner No.1 has claimed respondent No.4 to be a drug addict who had harassed/tortured her 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 for payment of maintenance by respondent No.4 to petitioner No.1 and did not initiate any proceeding for any relief under the PWDV Act.

14. In the present case petitioner No.1 is at present residing with petitioner No.2 in live-in-relationship and petitioner No.1 is seeking protection from any harm at the instance of respondent No.4 for living with petitioner No.2 in such live-in-relationship but live-in-relationship in the nature of adulterous/bigamous marriage is not

legally permissible under 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. In the present case live-in-relationship of petitioner No.1 with petitioner No.2 will not only be legally un-enforceable for claiming any right of protection, maintenance or residence against petitioner No.2 but will also not be protected by law due to the same being of adulterous/bigamous nature for any relief against respondent No.4.

15. 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.

16. 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 and maintenance under the PWDV Act against respondent No.4. Grant of protection to the petitioners by issuance of writ/direction in exercise of writ jurisdiction on the basis of their claim of live-in-relationship which has the character of adulterous/bigamous relationship will also be against public policy. Further, in view of subsistence of marriage, respondent No.4-husband will be entitled to avail judicial remedy of restitution of conjugal rights against petitioner No.1 and grant of protection as prayed for will also be contrary to any such claim of statutory rights by respondent No.4. Further, even though Section 497 of the IPC defining and prescribing the punishment for the offence of adultery was struck down by Hon'ble Supreme Court as unconstitutional vide its judgment passed in ***Joseph Shine Vs. Union of India : 2018(4) RCR (Criminal) 480*** but adultery continues to be a ground of divorce under the Hindu Marriage Act, 1955 and grant of protection as prayed for will also amount to approval of matrimonial mis-conduct.

17. It is also pertinent to observe that the petitioners have claimed that when petitioner No.1 took shelter with petitioner No.2, respondent No.4 got annoyed and made false and frivolous complaint against petitioner No.2, forcibly entered into their house on 14.07.2021, damaged household articles and tried to kill them but the petitioners did not lodge any FIR or file any complaint before Judicial Magistrate First Class having jurisdiction regarding the same. The petitioners made representation dated 30.07.2021 to respondent No.2-Senior Superintendent of Police, Gurdaspur but did not make any mention of

any such incident in the representation. In the facts and circumstances of the case the apprehension of the petitioners of danger from respondent No.4 can not be said to be reasonable and substantial so as to warrant issuance of a writ/direction by this Court in exercise of writ jurisdiction as prayed for particularly when petitioner No.1 has got equally efficacious alternative remedies.

18. The observations in *CRWP No.4537 of 2021 titled as 'Sonia and another Vs. State of Haryana and other' decided on 18.05.2021* relied upon by learned Counsel for the petitioners are not applicable to the facts of present case as in that case live-in-relationship was not of adulterous/bigamous nature.

19. It crystallizes from the above discussion that the petitioners are not entitled to issuance of any writ or direction for protection of their life and liberty for living in and continuing with their live-in-relationship of adulterous/bigamous nature as prayed for and the petition being devoid of any merit is liable to be dismissed.

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

06.08.2021

Kothiyal

(ARUN KUMAR TYAGI)
JUDGE

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