

THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARHCRM-M-34237-2020 (O & M)  
Date of Decision: 07.04.2021Joginder Kaur and others

....Petitioners

VersusShalini and another

.....Respondents

**CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL**

Present: Mr. Arvind Galav, Advocate, for the petitioners.

Mr. A.P.S.Sandhu, Advocate, for respondent No.1.

**Harnaresh Singh Gill, J.**

The petitioners seek quashing of the Criminal Complaint No. 73-2017 titled as Shalini Vs. Sukhwinder Singh and others, filed under the Protection of Women from Domestic Violence Act, 2005 (for short 'the 2005 Act') and the summoning order dated 13.02.2017 and all consequential proceedings arising therefrom.

As per the facts of the present case, Sukhwinder Singh-respondent No.2, son of petitioners No.1 and 2 and brother of petitioner No.3, married Shalini-respondent No.1 on 22.04.2015. From said wedlock, one male child was born on 23.07.2016. After marriage, Shalini stayed at Chandigarh with her husband, who is working in Punjab Engineering College, Chandigarh, at House No.610-A, Sector-12, Chandigarh, and

there was no interference of the petitioners in the nuclear family affairs of respondents No.1 and 2. Petitioner No.3-sister of respondent No.2 has been working as a Government Teacher since 2007 and residing in her matrimonial home in District Jalandhar since 2009 i.e. after her marriage.

Learned counsel for the petitioners submits that on 20.11.2016, parents and other family members of respondent No.1 went to Chandigarh and brought respondent No.1 back to Amritsar, along with the minor child and all valuable articles. Regarding this incident, a complaint dated 21.11.2016 was given to UT Police, Chandigarh, by respondent No.2 and as a counterblast to the same, respondent No.1 had filed a criminal complaint under the 2005 Act, and another one under Sections 406, 498-A IPC.

The petitioners had filed an application for dismissal of the complaint filed under the 2005 Act, before the learned Magistrate, inter-alia, pleading that respondent No.1 (daughter-in-law) never resided at Village Mujjafarpur, Jalandhar nor did she have any domestic relationship with them and/or she had shared any household with petitioners, but the said application was dismissed on 23.07.2018, without taking into consideration the said factual position.

It is further submitted that respondent No.1 either remained with her husband at Chandigarh or at Amritsar, which fact had been clearly reflected in her self-declaration form at the time of her appointment as a teacher in the Navodya Vidyalaya, Faridkot (Annexure P-11). The complaint under the 2005 Act,

has been pending for the last 4 years and except for one official witness, no evidence has been adduced by complainant-respondent No.1 and the dispute, if any, is between husband and wife. It is further submitted that petitioners No.1 and 2, 65 years and 73 years of age respectively, have been dragged into the present litigation only with a view to harassing them and the allegations contained in the complaint are general and omnibus in nature. Above all petitioner No.2 has been on Dialysis thrice a week and as far as petitioner No.3 is concerned, she is a married sister-in-law of respondent No.1 and being a Government Teacher, she with her two minor children, has been living in her matrimonial home since 2009 at Jalandhar, which is a far away place from her parents i.e. petitioner No.1 and petitioner No.2. Rather in her service record, respondent No.1 has given the address of Chandigarh, where her husband (respondent No.2), resides.

Learned counsel for the petitioners further submits that there is no specific allegation as to how the relatives of the husband i.e. petitioners had caused acts of domestic violence and hence, the proceedings initiated by respondent No.1 are not sustainable in the eyes of law. He relies upon the judgment of the Hon'ble Apex Court Shyamlal Devda and Others vs Parimala, (2020)3 SCC 14.

Learned counsel for the petitioners also relies on the judgment of the Hon'ble Supreme Court in Geeta Mehrotra and Another vs State of U.P. and Another, (2012)10 SCC 741, wherein it was held that a fact borne out of experience, cannot

be overlooked that there is a tendency to involve the entire family members in domestic quarrel taking place in the matrimonial disputes.

A judgment of this Court in Anoop and Others vs Vani Shree, 2015 (2) RCR (Criminal) 989, is relied upon to contend that the law of domestic violence is being misused so as to terrorize the husband, their families and distant relatives and thus phenomenon has now acquired the name of 'Legal Terrorism'.

Still further, learned counsel for the petitioners relies upon the judgment of the Andhra Pradesh High Court in AK Srinivasa Rao and Others vs State of A.P., 2016(2) RCR (Criminal) 246, to contend that the allegations made in the complaint are omnibus and vague in nature and do not disclose even a prima-facie case under the 2005 Act.

Per contra, learned counsel for respondent No.1-wife submits that the matrimonial house is a joint family house which does not cease to exist merely because respondent No.2, husband, is working at Chandigarh. The petitioners had moved an application before the learned Magistrate for dismissal of the complaint under the 2005 Act, which was dismissed and the said order having not been challenged either by way of an appeal or revision, has attained finality. Hence, the present petition is not maintainable.

It is further argued that respondent No.1 though had stayed at Chandigarh, yet for short intervals and during the period of pregnancy and for check-up, respondent No.1 went to

PGI, Chandigarh, and General Hospital, Sector-16, Chandigarh. The 'godh bharayi' ceremony was performed at Jalandhar. Giving Chandigarh address in the service record by respondent No.1, is because of the fact that in the service record of her husband, the address of Chandigarh, is given and thus, it does not mean that respondent No.1 never resided at her matrimonial home at Jalandhar.

Learned counsel for respondent No.1 further submits that as far as petitioner No.3 is concerned, being real sister of respondent No.2, she had been a regular visitor to the matrimonial home of respondent No.1 and petitioner No.3 also resided at Jalandhar. There are specific allegations against her. There are other brother and sisters of respondent No.2 husband, but they have not been arraigned as accused/respondents in the complaint because they had never treated respondent No.1 with cruelty. Rather the petitioners and respondent No.2 have delayed the trial by moving an application for dismissal of complaint and then preferring the present petition, for quashing of the complaint under the 2005 Act.

It is further submitted that maintenance granted by the trial Court has not been paid by respondent No.2 and thus, his defence is liable to be struck off. Moreover, the grounds of ill-health and old age were taken up by petitioner No.1 in this Court, when application was filed for transfer of the complaint under the 2005 Act from Amritsar to Jalandhar, but the same was rejected on 20.03.2019 (Annexure R-1). Thus, there is no ground to quash the complaint filed by respondent No.1 wife

under the 2005 Act, as the petitioners are just the proxies of respondent No.2.

It is still further submitted by the learned counsel for respondent No.1 that husband i.e. respondent No.2 is in the habit of frustrating the rights of respondent No.1 and had filed a petition under Section 9 of the Hindu Marriage Act, 1955 at Chandigarh. But, when respondent No.1 filed an application to transfer the said petition to Amritsar from Chandigarh, respondent No.2 made a statement that he did not want to pursue the petition. Later respondent No.2 had filed a divorce petition at District Courts, Chandigarh, just to harass respondent No.1 and vide order dated 15.03.2019, a Coordinate Bench of this Court, had transferred the divorce petition from Chandigarh to Amritsar. Moreover, the proceedings under the 2005 Act are quasi civil in nature and the petitioners are not required to attend Court on each and every date of hearing. It is, thus, pleaded that no case is made out to quash the criminal complaint and the proceedings arising therefrom.

Learned counsel for respondent No.1 has relied upon the judgment of the Hon'ble Supreme Court in Hiral P Harsora and Others vs Kusum Narottamdas Harsora and others, (2016)10 SCC 165, to contend that a wife can file a complaint against her husband and husband's relatives, including mother-in-law and sister-in-law, and is entitled to the monetary relief against her husband and his female relatives, which include the mother-in-law as well.

Learned counsel for respondent No.1 also relies upon the judgment of this Court in case Tej Singh Thakur and another vs Anshul Suphia, 2019 (4) RCR (Criminal) 817, to submit that the accused/respondents in the complaint, in their endeavour to forego their appearance before the learned Magistrate to facilitate counselling and opportunity of being heard, cannot approach the High Court by invoking the provisions of Section 482 Cr.P.C. and such provisions are to be used sparingly and that too to meet the ends of justice. Still further, it is submitted that Section 29 of the 2005 Act provides for a forum of appeal, which has not been resorted to by the petitioners and hence, the present petition is liable to be dismissed.

Learned counsel for respondent No.1 further relies on the judgment of the Delhi High Court in Smt. Maya Devi Vs The State of NCT of Delhi, 2007(16) RCR (Crl.) 659, to contend that where a specific remedy is open to the party under the 2005 Act, the High Court will not interfere under Section 482 Cr.P.C., as there is an alternative remedy. He also places reliance upon a Single Bench judgment of this Court in Rajinder Singh vs State of Haryana, 2015(9) RCR (Crl.) 42, wherein it has been held that where the charges were framed 4 years ago, and the prosecution was leading evidence, quashing petition cannot be filed at a belated stage.

I have heard the learned counsel for the petitioners and the learned counsel for respondent No.1 and with their able assistance, I have also gone through the documents on the file.

The petitioners before this Court are mother-in-law, father-in-law and a married sister-in-law of respondent No.1. The marriage of respondent No.1 with respondent No.2, was solemnized on 22.04.2015 at Amritsar and a male child-Gursirat, was born on 23.07.2016. Respondent No.2, husband, is posted as Assistant Professor in the Punjab Engineering College, whereas respondent No.1, wife, has completed her Ph.D. in Physics from Guru Nanak Dev University.

In the present case, it is the stand of respondent No.1 that she had stayed with respondent No.2 husband at Punjab Engineering College, Chandigarh in the Campus accommodation for short intervals and during the period of her pregnancy she had got herself checked-up at PGIMER and General Hospital, Sector-16, Chandigarh and resided at Jalandhar at her matrimonial home with petitioners No.1 and 2. It is the further stand of respondent No.1 that petitioner No.3, who is the married sister-in-law of respondent No.1, had been regularly visiting matrimonial home of respondent No.1.

To my mind, present petition deserves to be allowed.

Respondent No.1 is working as Teacher in Jawajar Novodaya Vidyalaya being Phd in Physics. Section 18 of the 2005 Act stipulates for a protection order in favour of a woman. Section 20 of the 2005 Act deals with the monetary relief to the aggrieved party and the same can be granted by a Court and before issuing notice, the learned Magistrate has to be prima facie satisfied that there have been instances of a domestic violence.

Even under the 2005 Act, there are various criminal offences. Domestic violence is based on domestic relationship and shared household.

Applying the ingredients of domestic violence to the present case, respondent No.1 joined her husband respondent No.2 at Punjab Engineering College, Campus accommodation at Chandigarh. It is the admitted case of respondent No.1 that during pregnancy, she took her treatment from PGIMER and General Hospital, Sector-16, Chandigarh. Moreover, in her service record, the address of Punjab engineering College, Chandigarh is given.

It has not been denied by respondent No.1 that she was appointed as Teacher in Jawajar Novodya Vidyalaya at District Faridkot and in her personal declaration tendered at the time of joining, respondent No.1 stated that she had resided at Chandigarh from 22.04.2015 to 19.11.2016 and from 20.11.2016 to 12.09.2017 at Amritsar i.e. her parental home. It is important to note that the date of marriage of the parties is 22.04.2015 and a son was born on 23.07.2016.

Further, a complaint was filed by respondent No.2 husband against respondent No.1 to Chandigarh Police on 21.11.2016 alleging that respondent No.1 along with her parental family members forcibly took the baby and valuable articles from the Punjab Engineering College Campus residence without informing respondent No.2, husband.

Specific allegations have not been disclosed against the petitioners and the matter arises out of a matrimonial

bickering. It would, thus, be clear that the present proceedings qua the petitioners, who are mechanically sought to be prosecuted under the provisions of the 2005 Act, are nothing but an abuse of the legal and judicial process. As noticed above, after leaving her husband's company, respondent No.1 had started living at her parental home.

The judgments in Shyamlal Devda's; Geeta Mehrotra's; Anoop's and A.K. Srinivasa Rao's cases (supra), focus on the facts that there should be specific allegations of domestic violence and the tendency to involve the extended members, who are away from the nuclear family, has been given a term of Legal Terrorism.

On the other hand, the judgments in Hiral P Harsora's; Tej Singh Thakur's; Smt. Maya Devi's and Rajinder's cases (supra), relied upon by the learned counsel for respondent No.1, there was a focus on the facts that in the domestic violence cases, a wife has every right to file complaint against her husband and husband's relatives, including mother-in-law and sister-in-law, who approach High Court without facilitating counselling to forego their appearance before the Magistrate. It was further held therein that if there is a specific remedy, it is open for the party to avail such remedy and not to invoke the provisions of Section 482 Cr.P.C.

Thus, the judgments cited by the learned counsel for respondent No.1 are not applicable to the facts of the present case.

The Hon'ble Supreme Court in Pepsi Foods Ltd. And another Vs. Special Judicial Magistrate and others, (1998)5 SCC 749, while relying upon its previous decisions, including the one delivered in State of Haryana Vs. Ch. Bhajan Lal, 1991(1) RCR 383, while setting aside the order passed by the High Court held that if there is no substance in the allegations in the complaint, then the High Court would be well within its right to quash the proceedings. The observations made by the High Court that at the stage of taking cognizance by the Magistrate, it cannot be said that the allegations in the complaint are so absurd and inherently improbable on the basis of which no prudent man can ever reach a just conclusion that there exists no sufficient ground for proceedings against the accused, were set aside.

As noticed above, the transfer petition filed by petitioner No.1 on the basis of her legal right, was dismissed by a Coordinate Bench of this Court on 20.03.2019. However, during the last four years, except for one official witness, no other witness has been examined in the complaint and thus, there being no headway in the trial, the same still stands at an initial stage.

Petitioner No.1 (mother-in-law) aged 65 years is 40% disabled from eyes, and is suffering from old age ailments whereas petitioner No.2 (father-in-law), aged 73 years, is a chronic kidney patient and has been on dialysis thrice a week. Petitioner No.3 is married sister-in-law is a Government Teacher and since her marriage in 2009, she has been residing in her matrimonial home and looking after her two minor children.

No other legal point worth consideration has either been urged or pressed by the counsel for the parties.

Thus, while summing it, it is held that a pure matrimonial dispute between husband and wife, has been given a colour of the proceedings under the 2005 Act so as to rope in hapless parents-in-law and a married sister-in-law. They have been roped in with an oblique motive to harass and mentally torture them. Moreover, the allegations leveled in the complaint are vague, general and omnibus in nature and as per the judgments of the Hon'ble Apex Court, relied upon by the learned counsel for the petitioners and as referred to above, the present proceedings qua the petitioners, are nothing, but a clear abuse of process of law.

In view of the above, the present petition is allowed. The impugned complaint; the summoning order dated 13.02.2017 and all consequential proceedings arising therefrom, are quashed, qua the petitioners.

07.04.2021  
**ds**

**(Harnaresh Singh Gill)**  
**Judge**

Whether reasoned/speaking? Yes/No  
Whether reportable? Yes/No