

**115 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-17483-2021

Date of decision : 07.04.2022

Dhani Ram and others**.....Petitioners****versus****State of Haryana and others****..... Respondents****CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ*********Present :- Mr. Anil Kumar Sharma, Advocate
for the petitioners.*********RAJESH BHARDWAJ, J. (Oral)**

Petitioners have approached this Court praying for quashing the complaint filed under Section 12 of Protection of Women from Domestic Violence Act, 2005 bearing case No.DV Act/24 of 2018 CNR No.HRGRB10005092016 filed on 21.07.2016 before the Sub Divisional Judicial Magistrate, Pataudi along with consequential proceedings arising therefrom.

It has been contended that the prosecution of the petitioner in a complaint filed is nothing but an abuse of the process of the Court. It is submitted that the complaint filed by respondents No.2 to 4 is baseless and without any substance as it does not disclose any act of cruelty and does not constitute any offence under the Domestic Violence Act. It is submitted that respondent No.2 had already filed a petition under Section 125 Cr.P.C. Besides this, the FIR bearing No.81 dated 02.03.2016, under Sections 323, 406, 498-A, 506 of IPC, Police Station Pataudi, District Gurugram on the same set of allegations and the petitioners have been acquitted vide order dated 16.12.2019 by the learned Judicial Magistrate Ist Class, Pataudi. He has submitted that the petitioners are residing separately from the private respondents and hence, they are not part of the shared household.

Therefore, their prosecution under the Domestic Violence Act is not made out. He has relied upon the judgment of this Court in a case titled as Amit Aggarwal and others Vs. Sanjay Aggarwal and others (CRM-M-36736-2014). He submits that the petitioners are living separately from the private respondents. They do not fall in the category of domestic relationship. Thus, their prosecution is nothing but an abuse of the process of the Court.

I have heard counsel for the petitioners and perused the records.

After hearing counsel for the petitioner and perusing the record, this Court finds that the present petition does not hold merit for quashing of the complaint. A bare perusal of the complaint filed would disclose the specific allegations against all the petitioners. The main thrust of the arguments of counsel for the petitioners is that on the similar grounds the private respondent lodged the FIR against the petitioners for the offence under Sections 323, 406, 498-A, 506 of IPC and the petitioners were acquitted by the trial Court. It is pertinent to mention here that the prosecution of the petitioners for the offence under the Indian Penal Code rest on different parameters than the prosecution for the offence under the Domestic Violence Act. The legislature has provided the remedy to the aggrieved wife under the Indian Penal Code and also under Domestic Violence Act which are totally independent. The allegations and counter-allegations are the disputed question of facts which can be established only after appreciation of the evidence produced before the trial Court. In all its humility, there is no dispute regarding the judicial precedent relied upon by the counsel for the petitioner. However, this Court finds that the same is distinguishable in the facts and circumstances of the present case. In the case relied upon by the learned counsel for petitioners i.e. Sanjay Aggarwal

and others (supra), the domestic relationship between the parties had come to an end after the decree of divorce was passed between the parties whereas, in the present case, there is no decree of divorce between the parties. However, the Constitutional Bench of the Supreme Court in a case titled as State of Haryana vs. Bhajan Lal, 1992 Supp (1) SCC 335 has held as under:-

102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised:

- 1. Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*
- 2. Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.*
- 3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*
- 4. Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable*

offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

- 5. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*
- 6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.*
- 7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.*

Taking into consideration the facts of the present case on the anvil of the law settled, the present petition fails to qualify the test for exercising the powers under Section 482 Cr.P.C. by this Court in favour of the petitioners.

The petition being devoid of any merits, is hereby stands dismissed. Nothing said herein shall be treated as an expression of opinion on the merits of the case.

(**RAJESH BHARDWAJ**)
JUDGE

07.04.2022
m. sharma

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