

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR 262/2016

Date of decision: 04.08.2023.

Smt. Suman

.....Petitioner

Vs.

Vijay and others

.....Respondent

CORAM HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. V.P.Sangwan, Advocate for the petitioner.

Mr. Ashok Arora, Advocate for the respondent.

Nidhi Gupta, J.

Challenge in the instant revision petition is to the order dated 15.10.2015 passed by Addl. Sessions Judge, Bhiwani dismissing the appeal filed by the petitioner against order dated 11.8.2014 passed by JMIC, Charkhi Dadri whereby complaint of the petitioner under Section 12 of The Protection of Women from Domestic Violence Act, 2005 was dismissed in default; as well as order dated 20.11.2014 passed by JMIC, Charkhi Dadri whereby her application for restoration of the said complaint was also dismissed.

Brief facts of the case are that the petitioner got married to respondent no.1 on 16.1.2005. Out of this wedlock two daughters were born on 27.1.2006 and 21.10.2007. Petitioner filed a complaint dated 9.4.2014 under Section 12 of The Protection of Women from Domestic Violence Act, 2005 against all the respondents herein, before JMIC Charkhi Dadri. It is this petition which has been dismissed in default, as well as appeal against said

order of dismissal in default has also been dismissed. Hence, the present revision petition.

Ld. Counsel for the petitioner submits that the impugned orders have been passed wrongly as the petitioner had clearly stated in her application for restoration (Annexure P-4), that she was suffering from Pneumonia, and her counsel went to the Court however, the Court was busy in another case and in these circumstances, the matter came to be dismissed in default. Ld. Counsel submits that absence of the petitioner was neither intentional nor deliberate.

Ld. Counsel for the respondent submits that petitioner has embroiled the respondents in numerous frivolous cases as a result of which the respondents are being harassed. It is stated that the petitioner had also filed a criminal case bearing FIR No. 68 dated 29.7.2010 under Sections 498-A/406/506 IPC, PS Baund Kalan against respondents No. 1 and 2. The said respondents faced trial and were ultimately acquitted by the Id. JMIC, Charkhi Dadri vide order dated 24.7.2015. Petitioner filed an appeal against the said order which was dismissed by the Court of Id. Addl. Sessions Judge, Bhiwani on 9.9.2016. Petitioner also filed an application under Section 97 Cr.PC against the respondent no.1 and respondent no.4 herein, seeking custody of her minor daughters. Petitioner also filed a petition dated 22.7.2010 under Section 6 of The Hindu Minority and Guardianship Act, 1956 seeking custody of minor daughters from respondent no.1, however, after examining two defence witnesses petitioner suddenly suffered a statement in Court and the petition for custody came to be dismissed as withdrawn. Thereafter, petitioner filed another petition dated 17.3.2012 under Section 25 of the Guardian and Wards Act, 1890 seeking custody of her minor daughters which was dismissed

on 23.12.2015 by the ld. District Judge, Family Court, Hisar holding that if the children are uprooted from the family of the respondent no. 1 and sent to the house of the petitioner it would cause irreparable loss to the future of children. Petitioner challenged the above said order dated 23.12.2015 by way of FAO No. 1237/2016 which was dismissed by this Court vide order dated 4.10.2019. Ld. Counsel submits that besides the above said litigation, the petitioner has filed numerous other applications/complaints before the police against the respondents. In fact, petitioner and her family also attacked respondent no.2 herein/mother-in-law of the petitioner in respect of which respondent no.2 has lodged FIR no.241 dated 30.5.2010 under Section 452, 323, 506, 34 IPC against the brothers of the petitioner. Ld. Counsel submits that while delivering the impugned judgment ld. Lower appellate Court has observed that petitioner/complainant has intentionally dragged the respondent into litigation and further while delivering judgment dated 23.12.2015 under Section 25 of the Guardian and Wards Act, 1890, ld. Family Court, Hisar has observed that no sincere efforts have been made by the petitioner to reside with the respondent, rather she has filed one case after another and disturbed the peace and harmony of the respondent. Ld. Counsel further submits that despite the above facts, the respondent no.1/husband of the petitioner has been regularly paying maintenance to the petitioner.

I have heard learned counsel for the parties.

Perusal of the record of the case reveals that in the present complaint respondents No. 2 to 4 were not summoned by the ld. Trial Court and only respondent no.1/husband was summoned. The said order, whereby the respondents No. 2 to 4 were not summoned was not challenged by the

petitioner and the same attained finality. Thus, in fact, the present revision petition is not maintainable against respondents No. 2 to 4.

Thereafter, the case was fixed for petitioner's evidence. It is pertinent that the instant complaint was fixed for evidence of the petitioner on 28.2.2013. It was dismissed in default on 11.8.2014. From 28.2.2013 till 11.8.2014 the petitioner had availed 11 effective opportunities for leading evidence but not even a single witness was examined during this time.

Perusal of the impugned order dated 11.8.2014 reveals that it has been recorded therein that despite the fact that the case was called several times before lunch as well as post lunch the petitioner did not appear in the Court, nor any witness was present. It is in these circumstances that the petitioner's complaint was dismissed in default vide order dated 11.8.2014 (Annexure P-2).

Thereafter, petitioner moved application dated 9.9.2014 (Annexure P-4) seeking restoration of her complaint alleging therein that she was suffering from Pneumonia and could therefore, not attend the proceedings on 11.8.2014. Vide order dated 20.11.2014 (Annexure P-3) passed by JMJC, Charkhi Dadri the said application was also dismissed. Against the order dated 11.8.2014 as well as order dated 20.11.2014 the petitioner filed appeal dated 24.12.2014 before the Id. Sessions Judge, Bhiwani which was dismissed vide order dated 15.10.2015 (Annexure P-1).

The ostensible reason cited by the petitioner in her application for restoration (Annexure P-4) for her absence on 11.8.2014, is that she was suffering from pneumonia. However, the said application for restoration was not supported either by affidavit of the petitioner/complainant; nor was there

any affidavit of her counsel that he had appeared twice in Court but his presence was not marked. Admittedly, the petitioner had not even produced any medical record either before the Courts below or before this Court in support of her contention that she was suffering from pneumonia on said date, and could, therefore not attend the proceedings before the Courts below.

In view of the above admitted facts, I find no ground is made out to interfere in the impugned orders.

Dismissed.

04.08.2023.
Joshi

(Nidhi Gupta)
Judge