

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRR No.137 of 2024 (O&M)
Date of decision: 23.01.2024

SHILPI SHARMA

.... Petitioner

Versus

STATE OF HARYANA AND ANOTHER

.... Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present : Mr. Kewal Singh, Advocate for the petitioner.

MANISHA BATRA, J. (oral)

CRM-3225-2024

This application has been filed seeking condonation of delay of 35 days in filing the present petition.

For the reasons, assigned in the application, the same is allowed and delay of 35 days in filing the present petition is condoned.

Main case

1. The present petitioner herein is assailing the order dated 22.08.2023 passed by learned Judicial Magistrate, Gurugram in petition bearing No.DV-119-2019 titled as *Shilpi vs. Parveen*, whereby, he had dismissed the petition filed by the present petitioner and the order dated 16.09.2023 passed by learned Additional Sessions Judge, Gurugram, thereby, upholding the order dated 22.08.2023.

2. As revealed from the record, the present petitioner had filed a petition before the Court of the Judicial Magistrate Ist Class, Gurugram under the provision of Protection of Women from Domestic Violence Act,2005 (**for short- the DV Act**). It is also revealed that she had been granted several

opportunities to produce evidence. On 20.07.2023, last opportunity was granted to her to conclude her evidence and matter was adjourned to 07.08.2023. As on that day she did not appear, still the trial Court granted one more opportunity to her for the purpose of concluding her evidence and the matter was adjourned to 22.08.2023 subject to her deposit of costs of Rs.5,000/- to be paid in DLSA. However, even on that day, she did not appear before the trial Court till 12 pm though the matter had been taken up twice. Learned Magistrate still chose to wait for 12 pm and it was only at that time, she appeared and stated that she did not want to lead any evidence as she had moved an application for transfer. While observing that, neither the petitioner had deposited the costs as ordered nor she was willing to lead evidence, learned Magistrate dismissed her petition on account of failure to lead any evidence.

3. It is further revealed from the record that the order dated 22.08.2023, passed by learned Magistrate was challenged by the petitioner by filing an application before learned Additional Sessions Judge who too by passing a detailed order and by observing that no ground had been made out to interfere in the impugned order, dismissed the petition.

4. Learned counsel for the petitioner has submitted that the trial Magistrate was biased against her and that is why she had moved an application for transfer of her case to some other Court which was pending for 22.08.2023. The request for adjournment of the case was genuine and on account of pendency of transfer application but neither the trial Court nor the Court of learned Additional Sessions Judge had taken that fact into consideration and had passed whimsical orders. Therefore, it is argued that the impugned orders are liable to be set aside, the revision petition deserves to be

allowed and the petitioner deserves to be given opportunity to produce evidence before the trial Court.

5. I have heard learned counsel for the petitioner at considerable length and have gone through the record and on perusal of the same, I see no reason which warrant interference in the orders as passed by the Courts below. It is revealed that the petition filed by the present petitioner before learned Magistrate was pending since the year 2019 and several opportunities including last opportunity had been granted to her for the purpose of producing her evidence. She took the pleas that the trial Court was biased against her and therefore, she had moved an application for transfer of the case to some other Court, at the time when final opportunity and that too subject to deposit of costs of Rs.5,000/- had been given to her. Learned Magistrate is shown to have observed in the order dated 22.08.2023 that previously also she had moved applications for transferring the petition more than 4 times and had also been creating unruly scenes before the Presiding Officers who had been dealing with the petition filed by her in the past.

6. It clearly appears from these orders that petitioner herself had been delaying the decision of her own case by not producing evidence before the concerned Magistrate without any plausible reason as she has failed to either plead as to what particular act and conduct of the concerned officer led her to assume that he/she was biased against her nor learned counsel for the petitioner has been able to point out any such instance. Even before the Court of learned Additional Sessions Judge, the only plea that was taken by her was that it was due to the reason that her application for transfer was pending that she had sought adjournment but the Magistrate was biased against her. As no specific instance qua any such bias is shown to have been quoted by her either

before the Court below or in the present revision petition, hence, I am of the considered opinion that learned Magistrate committed no error in dismissing the petition filed by the petitioner on the ground that as she had failed to conclude her evidence despite availing several effective opportunities including last opportunity and had not even deposited the cost of Rs.5,000/- on 22.08.2023 as directed by learned trial Court on some previous date, even though the payment of cost was obviously a condition precedent for further prosecution of the matter by her. Accordingly, finding no merit, the petition is dismissed.

23.01.2024
Jyoti-IV

(MANISHA BATRA)
JUDGE

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