

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

121

CRM-M-4688-2024 (O&M)
Date of decision: 30.01.2024

Nisha Phutela

...Petitioner

Versus

Rahul Gandhi and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Ashok Kumar Khunger, Advocate
for the petitioner.

MANISHA BATRA, J. (Oral)

1. The instant petition has been filed by the petitioner under Section 482 Cr.P.C. seeking issuance of direction to the Judicial Magistrate First Class, Chandigarh to expeditiously decide the complaint bearing case No. COMP DV ACT-9/2021, titled as *Nisha Phutela vs. Rahul Gandhi and others*, registered on 05.04.2021, which has been filed by the petitioner and is pending before the said Court.

2. Learned counsel for the petitioner submits that the petitioner was married with respondent No.1 on 09.11.2020 but a matrimonial discord arose between the parties, consequent to which, the petitioner has filed the aforesaid complaint under Section 12 of the Protection of Women from Domestic Violence Act, 2005 against the respondents, which was registered on 05.04.2021 and the trial Court had issued notice to the respondents for

26.04.2021 but since it was declared a holiday, the case was taken up by the trial Court on 27.04.2021 and was adjourned for 09.07.2021. On 09.07.2021, fresh notice was issued by the trial Court to respondents for 25.08.2021, on which date, the petitioner in compliance with order dated 05.04.2021, had filed an affidavit regarding her income, liability etc. Thereafter, the case was adjourned to 27.10.2021, however, since then, the case has been adjourned on many occasions and it is still pending before the said Court. It is further submitted that till date, even the application for grant of interim maintenance has not been decided and the case is now stated to be fixed for 15.02.2024. It is, therefore, prayed that an appropriate direction may be issued to the trial Court for deciding the aforesaid complaint expeditiously and in a time bound manner.

3. I have heard learned counsel for the petitioner at length and have also perused the zimini orders passed by the trial Court, which have been placed on record. Copies of zimini orders, passed by the trial Court from 27.01.2021 to 08.12.2023 have been placed on record by the petitioner as Annexure P-6 claiming that the case was being adjourned by the trial Court as the respondents were deliberately avoiding service of summons and were intentionally delaying the proceedings of the case. However, a perusal of these zimini orders would reveal that when on 25.08.2021, notice issued to respondents were received back unserved for want of correct address, the petitioner was to supply the correct address of the respondents within a period of 07 days for issuance of fresh notices but despite availing three opportunities, the same was not done by the petitioner, which contributed to the delay of disposal of the case to a great extent. It is also worth mentioning

here that the aforesaid complaint was filed at a time when the country was gripped by Covid-19 pandemic and the Courts were working in restricted mode. A perusal of order dated 06.01.2022 would even show that the trial Court, while adjourning the case to 27.07.2022, had taken into consideration the fact of sudden surge in Covid-19 cases, in view of a letter issued by the Registry of this Court. Therefore, it cannot be stated that the delay in disposal of the case is due to alleged lackadaisical approach of the trial Court. So far as the prayer of the petitioner for early disposal of her complaint is concerned, a reference can be made to the judgment rendered by Hon'ble Supreme Court in ***M. Gopalakrishnan & others vs. Pasumpon Muthuramalingam & another : 2022 Live Law (SC) 298***, wherein it has been held that when the petitions seeking directions to trial Court to expedite the trial are filed before the higher courts, the same should be examined from all angles. It was further held that ordinarily before passing any such order for expeditious proceedings in a particular case (which might appear to be rather of innocuous nature), it would be appropriate for the higher Court to appreciate that any such order for one case, without cogent and extremely compelling reasons, might upset the calendar and schedule of the subordinate Court; might result in assigning an unwarranted priority to that particular case over and above other cases pending in that Court; and progression of such other cases might suffer for no reason and none of the faults of the litigants involved therein. Hence, keeping in view the huge pendency of cases before the Magistrates and also in view of the ratio of law as laid down in aforecited judgment, this Court is of the considered opinion that no compelling or cogent reasons have been made out

by the petitioner to issue any direction to the trial Court for deciding the present case on priority or in a time bound manner.

4. However, keeping in view the fact that the petitioner has filed the aforesaid complaint along with an application for grant of interim maintenance but even the said application has not yet been decided by the trial Court leaving the petitioner in lurch, the present petition is disposed off with a direction to the trial Court to decide the application for grant of interim maintenance on the next date so fixed i.e. 15.02.2024. The trial Court will also ensure that no further opportunity is granted to respondent No. 1 to seek adjournments for the purpose of filing his affidavit.

5. Before parting with this order, it is also made clear to the trial Court that although it is giving repeated directions to the parties to file their respective affidavits with regard to their assets, income, liability etc. but it is ignoring the fact that the petitioner has already filed the requisite affidavit on 25.08.2021 as reflected in the order of the said date.

6. Disposed off accordingly.

30.01.2024

Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned *Yes*

Whether reportable *Yes*