

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CRM-M-24470-2022(O&M)

Date of order: 09.04.2024

Baldev Singh & Others

.....Petitioner(s)

Vs.

Ms. Mamta

.....Respondent(s)

CORAM: HON’BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Raman Mahajan, Advocate
for the petitioners.

Mr. DPS Bajwa, Advocate
for the respondent.

Nidhi Gupta, J.

Present petition under Section 482 of the Code of Criminal Procedure, is filed seeking quashing of application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as ‘the DV Act’), bearing No.COMA-7734- 2015 filed on 26.10.2015, registered on 28.10.2015 by Ms. Pushpa Malhotra signed as Pushpa Rani, wife of Sh.Faquir Chand, resident of H.No.1983, Indira Colony, Tejpur Road, Ludhiana, as attorney of Ms. Mamta (Annexure P-1); **AND** order dated 05.06.2018 passed by the learned Judicial Magistrate First Class, Ludhiana, (Annexure P-2); **AND** order dated 22.03.2022, passed by the learned Additional Sessions Judge, Ludhiana, in CRA-508 of 2018 (Annexure P-3); **AND** the subsequent proceedings arising there from.

2. Learned counsel for the petitioners inter alia submits
that petitioner No.1 is the father-in-law, petitioner No.2 is the mother-in-

law, petitioner No.3 is the brother-in-law/Nandoi, and petitioner No.4 is the sister-in-law/Nanad of the complainant/respondent herein.

3. Learned counsel submits that for the proper adjudication of the matter, a brief summary of the facts is necessary to be brought to the notice of this Court. It is stated that petitioners No.1 and 2 are more than 80 years of age. Their son, namely Amritpal Singh, was married to the complainant, namely Mamta/respondent herein, on 17.09.2004. No child was born out of this wedlock. After the marriage, differences arose between the complainant and her husband and therefore, they started living separately. Eventually, as per the case of the complainant herself, she went abroad on 23.07.2005 i.e. within less than one year of marriage. It is stated that as on date too, the complainant is abroad, however, her whereabouts are not known; and it is for this reason that the said Mamta has been represented throughout the entire litigation by her mother, namely Mrs. Pushpa Malhotra, who is her Special Power of Attorney.

4. It is submitted that as the complainant had secretly and stealthily gone abroad without informing her husband or his family, Amritpal Singh filed a petition under Section 13(1) of the Hindu Marriage Act, 1955. In the said petition, though the respondent filed her written statement, she did not disclose her whereabouts; and though she appeared in the witness box as RW3 however, her evidence could not be completed as after part cross-examination, she did not turn up for the remaining evidence. Subsequently, the parties were granted divorce vide decree dated 27.02.2009 (Annexure P4).

5. Ld. Counsel further states that during pendency of the said petition u/s 13 HMA, the complainant had filed an application under Section 24 of the Hindu Marriage Act seeking maintenance from Amritpal Singh. However, the said application was dismissed by the learned Additional District Judge-cum-Presiding Officer, Fast Track Court, Rupnagar vide order dated 14.08.2007 (Annexure P5). Thereafter, the respondent had filed a Revision Petition before this Court bearing No.CR-5537-2007 thereby challenging order dated 14.08.2007. The said Revision Petition of the respondent was also dismissed by this Court vide order dated 19.05.2008 (Annexure P6).

6. Thereafter, the respondent had challenged the decree of divorce dated 27.02.2009 before this Court by way of FAO-M-111 of 2009; which was also dismissed by this Court vide order dated 03.02.2011 (Annexure P7).

7. Learned counsel submits that after grant of divorce, the respondent had then filed a private complaint against the petitioners bearing No.276/1 of 25.04.2009. The petitioners as well as Amritpal Singh sought quashing of the said complaint before this Court by way of CRM-M-8585-2012. Vide order dated 22.07.2013 (Annexure P8), the said petition was allowed by this Court. In pursuance to said order dated 22.07.2013 (Annexure P8) passed by this Court, the learned JMIC vide order dated 05.09.2013 (Annexure P9) quashed the complaint No.276/1 dated 25.04.2009 and all the consequential proceedings arising therefrom against the accused i.e. the petitioners and Amritpal Singh.

8. It is stated that it is several years thereafter, that the present impugned complaint (Annexure P1) has now been filed by the respondent through her mother on 26.10.2015/ registered on 28.10.2015 bearing No.COMA/7734, in which, vide ex-parte impugned order dated 05.06.2018 (Annexure P2) passed by the learned JMIC Ludhiana, the petitioners have been directed to pay Rs.8,000/- per month to the respondent as maintenance, in the following manner: -

“7. From the evidence, which remained unrebutted and unchallenged as the respondents did not appear in the court to cross-examine these witnesses. Evidence on record clearly established that the complainant is wife of respondent no.1. From the exparte evidence led by the aggrieved/petitioner, I am satisfied that the aggrieved/petitioner has successfully established her case for grant of maintenance. However, no proof on income and shared household has been placed on record. Regarding the financial capacity of respondent no.1 it is averred that respondent no.1 is doing the business of import and export and going abroad and earning Rs.6,00,000/- per month (Indian rupees) and is also having moveable and immovable properties in Mohali. The respondent no.1 is giving money to the other respondent and they are purchasing the properties in Indian and getting rental income thus the total earning of respondent no.1 is more than Rs.10,00,000/-. Whereas complainant possess any earnable movable or immovable property. The petitioner/complainant failed to lead any evidence to the effect that respondent no.1 is earning as alleged. So, he is considered as labourer. Hence, the present petition for maintenance is hereby accepted and respondent no.1 is ordered to be paid maintenance @ Rs.8,000/- per month to the petitioner being his legally wedded wife, from the date of filing of present petition/application and Rs.10,000/- as

litigation expenses. Respondents are restrained from causing any kind of act constituted domestic violence to the applicant and to her relatives.”

9. Learned counsel contends that from a perusal of the order dated 05.06.2018 it appears that it was not brought to the notice of the learned JMJC that parties had already been granted divorce as far back as in the year 2009.

10. Not satisfied with the order 05.06.2018 (Annexure P-2), the respondent filed an appeal before the learned Additional Sessions Judge seeking enhancement of the monthly maintenance of Rs. 8000/-, as also praying that the istridhan allegedly lying with the petitioners be returned to her. The petitioners appeared before the learned Additional Sessions Judge and brought the above facts to the notice of the Court. It is submitted that despite that, the learned Additional Sessions Judge vide impugned order dated 22.03.2022 (Annexure P3) has issued the extraordinary directions as contained in Para 18 of the said order. The same is reproduced hereinbelow:-

“18. Next coming to the restraining the respondents for not alienating the shared household. In the opinion of this court appellant do not have any absolute right over the shared household. Her requirement of the house accommodation had already been declined by the court. Unnecessary restraint on the shared household, cannot be put. But nevertheless for restoration of the gold articles ordered to be restored by this court as well as for returning of Rs.2 lakhs and for recovery of maintenance/litigation expenses which was given to respondent no.1, limited restraint can certainly be put. After all to achieve the social object, respondents cannot be allowed to

alienate the property leaving the girl without any remedy to recover her maintenance, istridhan articles and cash given at the time of marriage. Accordingly instant appeal is partly accepted and it is ordered that respondents no.1 to 3 shall restore back gold articles or gold weighing 178.345 gram to appellant within 1 month. They may give back money value for the gold at relevant prevailing market also. Additionally respondent no.1 is directed to pay back Rs. 2 lakh which was given to him through bank. It is also ordered that till this amount i.e. gold articles, Rs.2 lakh and arrear of maintenance awarded by the trial court are paid, respondents no.1 to 3 shall not allowed to alienate the shared household no.159, Sector 65, Phase-XI, SAS Nagar Mohali. Such restraint is necessary to provide necessary relief to the appellant. Additionally maintenance rights of the appellant @ Rs.8,000/- per month awarded by the trial court shall be a charge over this property. The arguments of learned counsel for respondent is not convincing, wherein he claimed that this house cannot be attached. In absence of pleadings by respondents none of the argument can be considered.

(Emphasis added)

11. Learned counsel for the petitioners has vehemently argued that the learned Additional Sessions Judge could not have issued such a direction as above as the parties already stood divorced since 2009. After cessation of matrimonial relationship between the parties, neither the petitioners nor Amritpal Singh owe anything to the respondent. Moreover, the petitioners are not in contact with Amritpal Singh and cannot be held liable on his behalf. Even further, any and all outstandings stood settled between the parties at time of grant of degree of divorce.

12. It is further argued that present complaint has been filed by mother of the respondent by suppressing the judicial verdicts (Annexure P4, P7 and P8). It is contended that no relief can be granted to the respondent as she had deliberately withheld material information and had therefore misled the Courts below. Not only that, even in the complaint before the learned JMIC Ludhiana wherein the petitioners were proceeded against ex parte, proper service was not effected upon the petitioners. On 15.09.2016, the respondent, through her mother, had filed an application under Order 5 Rule 20 CPC seeking substituted service of the petitioners. Vide order dated 15.09.2016 itself (reproduced at Page 13 of the paper book), learned JMIC, Ludhiana had directed issuance of service by way of publication in newspaper 'English Tribune'. On 20.02.2017, learned JMIC accepted the publication and a copy of the said newspaper was placed on the judicial file and accordingly, ex parte proceedings were initiated against all the petitioners as well as Amritpal Singh. However, the learned JMIC failed to consider that the publication had been deliberately carried out by the respondent in the English Tribune of Himachal Pradesh for 20.02.2017 (Annexure P10).

13. It is further argued that in the present case, the respondent Mamta has not stepped into the witness box at all. The mother of the respondent, namely Ms. Pushpa Malhotra, had stepped into the witness box as AW1. Learned counsel submits that present proceedings are a complete abuse of judicial process. Ms. Pushpa Malhotra, who initiated the case as attorney of her daughter Mamta, has misled the Hon'ble Courts. She has suppressed the facts and has not placed on record the relevant

record before the Ld. Judicial Magistrate. It is contended that the present complaint under the D.V. Act would have been dismissed by the learned JMIC had Ms. Mamta placed on record Annexures P- 4 to P-9. These judicial verdicts have been withheld with criminal intention and amount to playing fraud with judicial process. Petitioners, at no point of time, were ever served. Similarly, the learned Additional Sessions Judge, Ludhiana, ought to have dismissed the appeal filed by Ms. Pushpa Malhotra as attorney of her daughter, Ms. Mamta. Admittedly, Ms. Mamta, has not stepped into the witness box in the proceedings so initiated on complaint under the D.V. Act and Annexures P-4 to P-9 were not placed on record.

14. Learned counsel further submits that withholding the factum of the earlier litigation between the parties amounts to abusing the judicial process and playing fraud with the judicial process, and for that, they are liable to be prosecuted. In all fairness, they ought to have placed on record the factum of Annexure P-4 to P-9, but with criminal intent, i.e. to mislead the Court, they withheld the factum of the earlier litigation, which has resulted into miscarriage of justice and passing of the order by the learned JMIC (Annexure P-2) and by the learned Additional Sessions Judge, Ludhiana (Annexure P-3).

15. It is further submitted that petitioners No.1 and 2 are more than 80 years of age. Petitioners No.3 and 4, being Nandoi and Nanad respectively of the respondent, have lived separately and never stayed with the parties and never interfered in the matrimonial life of Amritpal Singh and the respondent. As on today, the whereabouts of the respondent are not known as everything has been concealed from the Court; and even

whereabouts of Amritpal Singh are not known to the petitioners as he has not been in touch with them. It is only Ms. Pushpa Malhotra, who is continuing the litigation against the petitioners with unclean motive and has clearly indulged in lies and suppression of material facts and has sworn false affidavits and made false depositions.

16. Hence, it is humbly prayed that application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 filed by Ms. Pushpa Malhotra signed as Pushpa Rani, wife of Sh. Faquir Chand, resident of 1983, Indira Colony, Tejpur Road, Ludhiana, as attorney of Ms. Mamta (Annexure P-1); **AND** order dated 05.06.2018 passed by the learned Judicial Magistrate First Class, Ludhiana, (Annexure P-2); **AND** order dated 22.03.2022, passed by the learned Additional Sessions Judge, Ludhiana, in CRA-508 of 2018 (Annexure P-3); **AND** the subsequent proceedings arising therefrom be quashed as the same have been passed on account of suppression of relevant material factual aspect and position as well as judicial pronouncements regarding the matrimonial life of the parties by Ms. Pushpa Malhotra. In fact, filing and continuation of the complaint under D.V. Act and the orders passed by the learned Judicial Magistrate First Class, Ludhiana (Annexure P-2), as well as by the learned Additional Sessions Judge, Ludhiana, (Annexure P- 3) have been obtained by suppressing earlier orders regarding Divorce Decree, FAO, Civil Revision and quashing petition (Annexure P-4 to P9); and Ms. Pushpa Malhotra has signed and verified false pleadings and made false deposition by withholding factum and result of the earlier litigation with criminal intent. It is further prayed that appropriate proceedings be initiated against

Ms.Mamta and Mrs.Pushpa Malhotra for playing fraud with the Hon'ble Court for abusing judicial Process. Orders at Annexures P-2 and P-3 are nullity as they have been obtained by practicing fraud.

17. Per contra, learned counsel for the respondent although does not dispute the above said facts narrated on behalf of the petitioners however, submits that now the situation has changed inasmuch as the complainant is now suffering from cancer. In this regard, learned counsel refers to medical record of the respondent (Annexure R1) and submits that perusal thereof shows that she is suffering from cancer and it is for this reason that the complainant was constrained to file present complaint and seek some maintenance from the petitioners as she had no other means to continue with her treatment. It is submitted that due to her disease, she is unable to do any job and is dependent upon others for financial help. The complainant has no means to support herself or continue with her treatment. Mother of the complainant through whom the respondent is pursuing the present proceedings, is also 85 years old and is suffering from paralysis and her treatment is also going on at CMC, Ludhiana as is evident from Annexure R3. Accordingly, present petition be dismissed.

18. No other argument is made on behalf of the parties.

19. I have heard learned counsel for the parties and perused the case file in detail.

20. The factual matrix of the present case inasmuch as the date of marriage of the son of petitioners no.1 and 2 with the respondent being 17.09.2004; and the fact that the respondent had left for UK on

23.07.2005; and no child was born out of this wedlock; divorce was granted vide decree dated 27.02.2009 (Annexure P4); application filed by the respondent under Section 24 of Hindu Marriage Act was dismissed vide order dated 14.08.2007 (Annexure P5) passed by learned Additional District Judge-cum-Presiding Officer, Fast Track Court, Rupnagar; the Civil Revision filed by the respondent against the said order dated 14.08.2007 was dismissed by this Court vide order dated 19.05.2008 (Annexure P6); the respondent's appeal against the decree of divorce was also dismissed by this Court vide judgment dated 03.02.2011 passed in FAO-M-111-2009 (Annexure P7); the private complaint filed by the respondent was quashed by this Court vide judgment dated 22.07.2013 passed in CRM-M-8585-2012 (Annexure P8); the complainant as on date also is abroad; the present petition is filed through her mother Ms. Pushpa Malhotra/Special Power of Attorney holder; or even that verdicts at Annexure P-4 to P-9 were not produced by the respondent before the Courts below; or that Service before the learned JMIC was affected upon the petitioners by publication in the English Tribune of Himachal Pradesh, has not been disputed one whit by counsel for the respondent. Even a perusal of the written statement filed by the respondent before this Court shows that there is no denial of the above said facts which have all been stated to be a matter of record.

21. Thus, the only fundamental genesis on which the respondent is seeking to maintain the present complaint against the petitioners is that she has no funds for her treatment of cancer.

22. Under the DV Act 'aggrieved person' has been defined in

Section 2 (a) of the Act and read as follows: –

“aggrieved person means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent”.

23. ‘Domestic Violence’ has been defined in Section 3 of the Act and reads as follows: –

“3. Definition of Domestic Violence -

For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it –

(a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or

(b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or

(c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or

(d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person.”

24. Upon a careful and detailed appraisal of the pleadings and record of the case, it is my clear, considered and unambiguous view that the respondent does not fall within the category of ‘aggrieved person’ as defined above; neither has any ‘domestic violence’ been committed against her by the petitioners. Explanation II of Section 3 further mandates

that in determining whether domestic violence has been committed against the aggrieved person *'the overall facts and circumstances of the case shall be taken into consideration.'*

25. The relevant attendant facts and circumstances of this case that demonstrate that it is the respondent who has indulged in protracted, prolonged, and patently vexatious and malicious litigation against the petitioners, are available in the orders at Annexure P-4 to P-9.

26. In decree of divorce dated 27.02.2009 (Annexure P-4), the Id. Additional District Judge, SAS Nagar, Mohali granted divorce on grounds of cruelty as *"...it stands proved that the respondent has not joined the matrimonial house for the last more than 3 1/2 years. The petitioner – husband do not know what she is doing in England nor he knew about her address or telephone number. Admittedly, the parties have not talked to each other since the respondent left for England for the last more than 3 1/2 years."*

27. In the said proceedings u/s 13 HMA, while dismissing the application of the respondent filed under section 24 HMA, vide order dated 14.8.2007 (Annexure P-5), the learned Additional District Judge found that *"The respondent also worked as Information officer in the Sub Distributed Information Department of Plant Breeding, Genetics and Biotechnology, Punjab Agricultural University, Ludhiana. So the respondent Mamta is a skilled worker and must be earning more than her subsistence in a foreign country i.e. United Kingdom and is residing there without the consent of the petitioner. Hence, she is not entitled to interim maintenance."*

28. The said order dated 14.8.2007 was assailed by Mrs Pushpa Malhotra, as mother and attorney of Mamta, before this Court by way of CR-5537 of 2007. The said CR-5537 of 2007 was dismissed by this Court vide order dated 19.5.2008 (Annexure P6) on the ground that *“Since the petitioner is found working and residing in UK, no case for grant of maintenance is made out.”*

29. Thereafter, divorce was granted to the parties vide decree dated 27.02.2009, which was challenged by the respondent before this Court by way of FAO-M-111 of 2009, which was dismissed vide order dated 03.02.2011 (Annexure P7). The relevant findings rendered by this Court in said order dated 03.02.2011 are reproduced hereinbelow:-

“16. Another fact, which the husband has been able to prove on record is that ever since the wife left for England, there is no communication by her as even in her evidence she has failed to rebut the contention raised by the husband in that regard, though a vague stand was taken up that on telephone number disclosed by the wife, the husband has used some filthy language and also sent certain badly worded emails.

17. The stand was also taken that the husband and his family members were demanding dowry but there was nothing on record to prove this allegation nor any type of complaint made to any authority in this regard. Even in the affidavit filed by her in examination-in-chief, she had not disclosed as to where she was living in England and what she was doing there. The claim was made in the pleadings by the wife that Rs.2 lacs were demanded by the husband after the marriage which were ultimately deposited in the joint account of the parties. However, in her part cross-examination, she had admitted that

out of that amount, she had withdrawn 1.50 lacs on 19.2.2005 and deposited the same in FDR in her own name.

18. Further perusal of copy of passport of the wife, Ex. RW3/B shows that the passport was initially issued on 21.4.2004 in the name of Mamta with the column of surname blank. Even though she was married on 17.9.2004, later on she got an entry made in surname column of her passport as 'Malhotra', which was her maiden caste as the caste of the husband is 'Ghattaora' as is evident from the marriage certificate available on record at page 94. Another fact which is relevant in the passport is that the column of spouse's name was also blank. Meaning thereby that when the wife got her surname added in the passport after the marriage, she did not disclose the factum of her marriage to the passport authorities. A perusal of the visa granted to the wife shows that it was for multiple entries valid from 20.6.2005 to 20.6.2006 under 'highly skilled migrant programme'.

19. The another glaring fact on record is that though undisputedly the wife after leaving for England on 23.7.2005 had visited India only in March 2008 to appear as witness in the case but still reply to the divorce petition was filed under the signatures of the wife mentioning her resident of House No. 908, Gaushala road Harbans pura Ludhiana and adding with the pen 'now at U.K.' It was not bearing any date. The counsel signed the reply and appended the date as '26/9/06' with the pen. Even at the time of evidence, brother and mother of the wife had not disclosed her address or employment details.

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23. It is further relevant that that after the closer of the evidence of the parties, the husband filed application dated 8.10.2008 for permission to produce on record a copy of the enquiry report of Deputy Superintendent of Police (S), S. A. S.

Nagar. As per the said enquiry, both the parties had settled the dispute. A sum of Rs. 2 lacs was to be paid to the wife by the husband. It has been further reported therein that the wife will file her affidavit regarding giving no objection to grant divorce to the husband. The settlement was signed by the mother and brother of the wife. However, when the matter was compromised, it was only the mother of the wife who did not agree to the settlement and filed application in the Women Cell, Mohali, alleging harassment by the husband and his family members for bringing insufficient dowry. It was found by the police that the allegations levelled by the mother of the wife were false as the wife after some time of the marriage had left for England. The police has also reported that after investigation, no allegation of demand of dowry or harassment was found. To this application, reply dated 15.10.2008 was filed by the wife under the signatures of her counsel only. Even at that stage no prayer was made to get her remaining cross-examination completed.

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28.If the facts of the present case are examined in the light of the enunciation of law, as referred to above, it can very well be opined that there is no will of the appellant wife to continue with matrimonial bonding as she has intermittently lived in the matrimonial home only between 17.9.2004 and 23.7.2005, when she went to England. In the last more than five years, she neither looked back to the matrimonial home nor made any effort to call the husband to England or visit India.”

(Emphasis added)

30. After the grant of divorce on 27.02.2009 the respondent had then filed a private complaint against the petitioners on 25.04.2009 bearing No.276/1 of 2009. The petitioners as well as Amritpal Singh sought

quashing of the said complaint before this Court by way of CRM-M-8585-2012. Vide order dated 22.07.2013 (Annexure P8), the said petition CRM-M-8585-2012 was allowed by this Court, and the complaint filed by the respondent was quashed. Relevant findings given in the said order dated 22.07.2013 is reproduced hereinbelow:-

“Petitioners have filed this petition under Section 482 for quashing of complaint No. 276/1/25.4.2009 (Annexure P-1) and all the consequential proceedings arising therefrom including the summoning order dated 11.7.2011 (Annexure P-2).

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Admittedly, in the present case, petitioner No. 1 got married to Mamta on 17.9.2004. Mamta applied for job in United Kingdom and got a visa in this regard. Mamta left for England on 23.7.2005. Petitioner No.1 filed a petition under Section 13 of the Act seeking a decree of divorce. In the said petition, Mamta appeared before the Court and her examination-in-chief and part cross-examination was recorded. However, Mamta did not appear again for her further cross-examination. The Trial Court allowed the petition filed by petitioner No. 1 and a decree of divorce was passed in favour of petitioner No. 1 on 27.2.2009. The said judgment and decree were challenged by Mamta by way of FAO No. 111 of 2009. The said appeal was dismissed by this Court vide order dated 3.2.2011 Annexure P-4.

A perusal of the order dated 3.2.2011 Annexure P-4 reveals that it was admitted fact that Mamta had gone to England on 23.7.2005 and had returned back to India only once i.e. in March 2008. Thereafter, there was no communication between the husband and wife. The allegations levelled by the wife that

there was demand of dowry could not be established. In her part cross-examination, Mamta had admitted that she had withdrawn Rs. 1,50,000/- on 19.2.2005 from the joint account and had invested the same in a fixed deposit in her own name. A perusal of the said order further reveals that in her passport, Mamta had left the column of her surname blank and she had also left the column of name of the spouse as blank. Thus, while going abroad, Mamta had not disclosed the factum of her marriage. A perusal of the order further reveals that in the divorce proceedings, petitioner No. 1 had proved on record inquiry report of the Deputy Superintendent of Police and as per the said inquiry report, both the parties had settled their dispute. The said settlement was signed by the mother and brother of Mamta. However, later on respondent had approached the Women Cell making a complaint regarding harassment meted out by petitioners to her daughter. The police after inquiry had reported that the allegations of demand of dowry and harassment were not made out. Hence, the appeal filed by Mamta was dismissed.

Thus, it is evident that in the divorce proceedings, the allegations of demand of dowry/harassment were not proved by the wife. The complaint in question was filed in April 2009 after the divorce petition filed by petitioner No. 1 was allowed. Presently also, Mamta is residing abroad. In these circumstances, continuation of criminal proceedings initiated by the mother of Mamta against the petitioners are nothing but an abuse of process of law.”

(Emphasis added)

31. Therefore, this Court as also the Courts below have found time and again by way of the above undisputed findings that: a) the respondent had not joined the matrimonial home for many years and her

whereabouts remained undisclosed; b) while going abroad, Mamta had not disclosed the fact of her marriage; c) thereafter the respondent was self-sufficient and earning well in the United Kingdom; d) allegations of dowry demand and harassment were found to be false; e) of the amount of ₹2 lakhs alleged to have been given by the respondent to the petitioners, it was admitted by the respondent in her cross-examination that of the said amount of ₹2,00,000 she had withdrawn ₹1.5 lakhs on 19.2.2005 and had deposited the same in a FDR in her own name; f) that the matter was settled between the parties which Settlement was signed by the mother and brother of the respondent, however, the mother of the respondent namely Mrs. Pushpa Malhotra did not adhere to the same and instead filed another complaint before the Women Cell, Mohali; g) even in the said complaint, the DSP vide report dated 8.10.2008 reported that the police found that the allegations levelled by Mrs Pushpa Malhotra were false, and further recorded that after their investigation, no allegation of demand of dowry or harassment has been found.

32. After all of the above controversies were put to rest by this Court vide the above said orders dated 03.02.2011 and 22.07.2013, now, the present complaint has been filed in October, 2015 under the provisions of the DV Act by the respondent Mamta through her mother, Mrs Pushpa Malhotra. It is my clear opinion that in view of the admitted fact that the respondent has been in the United Kingdom since 2005, and the fact that divorce was granted to the parties as far back as in the year 2009, and all relationship accordingly stood severed, there is no question of any actionable claim subsisting in favour of the respondent against the

petitioners. Even regarding the 10-month period from 17.09.2004 till 23.07.2005 during which the respondent ostensibly stayed with the petitioners, any and all claims of the respondent already stood settled at the time of decision of the petition under section 13 HMA. Moreover, the Id. JMIC in para 7 of his order dated 05.06.2018 has found that *“no proof on income and shared household has been placed on record.”* Therefore, no relief is possible, and no compensation is payable as no domestic violence or harassment is established.

33. Furthermore, as per the evidence and findings on record, the respondent had failed to prove dowry demand and/or harassment against the petitioners. Even this Court has returned findings twice over in the orders dated 03.02.2011 and again on 22.07.2013 that no domestic violence was established against the petitioners as all allegations made by the respondent regarding dowry demand and harassment were found to be false. Despite that, the present complaint under the DV Act had been filed by the respondent.

34. Before proceeding further, in the interest of justice, it is imperative to advert to the legal principles enunciated in respect of filing multiple complaints against hapless accused. I refer to judgment of Hon’ble Supreme Court in **“Krishna Lal Chawla & Ors. Vs. State of UP & Anr.”** Law Finder Doc ID # 1816686, where filing of multiple complaints has been held to be violative of the Fundamental Right enshrined under Article 21 of the Constitution of India. In this landmark judgement, the Hon’ble Supreme Court has held in para 21 that there are inherent powers to prevent the abuse of process so that the Courts shall not suffer a litigant utilising the

institution of justice for unjust means. Relevant extract of which is as under:-

“B. Constitution of India, 1950 Article 21 Criminal Law – Multiple complaints – Permitting multiple complaints by same party in respect of same incident, whether it involves cognizable or private complaint offence, will lead to accused being entangled in numerous criminal proceedings – As such, he would be forced to keep surrendering his liberty and precious time before police and Courts, as and when required in each case – Such transaction is not only impermissible but it violates Article 21 of Constitution.

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6. The grave implications of allowing such misuse may be understood better in light of the following exposition by this Court in **Amitbhai Anilchandra Shah v. CBI & anr, (2013) 6 SCC 348:**

*"37. This Court has consistently laid down the law on the issue interpreting the Code, that a second FIR in respect of an offence or different offences committed in the course of the same transaction is not only impermissible but it violates Article 21 of the Constitution. In **T.T. Antony [(2001) 6 SCC 181: 2001 SCC (Cri) 1048]**, this Court has categorically held that registration of second FIR (which is not a cross-case) is violative of Article 21 of the Constitution." (emphasis supplied)*

Article 21 of the Constitution guarantees that the right to life and liberty shall not be taken away except by due process of law. Permitting multiple complaints by the same party in respect of the same incident, whether it involves a cognizable or private complaint offence, will lead to the accused being

entangled in numerous criminal proceedings. As such, he would be forced to keep surrendering his liberty and precious time before the police and the Courts, as and when required in each case. As this Court has held in **Amitbhai Anilchandra Shah (supra)**, such an absurd and mischievous interpretation of the provisions of the CrPC will not stand the test of constitutional scrutiny, and therefore cannot be adopted by us.

7. The implications of such successive FIRs on an individual's rights under Article 21 of the Constitution has been elaborated further in **T.T. Antony (supra)**:

"27. A just balance between the fundamental rights of the citizens under Articles 19 and 21 of the Constitution and the expansive power of the police to investigate a cognizable offence has to be struck by the court. There cannot be any controversy that subsection (8) of section 173 CrPC, 1973 empowers the police to make further investigation, obtain further evidence (both oral and documentary) and forward a further report or reports to the Magistrate. In **Narang case [Ram Lal Narang v. State (Delhi Admn.), (1979) 2 SCC 322 : 1979 SCC (Cri) 479]** it was, however, observed that it would be appropriate to conduct further investigation with the permission of the court. However, the sweeping power of investigation does not warrant subjecting a citizen each time to fresh investigation by the police in respect of the same incident, giving rise to one or more cognizable offences, consequent upon filing of successive FIRs whether before or after filing the final report under section 173(2) CrPC, 1973."

(emphasis supplied)

Thus, it is incumbent upon this Court to preserve this delicate balance between the power to investigate offences under the

CrPC, and the fundamental right of the individual to be free from frivolous and repetitive criminal prosecutions forced upon him by the might of the State. If the Respondent No. 2 was aggrieved by lack of speedy investigation in the earlier case filed by him, the appropriate remedy would have been to apply to the Magistrate under section 155(2), CrPC, 1973 for directions to the police in this regard. Filing a private complaint without any prelude, after a gap of six years from the date of giving information to the police, smacks of mala fide on the part of Respondent No. 2.

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21. It is a settled canon of law that this Court has inherent powers to prevent the abuse of its own processes, that this Court shall not suffer a litigant utilising the institution of justice for unjust means. Thus, it would be only proper for this Court to deny any relief to a litigant who attempts to pollute the stream of justice by coming to it with his unclean hands. Similarly, a litigant pursuing frivolous and vexatious proceedings cannot claim unlimited right upon court time and public money to achieve his ends."

(Emphasis mine)

35. Now reverting to the merits of the matter at hand in order to establish that the petitioners had committed violence as contemplated under the DV Act it is required that the aggrieved person was sharing a household with the respondents and there was a domestic relationship between the parties. In the present case, the petitioners being the parents in law and sister-in-law and brother-in-law of the respondent have never shared a household with the respondent. Moreover, the domestic relationship, if any, between the parties stood severed when the

respondent left for the United Kingdom in 2005; and definitely stood severed after the grant of divorce in the year 2009. Besides that, even the Id. JMIC in para 7 of his order dated 05.06.2018 has found that “*no proof on income and shared household has been placed on record.*” This finding has not been reversed by the Id. Appellate Court by holding that: –

“15. Coming to the another part of the relief where appellant wants rent or accommodation. But again, same cannot be granted as appellant is residing in UK. The husband is not expected to provide accommodation to his wife in UK. She does not seems to be in any requirement of another accommodation in India as she has not come to India. So this relief was rightly declined.”

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18. Next coming to the restraining the respondents for not alienating the shared household. In the opinion of this court appellant do not have any absolute right over the shared household. Her requirement of the house accommodation had already been declined by the court. Unnecessary restraint on the shared household, cannot be put.”

36. Even further, the express and admitted purpose of the respondent in filing the present complaint under the DV Act is that she requires money for her treatment of cancer. To obtain the said money from the petitioners, the respondent has taken two main pleas that: a) the respondent had given a sum of ₹2 lakhs to the petitioners; and that b) gold ornaments which were given as Istridhan, have not been returned by the petitioners.

37. At the risk of repetition, it has been incontrovertibly found by this Court on the basis of evidence led before the Courts below, that as regards the first plea regarding Rs. 2 lacs, that the respondent in her cross-examination has admitted that of the said amount of ₹2,00,000, she had withdrawn ₹1.5 lakhs on 19.2.2005 and had deposited the same in an FDR in her own name.

38. As regards, the second plea regarding entrustment of dowry articles/Istridhan, again this Court has already found twice over that allegations of dowry demand and harassment have been found to be false. Even the DSP, as per his report dated 8.10.2008 had found that the allegations levelled by Pushpa Malhotra were false and further recorded that after their investigation, no allegation of demand of dowry or harassment has been found. In respect of istridhan this Court had previously found in order dated 03.02.2011 (Annexure P7) that *"...it was only the mother of the wife who did not agree to the settlement and filed application in the Women Cell, Mohali alleging harassment by the husband and his family members for bringing insufficient dowry. It was found by the police that the allegations leveled by the mother of the wife were false as the wife after some time of the marriage had left for England. The police has also reported that after investigation, no allegation of demand of dowry or harassment was found...."*

39. The Id. JMIC had further given the finding in para 8 of the order dated 05.06.2018 (Annexure P2) that *"Regarding the return of Istridhan listed in Ex. B/1 to Ex. B/2, the same cannot be ordered as there is no proof established on record that the petitioner owns these articles and*

they are in possession of which owners. Merely proof of the list does not prove the case of petitioner. Regarding the restraint of alienation of property, there is no iota of evidence which shows that the property stands in the name of respondent no.1, regarding which the petitioner has right. The claim of compensation has also not been established."The Id. JMIC had accordingly, declined relief for return of Istridhan.

40. Despite the above, the learned Appellate Court in the impugned order dated 22.3.2022 (Annexure P3), while admitting that *"respondent did not participate in the trial court proceedings Appellant in the present case had certainly not produced best evidence. The girl herself had not appeared in the witness box and in her place, only mother had deposed. This is a serious handicap."* had yet gone on to pass the impugned directions on the assumption that *"Parents of a girl in India are supposed to be aware what is being given as dowry article articles or Istridhan"*. What is most flabbergasting is that the learned Appellate Court had directed not just for return of ₹2 lakhs and for restoration of gold articles, but also for restricting the petitioners from alienating their property. No reasons whatsoever have been given by the learned Additional Sessions Judge to controvert or distinguish the above findings of the learned JMIC that there was no proof of entrustment of dowry articles. There is even no finding by the learned ASJ that there was any delivery of dowry articles.

41. It is my clear opinion that in view of the findings/discussion here in above, the impugned directions of the learned Additional Sessions Judge contained in order dated 22.03.2022, are

unsustainable. It is also relevant that the respondent has clearly indulged in abuse of the due process of law as the record reveals that the respondent failed to bring Annexures P4 to P9 to the notice of the Courts below. It is the obligation of the Court to keep the unscrupulous and unethical litigants at bay. Moreover, the only ground pleaded by learned counsel for the respondent for filing the present complaint is that the respondent has now contracted cancer and she has no means to support herself and therefore, she has been constrained to file the present complaint. However, admittedly, there is no relationship subsisting between the parties since 2009. Any domestic relationship between the petitioners and the respondent was severed as far back as in the year 2009. The respondent now has no claim upon them. Any and all claims of the respondent in respect of istridhan stood settled at the time of proceeding under Section 13 HMA. Moreover, the petitioners cannot be held responsible for their son/brother whose whereabouts are in any case not known to the petitioners, as stated by them on affidavit.

42. Even otherwise, a perusal of medical record of the respondent dated 20.07.2023 (Annexure R1) issued by the NHS, Ealing, Featherstone Road Health Centre, UK, shows that it has been recorded therein that the respondent is suffering from breast cancer diagnosed in 2015. What is eye-catching is that it has been recorded therein that the respondent is a *“single mother and has caring responsibility of a four year old child.”* The natural assumption, therefore, is that the respondent has remarried after her divorce from Amritpal Singh. However, nothing in this regard has been stated by the counsel for the respondent, either in the

pleadings or at the time of argument. Clearly, therefore, the respondent has not come clean before this Court as even before the Courts below.

43. Before parting, it would be relevant to note that this Court is well aware of the decision of the Hon'ble Supreme Court in **Kamatchi v. Lakshmi Narayanan (SC) : Law Finder Doc Id # 1971681** as per which, petition under Article 226/227 would have been maintainable. However, this Court is entertaining the present petition under Section 482 Cr.P.C. for the following three reasons:

A) That Notice of Motion and Notice re: Stay have already been issued in the present case by a Coordinate Bench of this Court vide order dated 31.05.2022, which is reproduced hereinbelow: –

“Learned counsel for the petitioners inter-alia contends that through order dated 22.03.2022 passed by the Additional Sessions Judge, Ludhiana (for short – the Appellate Court) no directions could have been issued to the petitioners, being father-in-law and mother-in-law of the respondent, to restrain them from alienating their residential house till jewellery and cash given to them as dowry and maintenance awarded in favour of the petitioner is not returned/paid as the same would violate the findings recorded by this Court on 22.07.2013 in CRM-M-8585 of 2012 – Amritpal Singh and others vs. Pushpa Malhotra, wherein it has been held that the demand for dowry by the petitioners and consequently giving thereof by the respondent was not established; the respondent's application should have been outrightly been rejected for having concealed therein the factum of earlier litigation especially the aforesaid order of this Court through which a complaint instituted by the respondent on similar allegations was quashed; so far as the claim of maintenance by the respondent is concerned, the

same has already been rejected by this Court through order dated May 19, 2008 passed in CR-5537-2007 – Mamta vs. Amritpal Singh; in any case proxy litigation at the behest of the respondent while she is residing in the United Kingdom is an abuse of the process of law and that the petitioners cannot be made liable for the dues of their son – Amritpal Singh.

Notice of motion for 17.08.2022.

Notice re: stay as well.”

It is therefore the opinion of this Court that after the present matter has remained pending before this Court for a period of almost two years it would be a travesty of justice to relegate the petitioners to further renewed proceedings afresh under Article 226/227 at this stage.

B) Because even the said proceedings under Article 226/227 would lie before, and be adjudicated upon by this Court only. Reference judgment of the Hon’ble Supreme Court in **Arnab Manoranjan Goswami v. State of Maharashtra, (SC) : Law Finder Doc Id # 1772977:**

*“42....Once an FIR is registered, the accused persons can always approach the High Court under section 482 CrPC, 1973 or under Article 226 of the Constitution for quashing of the FIR. In **Bhajan Lal [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426 : AIR 1992 Supreme Court 604]** the two- Judge Bench after referring to **[Hazari Lal Gupta v. Rameshwar Prasad, (1972) 1 SCC 452 : 1972 SCC (Cri) 208]**, **[Jehan Singh v. Delhi Admn., (1974) 4 SCC 522 : 1974 SCC (Cri) 558 : AIR 1974 Supreme Court 1146]**, **[Amar Nath v. State of Haryana, (1977) 4 SCC 137 : 1977 SCC (Cri) 585]**, **[Kurukshetra University v. State of Haryana, (1977) 4 SCC 451 : 1977 SCC (Cri) 613]**, **[State of Bihar v. J.A.C. Saldanha, (1980) 1 SCC 554 : 1980 SCC (Cri) 272 : AIR 1980 Supreme Court 326]**, **[State of***

W.B. v. Swapan Kumar Guha, (1982) 1 SCC 561 : 1982 SCC (Cri) 283 : AIR 1982 Supreme Court 949], [Nagawwa v. Veeranna Shivalingappa Konjalgi, (1976) 3 SCC 736 : 1976 SCC (Cri) 507 : AIR 1976 Supreme Court 1947], [Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre, (1988) 1 SCC 692 : 1988 SCC (Cri) 234], [State of Bihar v. Murad Ali Khan, (1988) 4 SCC 655 : 1989 SCC (Cri) 27 : AIR 1989 Supreme Court 1] and some other authorities that had dealt with the contours of exercise of inherent powers of the High Court, thought it appropriate to mention certain category of cases by way of illustration wherein the extraordinary power under Article 226 of the Constitution or inherent power under section 482 CrPC, 1973 could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice. The Court also observed that it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad cases wherein such power should be exercised.”

C) And pertinently no plea, objection, and/or argument to this effect has been raised on behalf of the respondent.

44. Accordingly, in exercise of the inherent jurisdiction conferred upon this Court under section 482 Cr.P.C., in the peculiar facts and circumstances of the case as noticed hereinabove, it is the clear view of this Court that continuation of the present proceedings against the petitioners would amount to gross misuse and abuse of the process of law, as also cause manifest injustice to the petitioners. It is time to put a quietus to the lis, as also to the agony of the petitioners. It is an established

position in law that inherent power under Section 482 Cr.P.C. can be used to prevent abuse of process of law and to secure the ends of justice. (Ref.: Full Judge Bench judgment of this Court in **“Kulwinder Singh & Others Vs. State of Punjab” Law Finder Doc ID # 131156 2007 (3) RCR Criminal 1052**). Power under Section 482 Cr.P.C. is to be exercised to secure the ends of justice or to prevent abuse of process of any Court. Upon perusal of all the above said facts, this Court has formed a clear opinion that continuation of the present proceedings against the petitioners is abuse of process of Court. It is further clarified that the present case/order would not be treated as a precedent and is being passed only in the peculiar facts and circumstances of the present case in order to affect substantial justice.

45. It may further be mentioned that in **“Anshul & Others Vs. The State of Madhya Pradesh & Others” Law Finder Doc ID # 2513776**, the High Court of Madhya Pradesh imposed costs of Rs.1 lakh to caution the unscrupulous litigants that they cannot take the Courts for a ride which are meant for serious litigation and the valuable time of the Courts cannot be allowed to be wasted by them in any manner. In the present case too, it is very clear that the respondent has grossly misused the due process of law in filing and continuing with frivolous and vexatious complaints and litigations through her mother Mrs Pushpa Malhotra. However, this Court shall adopt a sympathetic view in view of the cancer of the respondent and not impose such costs.

46. In view of the above, present petition is **allowed**. The impugned complaint (Annexure P1) and the orders dated 05.06.2018

(Annexure P2) and 22.03.2022 (Annexure P3) are hereby quashed qua the petitioners.

47. Pending application(s) if any also stand(s) disposed of.

09.04.2024		(Nidhi Gupta)
Sunena		Judge
Whether speaking/reasoned	Yes/No	
Whether reportable	9Yes/No	