



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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Criminal Revision No.3222 of 2014 (O&M)**Date of Decision: 06.05.2024**

Harbans Kaur

... Petitioner

Versus

Joginder Pal and others

... Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. S.K. Rana, Advocate,
for the petitioner.

Mr. R.S. Budhwar, Advocate,
for respondent No.1.

None for respondents No.2 to 4.

MANISHA BATRA, J.

1. The instant revision petition has been filed against the order dated 30.08.2014 passed by learned Additional Sessions Judge, Karnal in HMA case No.33 of 2014 titled as *Harbans Kaur v. Joginder Pal* thereby affirming the order dated 26.02.2014 passed by the Judicial Magistrate, 1st Class, Karnal dismissing the Criminal Petition No.24 of 2012 of the same title filed under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (For short "DV Act") by the petitioner.

2. Brief facts of the case relevant for the present petition are that the petitioner filed the aforementioned petition on the averments that she was married with the respondent No.1 on 13.12.1992 according to Hindu rites and ceremonies. Four children were born out of the wedlock. Her parents had given sufficient dowry at the time of marriage but the

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respondent No.1 and his family members were not satisfied with the same and they started subjecting the petitioner to mental as well as physical cruelty on account of the same. Previously, a divorce petition had also been filed by respondent No.1 but a settlement had been effected. She alleged that on 02.11.2010, the respondent No.1 along with respondents No.2 and 3 who are her brother-in-law and sister-in-law respectively, caught hold of her and she was extended beatings. She was kept confined without providing any meals. On reporting matter to the police, a Calandra under Sections 107 and 151 of Cr.P.C. was presented against the respondents No.1 to 3. She also alleged that the respondent No.1 had thrown her out of her matrimonial house and was not returning her istridhan. She prayed for granting relief to pass orders for letting her reside in her matrimonial house for her safety, for grant of monetary relief to her, for grant of litigation expenses, for return of her istridhan and further from restraining the respondents from alienating the shared household.

3. The respondents No.5 and 6 were given up by learned trial Court. The remaining respondents initially appeared in response to the notice of the petition and filed a joint reply refuting the allegations as levelled in the petition and claiming that the petitioner herself had left the company of respondent No.1 and refused to join the same. She used to have illicit relations with her neighbourers and remained absent from her matrimonial house for days together without giving any intimation to him and whenever objected by him, used to extend threat to commit suicide. All the children of the petitioner and respondent No.1 had been looked after only by him.

Besides this, the pleas as to maintainability of petition, cause of action and

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locus standi were also taken and dismissal of the petition had been prayed for. The respondents No.2 to 4 subsequently absented themselves and were proceeded against ex parte.

4. The learned trial Court framed issues and had granted opportunity to both the parties to adduce evidence. The petitioner examined herself as CW-1 and produced her father Karam Singh as CW-2 and one formal witness was produced as CW-3. Certain documents were also tendered in evidence. On the other hand, the respondent No.1 examined himself as RW-1 and 4 more witnesses were produced by him. On appraising the evidence produced on record and giving deliberation to the contentions raised by both the sides, the learned Magistrate dismissed the petition vide order dated 26.02.2014. As mentioned above, the appeal filed by the petitioner-appellant had also been dismissed vide order dated 30.08.2014.

5. Feeling aggrieved from the impugned orders, the present revision petition had been filed by the petitioner.

6. It is argued by learned counsel for the petitioner and it is submitted in the petition that the impugned orders as passed by the Courts below are liable to be set aside as while passing the same, the concerned Courts did not apply their judicious mind. Non-speaking orders had been passed. There is overwhelming evidence on record to prove that the petitioner had been treated by respondent No.1 and his family members with utmost cruelty and had been turned out of her shared household/matrimonial house without any sufficient reason. No interim maintenance allowance had been paid to her despite the fact that the same had been ordered during the

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pendency of the petition. With these broad submissions, it is argued that the impugned orders are liable to be set aside, the revision petition deserves to be accepted and further that the petitioner is entitled to reliefs as claimed by her in the petition filed before learned Magistrate.

7. On the other hand, learned counsel for respondent No.1 argued that the findings as given by learned trial Magistrate and affirmed by the appellate Court are well reasoned and do not warrant any interference. Hence, it is argued by him that the petition being devoid of any merit is liable to be dismissed.

8. It will not be out of place to mention here that though the respondents No.2 to 4 had caused appearance through their counsel but none has been appearing on their behalf from the last some dates of hearing and, therefore, it is only learned counsel for the petitioner and learned counsel for respondent No.1 who have been heard.

9. I have heard learned counsel for the petitioner as well as learned counsel for respondent No.1 at considerable length and have gone through the trial Court record as well as the impugned orders.

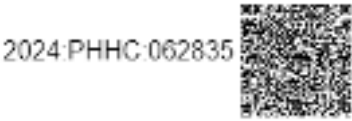
10. The petitioner was admittedly married with respondent No.1 on 13.12.1992. It is also not in dispute that a divorce petition was previously filed by respondent No.1 but the same was withdrawn. The respondents have placed on record a copy of judgment dated 21.10.2016 passed in HMA case No.212 of 2015 by the Court of learned Additional Sessions Judge, Kurukshetra showing that an ex parte decree of divorce had been passed in favour of respondent No.1. The burden of proving the fact that the petitioner was an aggrieved person and domestic violence within the meaning of DV

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Act had been committed upon her was upon the petitioner herself. However, on perusal of the material placed on record, this Court is also of the considered opinion that the petitioner had failed to produce cogent, convincing and reliable evidence of such nature which could be acted and relied upon beyond any doubt to prove that she was a victim of domestic violence and fell within the definition of 'aggrieved person' and was further entitled to the reliefs as claimed by her in the petition filed by her.

11. The petition under the provision of Section 12 of the DV Act had been filed by the petitioner in the year 2011 i.e. after a period of 19 years from the period of her marriage with respondent No.1. However, in the petition, no specific instance had been quoted to prove the allegations of her being subjected to physical or mental cruelty at the hands of the respondent No.1. General allegations are shown to have been levelled and no particular date, month and year when she was taunted or harassed on account of non-fulfillment of amount of dowry had been mentioned either in the petition or in the statements of the petitioner and her father. The Courts below observed that the petitioner and her father while appearing as CW-1 and CW-2 respectively, had even denied having any knowledge about the facts as narrated in the affidavits which were respectively filed by them by way of examination-in-chief. The act and conduct of the petitioner herself as noticed from her sworn deposition also shows that she was not bothered about the respondent No.1 and even her children. She had no knowledge about the age of her husband. She even stated that she did not know if her children were dead or alive. CW-2 even admitted that the petitioner was looked after well by respondent No.1 and all the expenses were also taken care of by him till



the birth of their four children. The children of the petitioner and respondent No.1 were admittedly residing with and looked after by respondent No.1 himself. The eldest daughter of the petitioner and respondent No.1 even appeared as a witness and denied the allegations as levelled by the petitioner and rather deposed that it was the petitioner, who did not look after them and used to beat them and maltreated her grandmother and other members of her family. The learned trial Magistrate had arrived at a conclusion that the petitioner was not proved to be a victim of domestic violence and hence did not fall within the definition of “aggrieved person” as mentioned under Section 2 (1) of the DV Act and these findings had also been affirmed by learned Appellate Court by giving detailed reasons. On perusal of the material placed on record and in view of the discussion as made above, I am of the considered opinion that no ground has been made out to interfere with the well reasoned findings as given by the trial Magistrate and as affirmed by the Appellate Court. As no manifest injustice is proved to have been caused to the petitioner warranting exercise of revisional jurisdiction of this Court nor she is proved to have made out a case to show that she was an aggrieved person, therefore, finding no merits, the petition is ordered to be dismissed.

12. Miscellaneous application(s), if any, also stand disposed of.

06.05.2024
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(MANISHA BATRA)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No