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2024:PHHC:169556



IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH

CRM-M-44313-2024
DECIDED ON: 09.09.2024

LAXMI DEVI
.....PETITIONER
VERSUS
STATE OF HARYANA
.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. P.S.Mann, Advocate and
Mr. Puneet Sharma, Advocate
for the petitioner.

Mr. Chetan Sharma, DAG, Haryana.

SANDEEP MOUDGIL, J

1. The jurisdiction of this court has been invoked under section 482 Cr.P.C for quashing of the attachment proceedings of residential house of the petitioner in Execution Proceedings arising from the Criminal Case being CRM/54/2024 titled “Heera Lal Vs. Ashok” and for setting aside the judgment of the learned Judicial Magistrate Ist Class, Faridabad, Annexure P-1, and also the order of the Appellate Court, Faridabad, Annexure P-4.
2. In brief the dispute in the present case is that petitioner’s husband lost one Cheque bounce case titled “Ashok Kumar Vs. Heera Lal” in the Court of

learned Judicial Magistrate Ist Class, Faridabad, and was convicted vide order dated 03.11.2022 (Annexure P-1). An appeal was preferred by petitioner's husband on 01.12.2022 before the Appellate Court at Faridabad (Appeal No.416/2022) wherein the learned Appellate Court directed him to deposit 25% of the cheque amount and suspended the sentence awarded by the learned trial Court. On 01.03.2023, banker's cheque was submitted in Court by the petitioner's husband and subsequently, the learned Appellate Court (the learned Additional Sessions Judge, Faridabad) vide order dated 30.11.2023,(Annexure P-3), dismissed the appeal and affirmed the order of conviction and sentence passed by the learned trial Court and attached the residential house,(Annexure P-4). Aggrieved against both the orders of both the Courts below, petitioner's husband filed Revision Petition being CRR-26-2024 before this Court but could not succeed and his revision petition was dismissed in limine, vide order dated 09.01.2024,(Annexure P-5). Thereafter, the learned Appellate Court, vide order dated 09.05.2024, issued Warrant of Attachment regarding the immovable property and bank account of appellant and also the warrant of arrest of the appellant.

3. It is contended by the learned counsel for the petitioner that after having failed before the learned Courts below and this Court also, the petitioner's husband due to fear of being caught and put to imprisonment ran away from the house without telling anything to the petitioner and before running away and leaving the house, he had a fight with the petitioner because the petitioner advised him to arrange some money from his near and dear ones.

4. Counsel for the petitioner contends that the petitioner, after her husband had absconded from the house, has filed an application under Section 12

alongwith Section 23(2) of Domestic Violence Act, 2005 (hereinafter referred to as 'D.V. Act') Annexure P-8 against her husband which is pending before the court of learned Judicial Magistrate Ist Class, Faridabad. However, in those proceedings, petitioner's husband has been proceeded against ex-parte in the main case but no order has been passed by the learned Court in the application u/s 23(2) of the D.V. Act.

5. It is further contended that it is the only residential house left for her after her husband has absconded while she has been left alone by her husband to fight for her residential house and the petitioner is facing great mental anguish due to the act and conduct of her husband.

6. Relying upon the Division Bench Judgment of Division Bench of Delhi High Court, it is argued on behalf of the petitioner that the concept of "One Main Residential House" has been answered by invoking the applicability of proviso (ccc) of Section 60(1) CPC in the State of Delhi and answered in favour of applicability and exemption of attachment in affirmative. As such, present petition is liable to be allowed and the attachment proceedings initiated by the learned Court below may be quashed.

7. Notice of motion.

8. On the asking of the Court, Mr. Chetan Sharma, Deputy Advocate General, Haryana, who is present in Court accepts notice on behalf of the State of Haryana and submitted that the petitioner's husband (Heera Lal) had been facing proceedings under Section 138 of the N.I.Act for dishonour of cheque No.000013 dated 10.02.2019 for Rs.6,00,000/- issued in favour of the complainant. The learned trial Court allowed the complaint and convicted and sentenced the petitioner's husband as he had failed to rebut the presumption raised against him that the cheque in question was issued in discharge of a legally enforceable

liability. His appeal and revision were also dismissed for this very reason as the petitioner's husband had failed to give any reason to say that this finding of the trial Court is wrong, incorrect and illegal. He further submitted that the petitioner's grievance is that the house under attachment is the only residential house in which she is living as such the order of attachment is required to be quashed but her prayer cannot be allowed because she is not a party to the main proceedings at any stage. Her application to intervene the execution proceedings is still pending consideration as such she has no locus standi at this stage.

9. Heard and case file also perused.

10. From the perusal of the case file and hearing both the sides, this Court has come to the conclusion that the present petition appears to be a collusive petition because as is averred in the petition itself, the petitioner has filed petition under the provisions of D.V.Act only after the Warrant of attachment of the immovable property had been issued by the learned Court below on the ground that her husband has absconded from the house whereas till the issuance of warrants of attachment, petitioner had no grouse against her husband. Even otherwise, a perusal of the order dated 27.06.2024, Annexure P-11, passed on the intervening application of the petitioner, would reveal that warrant of attachment of the property has been issued to secure the presence of the petitioner's husband. The relevant lines read as follows:

“Perusal of the application reveals that nothing was urgent, as pleaded, therein. The Criminal Appeal of the convict (i.e. husband of the petitioner), has been already dismissed by this Court but he has failed to abide by the terms and conditions of the Final Order and was evading his arrest since long. It was further noticed that the

property of the appellant/convict Heera Lal was also ordered to be attached, by this Court in order, to secure his presence in that Criminal Appeal, to abide by the directions/terms and conditions imposed by this Court/Ld.Trial Court.”

11. Therefore, this Court does not find any illegality in the above observations of the learned Appellate Court.

12. Now coming to the petition filed under D.V. Act, it can be seen that the petitioner has impleaded her husband – Heera Lal as respondent by giving the same address (R/o C-259, SGM Nagar, Faridabad) despite knowing very well that her husband has been absconding and he cannot be served on that address. This clearly shows that the present petition filed before this Court is a collusive petition. Further, there is no police complaint by the petitioner against her husband where an iota of truth can be revealed if a fight had taken place before petitioner’s husband had left the house, as claimed in the present petition.

13. Petitioner has attached a copy of power of attorney as Annexure P-12 to show that she is the owner of the house under attachment, however, perusal of the said document would reveal that she has been appointed as General Power of Attorney by one Mukesh Kumar Sharma son of Sh.G.L.Sharma in respect of portion measuring 100 sq.yrds. of property No.259 situated at Mauja Badkal, Tehsil and District Faridabad. Therefore, the petitioner is the General Power of Attorney holder of abovesaid Mukesh Kumar and has to act on his behalf (the original owner) and as such, has no proprietary rights in respect of the property involved herein. The property belongs to only the original owner (Mukesh Kumar) and the present petitioner has no locus standi to file the present petition in her own personal and individual capacity as owner of the land and building

erected on it. Even otherwise, the petitioner’s husband is absconding and cannot be allowed to abscond indefinitely from the hands of law, therefore, petitioner or her husband do not deserve any interference in the matter.

14. Consequently, this petition is hereby dismissed being not maintainable for want of petitioner’s locus standi to file the same.

09.09.2024
Meenu

(SANDEEP MOUDGIL)
JUDGE

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