

Crl. Misc. No.M-36736 of 2014 (O&M)

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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

Crl. Misc. No.M-36736 of 2014 (O&M)
Date of decision : 31.05.2016

Amit Agarwal and others

.....Petitioner(s)

Versus

Sanjay Aggarwal and others

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

1. Whether Reporters of local papers may be allowed to see the judgment? Yes/No
2. To be referred to the Reporters or not? Yes
3. Whether the judgment should be reported in the digest? Yes

Present: Mr. Sukhbir Singh, Advocate
for the petitioners.

Mr. A.S. Manaise, Advocate
for the respondents.

ANITA CHAUDHRY, J.

The instant petition has been filed under Section 482 Cr.P.C. seeking quashing of complaint filed under the Domestic Violence Act.

It is necessary to give the factual issues before referring to the legal issues. A complaint under the Domestic Violence Act was filed by Sanjay Aggarwal, brother of Ritu Aggarwal. Ritu was married to Amit Aggarwal in October, 2003. A child was born to them in October, 2004. Allegations were levelled that there was demand of a car before marriage. The family gave Rs.2 lacs in cash, gold items besides electrical goods. There was a demand even at the time of birth of the child, the wife was beaten up and tortured and kicked out of the house finally in June, 2006. The Istridhan and the dowry articles were retained by the accused. A claim for

maintenance, compensation as damages, residence in the shared house hold was made.

The petitioners are the husband, father in law & the brother in law. It was the second marriage for petitioner no.1. It is claimed that Ritu left the matrimonial home in June, 2006 to attend two functions and took all the jewellery with her to wear on the occasion at Ludhiana on 02.02.2006. It was pleaded that petitioner no.1 and his parents had made a number of calls but she refused to return till petitioner no.1 separated from his family. She was insisting for a separate residence or transfer of some property in her name. The petitioners had pleaded that petitioner no.1 got the FIR registered against respondent no.2 on 10.09.2006. A week later Ritu got a case registered under Section 498-A and 406 IPC against petitioner no.1, his parents and other relatives. The FIR against the sister and brother in law was quashed in October, 2008. The FIR qua the husband and his parents was quashed on the ground that no part of the cause of action had arisen at Batala, however, the Apex Court transferred the trial to Delhi. It was pleaded that petitioner no.1 had filed a divorce petition and Ritu failed to appear though she had been served and exparte decree of divorce was passed. An application for setting aside the exparte decree was filed after 14 months but it was dismissed for non-prosecution on 18.07.2011. Another application was filed for its restoration, which was pending. It was pleaded that since a divorce had been granted, there was no domestic relationship and the complaint under the Domestic Violence Act was not maintainable. It was pleaded that so far as the maintenance was concerned, a petition under Section 125 Cr.P.C. had been filed and maintenance was granted by the

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Magistrate against which an appeal had been filed, which was pending and maintenance up to October, 2014 had been paid and all the articles had been recovered by the police.

Respondent no.1 filed the reply and it was pleaded that the issue of maintainability of the complaint had been raised by the petitioner before the trial Court and it was pending and the petitioner could not raise the same issue before this Court. It was pleaded that respondent no.1 had filed a complaint on 01.12.2007, which was withdrawn on 27.03.2009 as the complainant wished to withdraw the complaint and file a fresh one and a statement in that regard was made on 27.03.2009. It was pleaded that an exparte decree of divorce was passed and no service was effected and an application for setting aside the decree was filed and was pending. It was pleaded that the decree had not attained finality and the exparte decree did not wash away the previous incidents of domestic violence and respondent no.2 was pushed out of the house in June, 2006. It was pleaded that although petitioner no.3 was the brother in law of petitioner no.1 and married prior to the marriage of respondent no.2 but he was actively involved in the acts of domestic violence. It was pleaded that an aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person could present an application to the Magistrate under Section 12 of the Domestic Violence Act and he had filed the complaint on behalf of his sister. It was admitted that a complaint was filed and was withdrawn and no liberty was granted to file again though he had reserved his right to file again.

I have heard the counsels of both the sides.

The counsel for the petitioners had contended that the

complaint under the Domestic Violence Act had been filed approximately after three years from the date the wife had left the matrimonial home and the complaint had been filed by the brother. It was urged that during her total stay in Delhi, no complaint was given to the police though the police station was at a walking distance. It was urged that the brother filed a complaint and withdrew it and without disclosing that fact another complaint was filed. It was urged that in view of the provisions contained in D.V. Act, a complaint can be filed only within a period of one year of the incident and since there was a divorce, the complaint was not maintainable. It was urged that the complainant had also named the brother in law who had been married five years prior to the marriage and he did not have a domestic relationship and the complaint was liable to be dismissed qua him. It was urged that the FIR was got registered against the petitioner and his family members and the High Court had quashed the FIR partly, against the sister and brother in law in 2008 and the FIR has been quashed against the husband. It was urged that the wife had left the matrimonial home before the Act came into existence and she was living in Batala and no domestic violence could be committed by them as they had never lived together. It was urged that so far as the maintenance was concerned, a petition under Section 125 Cr.P.C. had been filed in the Courts at Batala and the Court had granted maintenance to the wife and the child and there are two parallel jurisdictions and the wife had already availed the remedy of filing a petition under Section 125 Cr.P.C. and later a petition under Section 127 Cr.P.C. was filed seeking enhancement of the interim maintenance. It was pleaded that the wife was an income-tax assessee and she had a D-Mat account and she

held shares in the D-Mat account and was doing business and had received Rs.2,49,000/- from the first husband as full and final settlement.

The submission on the other hand was that a complaint was filed earlier where a statement was given and liberty was sought for instituting another complaint and therefore, second complaint was filed after few days. It was urged that the brother had filed the complaint and there is no restriction and any person can file a complaint on behalf of the aggrieved person. It was urged that the question of limitation did not arise as the wife was asking for residence and maintenance which was a recurring cause of action. It was urged that an application has been filed before the Court below on the similar lines and the petitioners could not have filed a petition under Section 482 Cr.P.C.

A perusal of the petition would show that in the title, the petitioner has sought quashing of Annexure P-3, which is a complaint, which had already been withdrawn. It appears that the correction made with the ink was erroneous otherwise an objection would have been taken by respondent. The petitioner is seeking quashing of Annexure P-1.

Few facts need to be noticed first. Sanjay Aggarwal, brother of Ritu filed a complaint under the Domestic Violence Act some time in November, 2007, which was subsequently withdrawn vide Annexure P-4. Though the complainant had sought liberty to file a fresh complaint but the order dated 27.03.2009 (Annexure P-5) shows that no such liberty was granted. The husband had filed a petition seeking dissolution of the marriage. Service was effected on the respondent and she failed to appear and was proceeded ex parte and ex parte decree of divorce was passed on

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16.05.2008. The complaint under the D.V. Act was filed against the husband, his father and brother in law. The brother in law admittedly is residing separately, though in the same city. Exparte decree of divorce has not been set aside till date.

Two important issue arise in the case. Whether the wife can file a complaint under the Domestic Violence Act when the relationship has come to an end with a decree of divorce and whether a petition under Section 482 Cr.P.C. would be maintainable.

Coming to the issue of maintainability, the submission on behalf of the petitioner was that the inherent powers under Section 482 Cr.P.C. can be exercised whether it is found that the allegations are groundless or where the complaint can not proceed then the parties cannot be left to undergo the agony of a criminal trial.

The submission of the other side was that an application had been filed before the trial Court and the trial Court was yet to examine the issue and the petition under Section 482 Cr.P.C. would not be maintainable.

The Apex Court, in the case of ***Kailash Chandra Agarwal & Anr. Vs State of U.P. & Ors.***, reported in 2014 AIR (SCW) 6152 noticed that the complaint did not attribute specific role to the relatives of the husband and it was quashed, by referring to the judgment in the case of ***Kans Raj Vs. State of Punjab & Ors.*** ((2000) 5 SCC 207), which reads thus:

"5.....A tendency has, however, developed for roping in all relations of the in-laws of the deceased wives in the matters of dowry deaths 14 which, if not discouraged, is likely to affect the case of the prosecution even against the real culprits. In their over enthusiasm and anxiety to seek conviction for maximum people, the parents of the deceased have

been found to be making efforts for involving other relations which ultimately weaken the case of the prosecution even against the real accused as appears to have happened in the instant case."

This question has been examined in a number cases. The Apex Court in *Ashish Dixit and others Vs. State of U.P. and another* MANU/SC/0156/2013 had quashed the proceedings under the Domestic Violence Act in a petition filed under Section 482 Cr.P.C. This High Court in *Jasvir Kaur and another Vs. Manpreet Kaur* in CRM No.M-29792 of 2011 allowed the petition filed under Section 482 Cr.P.C. seeking quashing of the complaint filed under the Domestic Violence Act. The Karnataka High Court in *Smt. Nagarathamma Vs. M.S. Vanithashree* in Cr, P. No.5246/2010 had allowed the petition filed under Section 482 Cr.P.C. Thus a complaint can be quashed in the petition filed under Section 482 Cr.P.C. if it is found that the complaint was an abuse of the process of the Court or has filed only with a view to harass the other side.

The complaint had filed by the brother. An objection was taken that no authority had been given to the complainant to lodge a complaint. It is necessary to notice Section 12 of the Domestic Violence Act. It reads as under:-

Section 12 in The Protection of Women from Domestic Violence Act, 2005

12. Application to Magistrate.—

(1) An aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person may present an application to the Magistrate seeking one or more reliefs under this Act: Provided that before passing any order on such application, the Magistrate shall take into consideration any domestic incident report received by him from the Protection Officer or the service provider

A perusal of the above would show that a complaint can be filed by an aggrieved person or a Protection Officer or any other person on

behalf of the aggrieved person and there is no bar and the other person on behalf of the aggrieved person can file a complaint.

A perusal of the record reveals that the complaint had been filed which was withdrawn and liberty was taken to lodge a fresh complaint but no liberty was granted and the fact that earlier a complaint was filed and was withdrawn, was not mentioned in Annexure P-1.

The next question is does the aggrieved person even mean a 'divorced woman'. Answer to the question lies in the definition provided in Section 2 (a), it defines the aggrieved person as under:-

"2 (a) "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"

The use of the word is any woman 'who is' or 'has been'. Both the expressions are in the present tense. The legislature has not used the word 'who was' or 'had been'. This means the domestic relationship has to be in the present and not in the past. The definition requires that on the date Act come into force, the woman should be in domestic relationship.

The definition of domestic relationship given under Section 2 (f) further supports the view that the requirement under D.V.Act is that the relationship which is the basis of invoking the jurisdiction under D.V.Act has to be in the present. Section 2 (f) of the D.V.Act reads as under:

(f) "domestic relationship" means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when

they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family;

The definition clearly speaks of a domestic relationship between two persons who live or have at any point of time lived together in a shared household and are related by marriage or through a relationship in the nature of marriage. This definition also speaks about the existence of a relationship by marriage or a relationship in the nature of marriage at the time. The expression used is 'are related' by marriage. The expression by the legislature is not 'were related'. From the bare reading of these two provisions it is apparent that the intention of the legislature is to protect those women who are living in a domestic relationship.

The contention of the respondent was that when the wife can move the jurisdiction of the court under [Section 125 Cr.P.C.](#), nothing prevents her from invoking the jurisdiction of the court under D.V.Act. It was further contended that the expression used under [Section 2 \(f\)](#) 'at any point of time lived together' also includes a divorced wife.

This issue has been examined in **(2010) DLT 67 titled Harbans Lal Malik vs. Payal Malik** wherein it had been held:

"11. It is apparent that in order to make a person as respondent in a petition under [Section 12](#), there must exist a domestic relationship between the respondent and the aggrieved person. If there is no domestic relationship between the aggrieved person and the respondent, the Court of MM cannot pass an order against such a person under the Act. Domestic relationship is defined under [Section 2 \(f\)](#) of the Act and is as under:

"domestic relationship" means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family;

It is apparent that domestic relationship arises between the two persons, who have lived together in a shared household and when they are related by consanguinity, marriage or through a relationship in the nature of marriage, adoption or are family members living together as a joint family. The definition speaks of living together at any point of time however it does not speak of having relation at any point of time. Thus, if the domestic relationship continued and if the parties have lived together at any point of time in a shared household, the person can be a respondent but if the relationship does not continue and the relationship had been in the past and is not in the present, a person cannot be made respondent on the ground of a past relationship. The domestic relationship between the aggrieved person and the respondent must be present and alive at the time when the complaint under [Domestic Violence Act](#) is filed.

It has been held in Harbans Lal Malik (supra) that definition of 'wife' as available in [Section 125 Cr.PC](#) cannot be merged into [Domestic Violence Act](#). [Section 125](#) specifically provides that the wife means 'divorced wife'. Explanation under [Section 125 \(1\) \(b\)](#) reads as under:

(b) "wife" includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried;

The court had further observed as under:

19. I, also consider that the definition of "wife" as available under Section 125 Cr.P.C could not be imported into Domestic Violence Act. The Legislature was well aware of Section 125 Cr.P.C. and if Legislature intended, it would have defined "wife" as in Section 125 Cr.P.C in Domestic Violence Act as well. The purpose and object of Domestic Violence and provision under Section 125 Cr.P.C. is different. While Domestic Violence Act has been enacted by the Parliament to prevent acts of domestic violence on women living in a shared household. Section 125 of Cr.P.C. is to prevent vagrancy where wife is left high and dry without maintenance. Law gives a right to claim maintenance under Civil Law as well as Section 125 Cr.P.C. even to a divorced wife, but an act of domestic violence cannot be committed on a divorced wife, who is not living with her husband or family and is free to live wherever she wants. She has a right to claim maintenance and enforce other rights as per law. She has a right to claim custody of children as per law but denial of these rights do not amount to domestic violence.

20. This definition pre supposes that the woman is living with the person who committed violence and domestic relationship is not dead buried or severed. This does not speak of past violence which a woman suffered before grant of divorce." सत्यमेव जयते

It is apparent that the provisions under the D.V.Act can be invoked only when the domestic relationship is in existence. Where the domestic relationship ceases, the provisions under the D.V.Act cannot be invoked.

In the present case, a decree of divorce had been passed. Though it was an exparte decree but it has not been set aside by the competent Court. Once the domestic relationship came to an end after the decree of divorce the complaint under the Domestic Violence Act could not have been filed. It is necessary to refer to the observations made in *Inderjit*

Singh Grewal's case (supra):-

“24. Submissions made by Shri Ranjit Kumar on the issue of limitation, in view of the provisions of [Section 468 Cr.P.C.](#), that the complaint could be filed only within a period of one year from the date of the incident seem to be preponderous in view of the provisions of [Sections 28 and 32](#) of the Act 2005 read with Rule 15(6) of The Protection of Women from Domestic Violence Rules, 2006 which make the provisions of [Cr.P.C.](#) applicable and stand fortified by the judgments of this court in [Japani Sahoo v. Chandra Sekhar Mohanty](#), AIR 2007 SC 2762; and [Noida Entrepreneurs Association v. Noida & Ors.](#), (2011) 6 SCC 508.

25. In view of the above, we are of the considered opinion that permitting the Magistrate to proceed further with the complaint under the provisions of the Act 2005 is not compatible and in consonance with the decree of divorce which still subsists and thus, the process amounts to abuse of the process of the court. Undoubtedly, for quashing a complaint, the court has to take its contents on its face value and in case the same discloses an offence, the court generally does not interfere with the same. However, in the backdrop of the factual matrix of this case, permitting the court to proceed with the complaint would be travesty of justice. Thus, interest of justice warrants quashing of the same.”

A FIR had been lodged by the wife against the husband and other relatives. The FIR has been quashed qua the relatives. The FIR qua the husband was also quashed as the Court did not have the jurisdiction, however, the trial was transferred to Delhi from Batala by the Apex Court. The aggrieved person had also filed a petition under Section 125 Cr.P.C. and interim maintenance has been granted.

Considering the above, it is held that the present complaint is an abuse of the process of the Court. The domestic relationship had come to an end. The complainant had impleaded relatives who were not living in the

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shared house and permitting the Magistrate to proceed with the complaint would be an abuse of the process of law. The complaint and the proceedings therein are quashed.

Before parting, it may be clarified that the aggrieved person would be entitled to continue with other cases in accordance with law without being influenced with the observations made herein. The said observation has been made only to decide the petition filed under Section 482 Cr.P.C.

The petition is allowed.

31.05.2016

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**(ANITA CHAUDHRY)
JUDGE**



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