

Crl. Misc. No. M-36559 of 2013

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Crl. Misc. No. M-36559 of 2013 (O&M)

Date of decision: 05.08.2014

Anoop and others

....Petitioners

Versus

Vani Shree

....Respondent

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

- 1) Whether Reporters of the local papers may be allowed to see the judgment ? **Yes**
- 2) To be referred to the Reporters or not ? **Yes**
- 3) Whether the judgment should be reported in the Digest ? **Yes**

Present: - Mr. Rahul Rampal, Advocate, for the petitioners.
Mr. Sandeep Jasuja, Advocate, for the respondent.

PARAMJEET SINGH, J.

Petitioners, who are facing allegations of domestic violence, have approached this Court under Section 482 of the Code of Criminal Procedure for quashing of complaint No.209-2 dated 11.01.2013 along with Form No.1 under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (for short 'the Act') and notice dated 16.07.2013 vide which petitioners have been summoned.

Brief facts for disposal of present petition are that respondent-complainant filed an application under the provisions of the Act against the petitioners, husband, father-in-law, mother-in-law, uncles and aunts of the husband, sons and daughters of the uncles of the husband. Petitioners No.1, 3 and 5 are uncles of husband of respondent,

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petitioners No.2, 4 and 6 are their wives, respectively whereas petitioner No.7 is son of petitioner No.1, petitioner No.8 is son of petitioner No.3 and petitioner No.9 is married daughter of petitioner No.1. All of them are having separate residence and mess from the husband's family. It is further averred that earlier respondent/complainant had got registered FIR under Sections 406/498-A IPC against her husband, father-in-law and mother-in-law and during enquiry they were found innocent.

I have heard learned counsel for the parties and perused the record.

Learned counsel for the petitioners vehemently contended that petitioners are related to husband of respondent-complainant being members of an extended family, who are separate in kitchen, residence and all other respects. Even no single instance of assault, stalking or any other crime has been alleged against the petitioners and it is otherwise not a crime of domestic violence. It is further argued by learned counsel for the petitioners that no specific allegation of harassment or cruelty has been levelled against the petitioners. All the allegations are general in nature. Learned counsel for the petitioners contended that before filing the present complaint, another application was moved before the authorities for recovery of various articles. Even an application under Section 125 Cr.P.C. was moved wherein there was no allegation as levelled in the present complaint. Even in the FIR no specific allegations of harassment or cruelty were levelled against the petitioners.

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On the other hand, learned counsel for the respondent vehemently contended that petitioners are members of the joint family and have been rightly issued notice for appearance they being also responsible for causing harassment. They are not entitled to quashing of complaint rather they should follow the instructions issued by competent authority from time to time.

I have considered the contentions raised by learned counsel for the parties.

Before I proceed to deal with the contentions raised by the learned counsel for the parties, it would be appropriate to reproduce relevant Sections of the Act, which read as under: -

“Domestic relationship”, “domestic violence” and “shared household” have been defined in Section 2 of the Act 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.

(g) “domestic violence” has the same meaning as assigned to it in section 3.

(s) “shared household” means a household where the persons aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by

either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household.”

Section 3 of the Act reads as under: -

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.

Explanation I.-For the purposes of this section,-

(i) "physical abuse" means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force;

- (ii) *"sexual abuse" includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman;*
- (iii) *"verbal and emotional abuse" includes-*
- (a) *insults, ridicule, humiliation, name calling and insults or ridicule specially with regard to not having a child or a male child; and*
 - (b) *repeated threats to cause physical pain to any person in whom the aggrieved person is interested.*
- (iv) *"economic abuse" includes-*
- (a) *deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance;*
 - (b) *disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person; and*
 - (c) *prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic*

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relationship including access to the shared household.

Explanation II.-For the purpose of determining whether any act, omission, commission or conduct of the respondent constitutes "domestic violence" under this section, the overall facts and circumstances of the case shall be taken into consideration."

Having read the relevant definitions, it would now be fruitful to understand the nature of reliefs that can be granted under various Sections of the Act on application u/s 12 which are detailed in Sections 18-23 of the Act. Section 18 of the Act enumerates the orders which the Magistrate can pass in favour of the aggrieved person. These orders include order prohibiting the respondent from (a) committing any act of domestic violence; (b) aiding or abetting in the commission of acts of domestic violence; (c) entering the place of employment, or school in the case of the child, of the aggrieved person; (d) attempting to communicate with the aggrieved person, (e) alienating any assets or operating bank accounts and bank lockers used or enjoyed by both the parties, or singly by the respondent and (f) causing violence to the dependants or other relatives of the aggrieved person. Section 19 of the Act confers power on the Magistrate to pass a Residence Order on being satisfied that domestic violence had taken place. Such order may restrain the respondent dispossessing the aggrieved person or disturbing her possession from the shared household, restrain him or any of his relatives from entering any portion of the shared household where the aggrieved person resides,

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restrain him from alienating or disposing of the shared household or creating encumbrances on it, restrain him from renouncing his rights in the shared household, and may also direct the respondent to remove himself from the shared household or to secure same level of alternate accommodation for the aggrieved person as was enjoyed by her in the shared household or to pay rent for the same. Under Section 20, the Magistrate while disposing of an application under Section 12 of the Act can direct the respondent to pay monetary relief to the aggrieved person in respect of loss of earnings, medical expenses, loss caused due to destruction, damage or removal of any property from her control and maintenance of the aggrieved person as well as her children. He can also order a lump sum payment or monthly payment of the maintenance. Under Section 21 of the Act, the Magistrate may grant temporary custody of the children to the aggrieved person and may deny visit of the respondent to the children of the aggrieved person. Under Section 22, the Magistrate can direct the respondent to make payment of compensation and damages for the injuries, including mental torture and emotional distress. Under Section 23, the Magistrate is competent to pass against the respondent such interim order as he deems fit in the facts and circumstances of the case.

In para 2 of the complaint, it is mentioned that accused started misbehaving with the complainant on the allegation that she has not brought sufficient dowry articles, the respondents used to beat the complainant that she has brought few dowry items. The accused started

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demanding cash and Honda city car, she was given merciless beating by the accused. Further general allegations are to the effect that complainant was not provided food, clothes, medicine etc. by the respondents. Complainant was forced to live out of the house and she was prevented from using any part of the house. It is also alleged that complainant was prevented from carrying on her employment. It is further alleged that accused were not allowing the complainant to use clothes or articles of general household use. It is also alleged that accused used to sell/paw the *stridhan* of the complainant/valuables without informing and without her consent. Besides this, various other allegations have been levelled against Amit Manik, husband of the complainant, which are detailed in para 5 of the complaint.

In the complaint in question, apart from impleading husband, father-in-law and mother-in-law, all and sundry have been included. Petitioners No.1, 3 and 5 are uncles of husband of respondent, petitioners No.2, 4 and 6 are respective wives of petitioners No.1, 3 and 5 whereas respondent No.7 is son of petitioner No.1, petitioner No.8 is son of petitioner No.3 and petitioner No.9 is married daughter of petitioner No.1. There is no categorical evidence on record nor averments in complaint from which it can be inferred that petitioners are residing with the husband of the complainant/respondent and in any way are part of the shared house. It is common that when husband is charged with crime of domestic violence, complainant accuses other members of the family of husband i.e. father-in-law, mother-in-law, sisters and distant

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relatives. Generally the domestic violence is between the intimate partners and is inter-personal. In the present case even distant relatives related by blood through father of the husband have also been arrayed as accused.

Hon'ble Supreme Court in *State of Haryana v. Bhajan Lal*, 1991(1) R.C.R. (Criminal) 383 held as under: -

“The following categories of cases can be stated by way of illustration wherein the extraordinary power under Article 226 or the inherent powers under Section 482, Cr.P.C. can be exercised by the High Court either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently chennelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised:-

(1) Where the allegations made in the first information report or the complainant/respondent No.2, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in

the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a Police Officer without an order of Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of aggrieved party.

7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceedings is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in

the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice.”

Hon'ble Supreme Court in ***Ashish Dixit and others v. State of U.P. and another, (2013) 4 SCC 176*** has held as under: -

“2. This appeal is directed against the judgment and order dated 05.07.2010 passed by the High Court of Judicature at Allahabad in Criminal Miscellaneous Application No.8358 of 2008. By the impugned judgment and order, the High Court has refused to quash the proceedings initiated against the petitioners by the respondent no.2-wife, under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (for brevity “the Act, 2005”).

3. In the petition filed by respondent no.2, apart from arraying her husband and her parents-in-law as parties to the proceedings, has included all and sundry, as respondents. To say the least, she has even alleged certain actions said to have been done by the tenant whose name is not even known to her.

4. In a matter of this nature, we are of the opinion that the High Court at least should have directed that the petition filed by respondent no.2 be confined to her husband as also her parents-in-law and should not have allowed the impleadment of respondent nos.4 to 12.

5. In view of the above, while allowing this appeal in part, we quash the proceedings as against appellant nos.4 to 12 in Case No.240 of 2007. We direct the learned Chief Judicial Magistrate, Agra to proceed with the aforesaid case; only

against the husband i.e. Shri Ashish Dixit, S/o. Padmakar Dutt Sharma, her father in law, Shri Padmakar Dutt Sharma, S/o.late Pt.Diwakar Dutt Sharma and Smt.Girja Dixit, W/o.Shri Padmakar Dutt Sharma, her mother in law.

6. We are of the opinion that the direction issued by the High Court, inter-alia, directing the appellants herein to appear before the Trial Court and seek bail is wholly unnecessary.”

This Court in the case of **Sachin Sharma and others v. Radhika Sharma, 2013(2) R.C.R. (Criminal) 817** held as under: -

“In the present case, respondent has filed the complaint under Section 12 of the Act Annexure P-7. Earlier respondent had lodged FIR No. 17 dated 17.2.2009 under Section 498-A IPC at Police Station Division No. 7, Jalandhar, District Jalandhar. The said FIR has been placed on record as Annexure P-4. A perusal of the same reveals that after thorough investigation of the case, challan was ordered to be presented against Sachin Sharma only. It was found that the respondent had lived with her husband at Noida till 15.9.2008. Respondent got married to Sachin Sharma on 10.12.2006. The daughter of petitioners No. 2 and 3 was mentally sick and was bed-ridden and was being looked after by them. It also transpired that petitioner No. 3 Narinder Sharma was a heart patient. Respondent had left the matrimonial home on account of trouble caused by her husband. Husband of the respondent i.e. Sachin Sharma died on 12.12.2006. A perusal of Annexure P-7 reveals that the petition filed by the respondent under Section 125 Cr.P.C. was allowed by the Trial Court vide order dated 15.7.2009 and it was ordered that she was entitled to receive ` 3,000/- per month as maintenance. The complaint under the Act was filed in April 2009. Thus, similar allegations levelled by the

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respondent in FIR under Section 498-A IPC were duly inquired by the police and it was found that petitioners No. 2 and 3 were innocent. It transpired during police enquiry that dispute was only between the respondent and her husband. Petitioners No. 2 and 3 were already taking care of their mentally sick daughter. In these circumstances, continuation of criminal proceedings against petitioners No. 2 and 3 would be nothing but an abuse of process of law.”

The term domestic violence encompasses a variety of criminal offences. These intra family offences are however are generally between immediate family members but not extended family members or non blood relatives. The phrase ‘domestic violence’ has to be understood in context of ‘domestic relationship and ‘shared household’, and therefore, the reliefs as aforesaid are meaningful only against the persons with whom the person aggrieved shares a ‘domestic relationship’ and a ‘shared household’. However, it has become an unfortunate trend to implead even the distant relatives in such like cases. To this extent at least, the law designed for protection of women is being misused for ulterior motives. It is often argued that the Act has given an undue advantage to the women and is most lethal weapon which women can use to exploit, extort and threaten not only the husband and his family but also his distant relatives. The law thus is being used to terrorise the husbands, their families and distant relatives and this phenomenon has now acquired the name of ‘Legal Terrorism’ and rightly so given the extent of its misuse, particularly against the distant relatives of the husband as in the instant case.

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In view of above, it is held that petitioners are not the members of intra-family of husband of the complainant rather are members of the extended family related to father of the husband of the complainant, who are not in anyway residing in the shared household as defined in the Act. Even no specific allegations have been levelled against the petitioners, only their names have been mentioned in the complaint and allegations are general in nature. In earlier proceedings initiated at the instance of respondent-complainant under Section 125 Cr.PC. and FIR under Sections 406/498-A IPC no such allegations have been levelled. These allegations are afterthought. In my opinion, complaint against the petitioners is clearly an abuse of process of law.

In view of above, petition is allowed. Complaint No.209-2 dated 11.01.2013 along with Form No.1 under Section 12 of the Act and notice dated 16.07.2013 vide which petitioners have been summoned, are quashed qua petitioners only.

(Paramjeet Singh)
Judge

August 05, 2014
R.S.