

**IN THE COURT OF SH. KAPIL, LD. JMIC, PANIPAT**

*Kusum & Anr*

*V/s*

*Sandeep Kumar & Ors*

*Ref : Application U/s 12 D.V. Act.*

**WRITTEN ARGUMENTS ON BEHALF OF RESPONDENTS**

*R/Sir,*

*That the present application has been filed by the applicant under section 12 D.V. Act, which is misuse of law, as the applicant wife has filed the same without any cause or reason. Moreover, the applicant does not fall under the definition of aggrieved person, as defined in the D.V Act. It is also pertinent to mentioned here that it is the applicant who willfully left the company and house of the respondent.*

*In the Case in hand, first of all, there is no reason with the applicant to desert the company of respondent and there is also not a single iota of evidence on the case file to prove that the applicant wife is/was ever harassed or humiliated by the respondents at any point of time during her stay with the respondent. It is worthwhile to mention here that the applicant has also gave an application to police of SP Panipat against the respondents containing same allegation as mentioned on the present application. Upon the said application the police of P.S Panipat city registered an FIR No.1456/2015 U/s 498-A, 323, 506 IPC against the respondent no.1, which is pending before this Hon'ble Court for Prosecution Evidence for 19.10.2019. As per settled proposition of law (CrPC 300 and Article 20(2) of Constitution of India) a person cannot be tried twice for the same allegation.*

It is also pertinent to mentioned here that the applicant has filed the present application under D.V. Act, after a period of more than 2 years (30 months) i.e. after expiry of the limitation period. It is humbly submitted that an application under domestic violence act can be filed within one year of alleged violence, but in case in hands, the applicant has filed the same after expiry the limitation period. The **Hon'ble Supreme Court of India** also held in SLP Crl no.7787/2010, titled as **Inderjeet Singh Grewal vs. State of Punjab and another**, that the complaint could be filed only within a period of one year from the date of incident and section 468 Cr.pc. is applicable on the provisions of D.V. Act. In the same way, the Hon'ble Punjab and Haryana High Court at Chandigarh as adopted the same view in criminal, Misc. No. M-36736/2014, titled as **Amit Aggarwal vs. Sanjay Aggarwal**. The Same view has also been adopted by Hon'ble High Court at Delhi in case titled as **Harbansh Lal Malik (Nagesh Malik) Vs Payal Malik** and also by Hon'ble High Court of Karnataka, in their various landmark decisions in **Gurudev vs Jayashree** and **Sriniwas vs G.Dhanlaxmi** on this point.

Apart from this, the applicant has also filed a petition u/s 125 Cr.P.C. against the respondent no.1/husband, which has been decided by the Court of Sh. J.S. Sidhu, Ld. Principal Judge, Family Court, District Panipat, vide its order dated 05.07.2019 and as per the order, respondent has to pay Rs.6,000/- per month to the applicant and minor Daughter as maintenance. The order dated 05.07.2019, is Exhibit as R-

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Sir, it is further humbly submitted that the Concerned Protection officer has also submitted its Domestic Violence Report in the case hand but the said protection officer did not conducted any inquiry before making of said report and prepared its report only on the statement of the applicant, which is clear violation of law. This fact has been proved from the information received under Right to information Act, which is Exhibited as R\_\_\_\_. The said protection officer also not provides answer to all the question asked under RTI Act. **It is also pertinent to mentioned here that the protection office did not step in to witness box to prove its report submitted by her. If she step into the witness box as witness, in that case the respondent had complete right to do cross examination of the protection officer and in the absence of protection office as witness, her report cannot be read in evidence as the respondent is right to cross over the same.** It is pertinent to mentioned here that the Investigation Officer who made investigation in case FIR No.1456 of 2015 U/s 498-A, 323, 506 IPC deposed in his cross examination in above said case that while investigating the case I met with the respondent neighbors and house owner but didn't find any act of harassment and humiliation towards applicant/complainant by the respondent no.1/accused. The statement of said Investigation Officer is Exhibit as R- . On this point, the **Hon'ble Supreme Court of India** has held in criminal Appeal No.1251/2014 titled as **Santosh Bakshi Vs. State of Punjab and others**, that the complaint, if made, by any women alleging offence under the D.V. Act, 2005 committed by any member of the family, the matter is to be looked upon seriously. The police or investigation agency without proper verification and investigation cannot submit a report that no case is made out. The investigation agency is required to make proper inquiry not

only from the members of the family but also from neighbors, friends and others. After such inquiry, the investigating agency may form a definite opinion and can file report.

Sir, it is further humbly submitted that the applicant has filed the present application against the respondent only to take revenge, when her matrimonial relations become strained. The applicant has used all the tools of law against the respondents, which are meant for true victim, but in the case in hands, the applicant has misused these provisions of law by twisting the facts. The **Hon'ble High Court of Punjab and Haryana at Chandigarh** have held in criminal Misc. no. M-36559/2013 titled as **Anoop and others vs. Vani Shree**, that it has become an unfortunate trend to implead even the distant relatives in such like cases. To this extents atleast, the law designed for the protection of women is being misused for ulterior motives and the women are using it as lethal weapon, which women can use to exploit, extort and threatened not only the husband and his family members but also his distant relatives. The law thus is being used to terrorize the husband, families and relatives and this phenomenon has now acquired the name of "**Legal Terrorism**" and rightly show given the extent of its misuse, particularly against the distant relatives of the husband as in the instant case. The **Hon'ble Punjab and Haryana at Chandigarh** also taken the same view in its decision CRM-M 8480 of 2010 titled as **Harjit Singh and another Vs. State Punjab and another**.

It is also pertinent to mention here that the due to the cruel and rude nature of the applicant, the family of the respondent no.1 also ended all the relations with the respondent no.1 and applicant and after that the applicant and respondent no.1

along with their daughter Avantika started living on a rented premises and got their separate Ration Card. The copy of said ration card is Exhibit as R 6. But the applicant also involved respondent no. 2 to 6 in the present application just to pressurize them, so she can fetch money from them too. This conduct of the applicant clearly shows her real motive and intentions. It is pertinent to mentioned here that the applicant gave application to SP Police for taking actions against all the respondent but in which the police gave clean chit to respondent no. 2 to 6 after its investigation. Moreover, the respondent no. 2 to 6 also file anticipatory bail application before the Hon'ble Court which was decided by the Court of Sh. Sushil Kumar Gard, then Ld. ASJ, Panipat vide its order dated 05.11.2015 which is exhibit as R-5. In its order the Hon'ble Court clearly mentioned that the allegation of demand of dowry against the respondent no. 2 to 6 are quit vague. Further as per police report, the allegations against the applicants/respondent no.2 to 6 have not been established during the course of investigation and even their names have not been mentioned in the FIR. This finding of the Ld. ASJ also reveals the act and conduct of the applicant. The **Hon'ble Punjab and Haryana** in its decision in CRM Misc. No 28371 of 2008 titled as **Sanjiv kumar Vs State of Haryana and Ors** stated that the in-laws and other relations cannot , in all cases , be held to be involved in the demand of dowry. In cases where such accusation is made, the overt acts attribute to such persons, other than husband, are required to be prima facie established. By mere conjectures and implication, such relations cannot be held for the offences relating to the demand of Dowry, which is totally lacking in the present case. As the Bench mark, all the essential ingredient to the constitutes the offences and elements of the complicity of petitioner are totally missing and same view also taken by

**Hon'ble High Court of Punjab and Haryana at Chandigarh** in *Jaswinder Kaur and Ors Vs State Of Punjab and Ors.*

*Sir, it is further submitted that the applicant has completely failed to prove the allegation leveled by her against the respondents in the present complaint, but on the other hand, the respondents proved with cogent and convincing evidence that applicant wife has filed the present complaint with malafide intention.*

*Sir, on the point of Maintenance, it is submitted that although the applicant wife is well qualified and is well able to maintain herself still she has been awarded monthly maintenance of Rs. 6,000/- by the respondent no.1 by Ld. Family Court, Panipat. **Hon'ble Justice Anita Chaudhary of High Court of Punjab and Haryana at Chandigarh** has held in a landmark judgment in **CRM-M No. 8864/2016** vide its judgment dated 29-01-2018 that applicant/wife has to establish that she is unable to maintain herself and the Ld. Magistrate has to enquire into the means of husband alone and exclude the means of wife altogether from consideration. Rather, there is definite indication of laws, that the financial resources of wife are also a relevant consideration. In the case in hand, the applicant/wife has been unable to show that she is unable to maintain herself. She has not been able to show the income of husband.*

*It is further submitted that the present application filed by the applicant/wife is a counter blast against the petition filed by the respondent/husband under section 13 of Hindu Marriage Act for divorce against the applicant. The respondent husband filed a divorce petition against the applicant on 05-08-2015 after waiting her 30 months on desertion ground and when the applicant received summons in above*

said divorce petition from the Hon'ble Court, then immediately the applicant filed present application along with application u/s 125 Cr.p.c. and complaint to police, which proves that the present application is creation of mischievous mind and is only a counter blast to the petition filed by respondent/husband. It is pertinent to mentioned here that this fact has admitted by the applicant/wife in her cross examination in the present case. So the application of the applicant/wife is liable to be dismissed. The same view has been held by **Hon'ble Justice A.K. Mittal and Ms. Sneh Prashar of High Court of Punjab and Haryana at Chandigarh** in their judgment dated 20-11-2014 titled as "**Sunita Vs. Sushil Kumar**".

Respected Sir, it is further submitted, that the applicant is not entitled for any relief of share household in the property, which belongs respondent no.2 to 6. In the case in hands, the respondent no.1 has no property. Due to the cruel and bad behavior of the applicant, respondent no .2 to 6 has already ended up all the relations with the respondent no.1 and applicant. Moreover, the respondent no.2 has also disowned the respondent no.1 from his movable and immovable properties in 2011 and also sent an application to S.P. Office Panipat, upon which investigation has carried out and the report of same is exhibited as Mark-R . The **Hon'ble Supreme Court of India** has also held in civil appeal no.5837 of 2006, **S.R. Batra and others vs. Truna Batra** that wife is only entitled to claim a right of resident in a shared household would only mean the house belonging to or taken on rent by the husband. The same view has been adopted by the **Hon'ble Punjab and Haryana High Court at Chandigarh** in its decisions cited in RSA No. 4398 of 2016, titled as **Varinder Kaur Vs. Jitender Kumar and another**, RSA no.2668 of 2013 titled as

**Sardara Ram Vs. Pramjeet Kaur** and Criminal Revision no.1253 of 2017 titled as **Krishan Kumar and others vs. Navneet @ Seema and others.** Sir, the respondent/husband was/is ready to take the custody of minor daughter Avantika from the applicant/wife and the respondent/husband is already paying maintenance to the applicant as per court order. It is worth-while mention here that the applicant/wife is a very egoistic, impatience and cruel lady, who voluntarily left the company of respondent/husband on 19.01.2013, due to her false ego and started to live with her parents. The applicant/wife moved more than 5/6 false/bogus complaints against the respondents on different dates to police authorities and she also accept it in her cross examination. It is further submitted after leaving the house and company of the respondent no.1 the applicant/wife had filed a application under section 125 Cr.P.C against the respondent no.1 on 31.01.2013, but the same was dismissed by the court of Sh Girraj Singh, the then, Ld. J.M.I.C., Panipat vide its order dated 24.07.2015, for want of prosecution which is Exhibited as **R-1** and the applicant gave 1<sup>st</sup> complaint to Police on the dated 01.02.2013 Exhibited as **R-2**, and 2<sup>nd</sup> complaint on dated 26.02.2013 Exhibit as **R-3**, and later on compromised the same after extorting huge amount from him and later on compromised in all above said complaints. It is pertinent to mentioned here that the facts stated in all the above said applications are highly contradicted, which clearly shows that the applicant/wife filed the applications on false and bogus facts, just the fetch money from the respondent/husband and it is settled proposition of law, that a person who concealed true and material facts from the Hon'ble Court and try to mislead the court for its own benefit is not entitled for any discretionary relief. Moreover, it is the applicant/wife, who herself left the company of respondent



husband without any legal reason, The respondent tried his best to call back the applicant/wife as his legally wedded wife, but on each and every time the applicant/wife refused to join the company of respondent/husband. This fact has proved from the document Exhibited as **R-** . Hence, the application filed by the wife deserves to be dismissed on this ground alone.

It is further submitted that the applicant/wife has examined four witnesses in support of her application, who are direct relative of the applicant and one of them is the father of the applicant. There are material contradictions between statements of all the witnesses. The applicant unable to prove her case from its own evidence. Moreover she also got failed to prove that she is aggrieved person. On the other hand, the respondent/husband has examined two witnesses in support of his defense and also tendered certain documents Exhibited as **R-1 to R-13** and Photographs **mark R-1 to R-60** and documents **mark R-61 and R-62** in his evidence from which it is proved that it is the respondent against whom actual cruelty took place and who is still facing lot of hardship just because of the applicant and the respondent is the real victim.

Sir the applicant had alleged that she never get treated by any doctor during and after the pregnancy and ill treated by the respondent. In its reply I submitted doctor prescriptions before and after the time of pregnancy and same is Exhibit as **R-8**. Applicant also alleged that the bill of doctor was paid by her father but in reality bill was paid by respondent Sandeep Kumar which is exhibited as **R-8**. Applicant further alleged that the respondents were unhappy due to the birth of girl but its completely wrong, in reply of this the respondent want to tell that in the occasion of birth of girl

*child respondents organize a Mata Jagran and some photographs of that event are Marked as **R-1 to R-60**. All these things clearly proved that the Applicant/wife filed fake case just to extort and fetch money from the respondent/husband.*

*Sir, it is further submitted that the applicant has filed present application only with a view to harass, humiliate and to create pressure upon the respondent, so the applicant can fetch handsome amount from the respondent in lieu of compromise in the present application as she did many time earlier.*

**As per Hon'ble Supreme Court of India in the Civil Appeal no. 5239 of 2002, in case titled as "Dalip Singh V/S State of U.P. & others" (Bench of Justice G.S. Singhvi & Justice Ashok Kumar Ganguli)** "A litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief interim or final.

*It is therefore, humbly requested that the Application filed by applicant/wife may kindly be dismissed with special costs and necessary actions may kindly be taken against the applicant for filing the fake application and giving false evidence before the court and to misuse the law of India, in the interest of justice.*

**Dated:-**

**RESPONDENT/HUSBAND**

*Sandeep Kumar S/o Sh. Ved Parkash*

*R/o Sondhapur, Jattal Road, Panipat*

***THROUGH COUNCEL***