

**In the Court of Amit Sharma, Civil Judge(Jr.Division),
Karnal.**

Complaint No.:41 of 2014

CIS No.:1000 of 2013

Date of Institution:8.8.2014/23.9.2011

Date of Order:4.3.2016

Shruti Kataria wife of Shri Pankaj Kataria and d/o Shri Om Parkash
Batra, resident of House No.50-52, Ram Nagar, Kachhwa Road, Karnal,
Police Station, City Karnal.

...Petitioner

Vs.

Pankaj Kataria son of Shri Leela Ram Kataria, resident of House
No.95/5, Second Floor, Block No.5, Charamwood Village, Faridabad.

...Respondent.

**Application for deciding the objection of
maintainability of petition on the ground of
limitation**

Present: Shri R.K.Kamra, counsel for the Applicant/Respondent.
Shri Anil Munjal, counsel for the respondent/Petitioner.

Order:-

This order of mine will finally dispose of an application
filed by the applicant/respondent for deciding the objection of
maintainability of petition on the ground of limitation.

2. It has been submitted on behalf of applicant/respondent that
he has filed his written statement in the abovesaid petition wherein he had
specifically taken an objection with regard to maintainability of

Amit Sharma,
JMJC,Karnal.

complaint as the same is not maintainable being filed by the petitioner after two years of leaving the matrimonial house. It is further submitted that the parties to the complaint are yet to led evidence and in case the issue with regard to maintainability of the complainant is not considered and decided then in that case it will result into miscarriage of justice. It is prayed that the present petition filed by the petitioner may kindly be rejected.

3. Reply to the said application was filed by the learned counsel for the complainant in which it has been stated the present application is not maintainable. On merits, it is submitted that once the congizance of the complaint has been aken by this court to summon the respondents then the question as claimed by the respondent cannot be adjudicated upon the basis of the instant application filed by the respondent. It is further submitted that all the abvoesaid facts required elaborate evidence for its conclusion as such the application under reply cannot be decided at this juncture of time when evidence of the case is yet to be adduced before this court. With these averments, dismissal of the application has been prayed for.

4. Arguments have been advanced before me by learned

counsel for the parties who have repeated the averments of the application and reply the instant application in their arguments. I have considered them in the light of peculiar facts and circumstances of this petition. It is observed that there is full force in the line of reasoning adopted by learned counsel for the applicant/respondent and the instant application moved by applicant/ respondent deserves to be allowed for the reasons mentioned hereinafter.

5. In the present application as per the averments of the petitioner, her marriage with the respondent was solemnized on 21.11.2008 at Gymkhana Club, Karnal and thereafter out of the said wedlock a child Ujwal Kataria was born. It is alleged by the petitioner that in July 2009 she was kicked out from her matrimonial home by the respondent and his family members and at that time she was having a pregnancy of about 3 months. Thereafter, during the period of July 2009 till the birth of first child in Jan 2010, the mother of petitioner convened Panchayats, however the respondent flatly refused to keep and maintain the petitioner and her minor son unless and until their demand of car is fulfilled. It is further alleged that several conciliation efforts were made in the Mahilla cell however the respondent and her family members did

not take the petitioner with them. Due to this a criminal case u/s 406,498-A was registered against the respondent and his mother.

6. By way of present petition, the petitioner has claimed various reliefs available to her under the Protection of Women from Domestic Violence Act, 2005 which includes protection order, residence order, maintenance relief, compensation and damages u/s 22, Maintenance Charges etc.

7. Reply to the said petition has been filed by the respondent and he has taken preliminary objection that respondent has got no locus-standi to file and maintain the present complaint and that the instant petition has been filed on false and frivolous ground with ulterior motive to harass and humiliate the answering respondents. It is specifically pleaded by him that complainant/petitioner is not residing with the respondent from July 2009 and she has left the house of the respondent on her own and no harassment or torture of the petitioner was committed by the respondent. It is further alleged that complainant left her matrimonial home on her own without disclosing about her pregnancy to him and no demand of dowry was made by him.

8. From the perusal of the petition, it is amply-clear that petitioner herself has claimed that she was thrown out of her matrimonial

home in the month of July 2009 and the present petition has been filed by her on 23.09.2011. This clearly shows that there is time gap of two years. Further, there is no specific averments in the petition that she has suffered any incidents of domestic violence from the respondent once she was thrown out of her home in the year 2009. There is no averment in the petition that after July 2009 the petitioner and the respondent have ever stayed together even for a day while the conciliation proceedings were going on between them. There is no averments in the present petition that any act of domestic violence was committed by the respondent during the Panchayat convened by her mother after petitioner was thrown out of her home in July 2009. Further it is undisputed that the present petition has been filed by the petitioner on 23.09.11. Therefore the only question left for the determination before this court is as to whether the present petition is time-barred or not in view of the provisions of the Domestic Violence Act? The relevant provision of Domestic Violence Act i.e. the provision u/s 28 reads as under:-

(1) Save as otherwise provided in this Act, all proceedings under Sections 12, 18, 19, 20, 21, 22 and 23 and offences under Section 31 shall be governed by the provisions of the Code

of Criminal Procedure, 1973(2 of 1974).

(2) Nothing in sub-section(1) shall prevent the court from laying down its own procedure for disposal of an application under section 12 or under sub-section(2) of Section 23.

9. As per section 28 of Cr.P.C, it is crystal clear that all proceedings u/s 12, 18, 19, 20, 21, 22 and 23 and offences u/s 31 shall be governed by the provisions of the Cr.P.C, 1973(2 of 1974). Therefore there is no doubt in the mind of this court that section 468 of the Cr.P.C is applicable on the proceedings of the Domestic Violence Act. For this, I placed reliance upon **Inderjit Singh Grewal Vs. State of Punjab, 2011(4) R.C.R. (Criminal) 1: 2012 CRI L.J.309** in which our Hon'ble the Supreme Court has held that the provisions under Section 468 Cr.P.C would apply to the Protection of Women from Domestic Violence Act, 2005. Therefore, in view of the provisions of Section 468 Cr.P.C. and in view of Sections 28 and 32 of the D.V. Act read with rule 15(6) of the Protection of Women from Domestic Violence Rules, 2006, the complaint under Domestic Violence Act could be filed within one year from the date of incident.

10. Accordingly, it is crystal clear that the instant petition filed by the petitioner under D.V. Act, 2005 is barred by the limitation in view

of the section 468 of Cr.P.C. as the same has been filed by the petitioner for more than 2 years after she was thrown out of her matrimonial home in the year July 2009. There is no explanation for the said delay and further no condonation of delay has been sought by petitioner while only filing of the instant petition. Accordingly, this court is of the considered view that instant application filed by the respondent seeking dismissal of the instant petition being barred by limitation deserves to be allowed and the same is hereby allowed. The petition filed by the petitioner under D.V.Act 2005 is not maintainable being barred by limitation. File be consigned to record room after due compliance.

Pronounced in Open Court:
4.3.2016

(Amit Sharma)
Judicial Magistrate Ist Class,
Karnal.

Note: All the 07 pages of this order have been checked and signed by me.

(Amit Sharma)
Judicial Magistrate Ist Class,
Karnal..4.3.2016

Amit Sharma,
JMIC,Karnal.

Shruti Kataria Vs. Pankaj Kataria

Present: Shri Rajinder Gupta, counsel for the petitioner.
Sh.Gagan Chugh, counsel for respondent.

Arguments heard on the application for deciding the objection of maintainability of petition on the ground of limitation. Vide my separate order of the even date, the said application has been allowed and the petition filed by the petitioner under D.V.Act is not maintainable. File be consigned to the record room after due compliance.

(Amit Sharma)
JMIC,Karnal..4.3.2016