

ITEM NO.29

COURT NO.16

SECTION II-B

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

SPECIAL LEAVE PETITION (CRIMINAL)..... Diary No(s).34053/2019

(Arising out of impugned final judgment and order dated 16-09-2016 in CRLR No.609/2015 passed by the High Court Of Punjab & Haryana At Chandigarh)

KAMLESH DEVI

Petitioner(s)

VERSUS

JAIPAL & ORS.

Respondent(s)

(With appln.(s) for c/delay in filing SLP & exemption from filing O.T.)

Date : 04-10-2019 This petition was called on for hearing today.

CORAM :

HON'BLE MS. JUSTICE INDIRA BANERJEE
HON'BLE MR. JUSTICE M.R. SHAH

For Petitioner(s) Mr. Anurag Pandey, AOR
Ms. Reena Pandey, Adv.
Ms. Pushpa Kishore, Adv.

For Respondent(s)

UPON hearing the counsel the Court made the following
O R D E R

Delay condoned.

This special leave petition is directed against an order dated 16th September, 2016 passed by the High Court of Punjab & Haryana at Chandigarh, dismissing Criminal Revision No.609/2015, filed by the petitioner under Section 401 of the Criminal Procedure Code.

Signature Not Verified
Digitally signed by
SARITA P. KISHORE
Date: 2019.10.04
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Reason:

By a judgment dated 22nd October, 2012 the Judicial Magistrate (First Class) dismissed a complaint filed by the

petitioner under the provisions of the Protection of Women from Domestic Violence Act, 2005.

An appeal filed by the petitioner against the said judgment and order has been dismissed. The revisional application filed by the petitioner under Section 401 of the Criminal Procedure Code for quashing the appellate order of the Sessions Judge and the judgment and order of the Judicial Magistrate (First Class) has been dismissed by the order impugned in the special leave petition.

The High Court has rightly found in effect that the ingredients of domestic violence are wholly absent in this case. The petitioner and the respondents are not persons living together in a shared household. There is a vague allegation that the respondents are family members. There is not a whisper of the respondents with the petitioner. They appear to be neighbours.

The special leave petition is dismissed. Pending applications shall stand disposed of.

(Beena Jolly)
Branch Officer

(Sarita Purohit)
AR-cum-PS

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.5929 of 2015 and
Criminal Revision No.609 of 2015

.....

Date of decision:16.9.2016

Kamlesh Devi

...Petitioner

v.

Jaipal and others

Respondents

....

Coram: Hon'ble Mr. Justice Inderjit Singh

.....

Present: Mr. Sharad Aggarwal, Advocate, Legal Aid Counsel for the
petitioner.

.....

Inderjit Singh, J.

Cr. Misc. No.5929 of 2015:

For the reasons mentioned in the criminal miscellaneous
application, the delay of 118 days in filing the criminal revision petition is
condoned.

The criminal miscellaneous application stands disposed of.

Criminal Revision No.609 of 2015:

This criminal revision petition has been filed under Section 401
Cr.P.C. against the impugned judgment dated 2.8.2014 passed by learned
Sessions Judge, Narnaul, dismissing the appeal filed against the judgment
dated 22.10.2012 passed by learned Judicial Magistrate Ist Class, Narnaul,
whereby the complaint filed under Sections 17, 18, 19, 20, 21, 22, 23 and 26
of the Protection of Women from Domestic Violence Act, 2005 (hereinafter

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referred to as 'the Act') was dismissed.

I have heard learned counsel for the petitioner and have gone through the record.

From the record, I find that Smt. Kamlesh Devi-petitioner/complainant aggrieved person filed the complaint against Jaipal, Krishan Kumar, Sandeep alias Chhotaniya, Dharma Devi, Anita, Sumitra Devi, Lali Devi and Maya alias Bhateri for the offences under Sections 17, 18, 19, 20, 21, 22, 23 and 26 of the Act.

The brief facts of the case as noted down by the learned Judicial Magistrate Ist Class, Narnaul, in his judgment are as under:-

“The brief facts of the complaint of the complainant are that the petitioner and respondents are the family members of the same family and have been living in same premises. It is further stated that husband of the petitioner is retired from BSF and she has three daughters, namely, Urmila, Anusaya and Gaytri. Anusaya and Gaytri are unmarried daughters of the petitioner and have been going to Krishna Nagar College for their study. Further respondents have made a gang and are quarrelsome persons and whenever daughters of petitioner i.e. Anusaya and Gaytri went to their college, respondents Jaipal, Krishan Kumar and Sandeep followed them and tease them and also did obscene activities. Husband of the petitioner Sube Singh also made a complaint to Sarpanch of Village Gaud against the respondents then in presence of respectable of the village, the

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respondents also apologized in writing on 5.8.2008. Thereafter, they remained normal for some time but afterwards again started those obscene activities. Hence, finding no other alternative for protection from domestic violence, the present complaint has been filed.”

The learned Judicial Magistrate Ist Class, Narnaul, after discussing the provisions of the Act found that none of the witnesses on record has established any fact to the effect that the respondents and the petitioner have been living in a shared household and the respondents have caused domestic violence upon them. The Court below also held that no violence whatsoever has been alleged of any kind within the premises of shared household. The only allegation is that though they did obscene activities with the daughters of the petitioner, the allegations as per pleadings are that respondents Jaipal, Krishan Kumar and Sandeep used to misbehave with the daughters of the petitioner, namely, Anusaya and Gaytri while they went outside for the purpose of their study and they used to do obscene activities with the daughters of the petitioner. The findings given by the learned Judicial Magistrate Ist Class, Narnaul, are correct as per evidence and law. No illegality has been committed by the learned Judicial Magistrate Ist Class, Narnaul.

From the perusal of the complaint itself, it transpires that the offence, if any, which has been alleged, falls in the provisions of IPC and it does not attract the provisions of the Act. The important fact that accused Jaipal, Krishan Kumar and Sandeep are the nephews itself will not bring the

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case under the Act.

The appeal filed by the present petitioner against the judgment of the learned Judicial Magistrate Ist Class, Narnaul, before the learned Sessions Judge was also dismissed by giving the reasoning as per law. The learned Sessions Judge also discussed that there is not an iota of evidence that the petitioner Kamlesh Devi and the respondents are living together in share household. Rather, certificate Ex.C.3/Ex.PW.1/C also shows that it has been mentioned therein that Sube Singh alias Shiv Lal, Siri Ram, Chhote Lal and Babu Lal reside separately in separate houses. Protection Officer had also reported that Kamlesh Devi along with her family is residing at Narnaul since a long time and had performed the marriages of her daughters at Narnaul and Smt. Kamlesh Devi and her husband are not residing in Village Gaud. The learned Sessions Judge, Narnaul also held that Kamlesh Devi-petitioner is not aggrieved person under the provision of Section 2(a) of the Act and is not entitled to any protection under Section 18 of the Act. A perusal of the judgments passed by the Courts below shows that the same have been passed as per evidence and law and the same are upheld.

Finding no merit in the present criminal revision petition, the same is dismissed.

September 16, 2016.

(Inderjit Singh)
Judge

hsp

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