

(2012) 09 P&H CK 0291

High Court Of Punjab And Haryana At Chandigarh

Case No: T.A. No. 535 of 2011 (O and M) and Suit No. 227 of 10.08.2011

Amandeep Kaur

APPELLANT

Vs

Kuldeep Singh and Others

RESPONDENT

Date of Decision: Sept. 13, 2012

Acts Referred:

- Constitution of India, 1950 - Article 227
- Specific Relief Act, 1963 - Section 41

Citation: (2012) 168 PLR 780

Hon'ble Judges: K. Kannan, J

Bench: Single Bench

Advocate: Vaibhav Sehgal, for the Appellant;

Judgement

K. Kannan, J.

The application for transfer is sought by the wife setting the several reasons as to how the transfer would be necessary. It is also pointed out that the husband has filed a frivolous suit only to harass her. Going by the contentions raised, I had sought for requisition of file from the Court below. I had expressed in Court on 06.08.2012 and made it a part of the docket order that the suit was prima facie untenable and it has to be examined whether a transfer of the case would be necessary at all. The file has been requisitioned and it is before this Court. The husband who has been represented through counsel is absent. The suit has been filed by the husband against his wife and the parents of the petitioner/wife for the following relief: restraining the defendants foisting the plaintiff in any false criminal case with the help of police illegally and further restraining the defendants from harassing the plaintiff on the basis of any false and frivolous application. The petitioner's sisters have been also arrayed as respondents 4 and 5. The prayer in suit is for injunction restraining the defendant from filing any false case with the help of the police and restraining the defendant from harassing the plaintiff. Section 41 of the Specific Relief Act details circumstances when injunction shall be refused. A

prosecution of proceeding itself cannot be a relief that can be sought under the guise of an apprehension that a false case can be instituted. A plaintiff cannot ask for a restraint against a false case to be instituted, for, it should be only taken that the plaintiff is essentially asking for prosecution of any legal proceeding itself. If the framing of suit was to be judicially approved then, it would mean that every plaintiff get over an interdict of the provisions of the Act by the averment that the prosecution of any suit is for an illegal or untenable remedy. If any such suit were to be instituted and it is to be contested that it is false and frivolous, there are provisions both under the civil and criminal procedure for rejection of plaint, for discharge of accused and for quashing of complaint, respectively. It cannot be presaged as to whether a complaint or a suit were to be treated as frivolous even before the actual initiation of the action. The suit, therefore, for a declaration that the defendant shall not institute any false case with the help of police, cannot be granted. A further prayer that the defendant shall not harass the plaintiff by any false case can only be by means of an actual proof of harassment, which could secure to the plaintiff in proceeding a relief of judicial separation or divorce or if the wife is joined by other persons involving him in mental harassment or suffering, a remedy for damages would also be available. By all accounts a suit on the prayer contained in the plaint cannot survive consideration. Such a suit is not a suit in the eye of law and it will be a waste of judicial time to entertain the case on board. The suit ought to be summarily thrown out of the judicial corridors. The power of a Court under the jurisdictional ambit of Article 227 ought to be available to enforce an appropriate supervision to see that there is no misuse or abuse of judicial process. I find the suit to be one such exercise indulged by a husband against the wife and all the members of the family. The plaint is quashed and taken off the record.

2. The transfer application is disposed of as having become unnecessary.