

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **LPA No. 64/2009 & CM Nos. 1801, 4625 & 4770 of 2009**

% Decided on : 6th May, 2009

MEENA CHAUDHARY @ DR. MEENA P.N. SINGH

..... Appellant

Through: Appellant in person.

versus

COMMISSIONER OF POLICE & ORS. Respondents

Through: Ms. Jyoti Singh, Mr. Amandeep Singh and Mr. Ankur Chhibber, Advocates for Respondent Nos. 1, 2, 3, 5 and 6.

Mr.M.N.Krishnamani, Sr.Adv. with Mr. Atul Jha, Adv. for Respondent No. 4

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE NEERAJ KISHAN KAUL

1. Whether the Reporters of the local newspapers be allowed to see the Judgment? Yes
2. To be referred to the Reporter or not? No
3. Whether the Judgment should be reported in the Digest? No

ORDER

1. The present appeal is directed against the judgment of the learned Single Judge dated 7th January, 2009. Briefly stated, the facts of the present case are as follows:-

2. The appellant had filed a writ petition against certain police officers as also respondent No. 4, Mr. Basant Kumar Chaudhary, who she stated is her husband and one Mr. Jaspal Singh who is said to be a R/o B-108, Hill View Apartments, Vasant Vihar, Delhi. The writ

petition was filed by the appellant (the original petitioner in the writ petition) *inter alia* to seek a writ of mandamus to direct the police authorities to provide her full security of life, liberty and property. She also sought a writ of mandamus to direct the police authorities from obstructing her from using the residential premises bearing No. B-108, Hill View Apartments, Vasant Vihar, Delhi and to direct the said respondent to allow her to occupy and use the said premises.

3. The case of the appellant is that she is the legally wedded wife of respondent No. 4, Mr. Basant Kumar Chaudhary. The appellant and the respondent No. 4, admittedly, have two issues from their wedlock. According to the appellant, she filed a case against respondent No. 4 in Crime Against Women Cell (in short 'CAW Cell') complaining that she was not being allowed to reside in the aforesaid apartment of her husband. This complaint, according to the complainant, was filed on 30th April, 2008. It is the case of the appellant as also her statement made to the police that she was married to respondent No. 4 in the year 1973, who deserted her in 1989 and thereafter married another woman in U.K. She further stated that in November, 2004 she came to know that Mr. Basant Kumar Chaudhary was living in Hill View Apartments. She tried to contact Mr. Basant Kumar Chaudhary but she was not permitted to talk to him. She was left with no money, so she came to B-108, Hill View Apartments, Vasant Vihar, Delhi. She entered the flat as she was having the keys to the door. She was only cleaning the apartment and had called the '*kabadi*' for removing the waste articles. While she was doing so, she was stopped by the police. On

the other hand, Mr. Basant Kumar Chaudhary stated that he had been living with his wife Ms. Vidushi for the last 20 years in the aforesaid apartment. He further stated that prior to this marriage, he was married to the appellant but later the two had been divorced by a court in Bhutan in the year 1989. Since both parties had set up contradictory cases, the police could not arrive at any definite conclusion. Consequently, both parties were directed to maintain peace in the area. It was further stated by the police that on enquiry being conducted from the neighbours, the neighbours had stated that respondent No. 4, Mr. Basant Kumar Chaudhary was living for the last 20 years along with his wife Ms. Vidushi. They had never seen or heard of the appellant at his place. It was further stated by the police that on 14th May, 2008, an application under Section 156 (3) of the Code of Criminal Procedure, 1973 (in short 'Cr.P.C.') had been received from the court of Sh. Sameer Vajpayee, Patiala House Courts, New Delhi, in which Mr. Basant Kumar Chaudhary, respondent No. 4 herein had prayed for registration of a case against the appellant herein. An action taken report was called for by the learned Magistrate on 16th May, 2008. After perusing the same and hearing the arguments of the counsel for respondent No. 4, the learned Magistrate had directed registration of a case on 16th May, 2008 itself. Accordingly, a case being FIR No. 125/08 dated 17th May, 2008, under Sections 457/380 of the Indian Penal Code, 1860 had been registered in the police station and the same is pending investigation. It was further stated that the dispute between the appellant and Mr. Basant Kumar Chaudhary, respondent No. 4 was a civil dispute. Pertinently, the police authorities also stated that no

threat to the life of the appellant has been perceived and in the facts and circumstances of the case, no police protection was at present warranted. It was lastly stated that the police officials were in no manner responsible for dispossessing any party from the occupation of the apartment in question or in putting any party into possession thereof. A further status report was filed by the police on 15th October, 2008. As per this status report, an enquiry was conducted into the complaint made by the appellant to the CAW Cell.

4. During the course of enquiry, no evidence of harassment came to light. The appellant was requested to get her statement recorded in connection with the document of divorce submitted by Mr. Basant Kumar Chaudhary but she refused to give any statement to the police. It was also noticed that the appellant had not filed any complaint of harassment/torture caused by respondent No. 4 during the last 19 years since they were separated. The appellant had been advised to utilize services of the Protection Officer to get relief under the provisions of The Protection of Women from Domestic Violence Act, 2005 (in short 'PWDV Act'), if she so desired. The complaint filed by the appellant at CAW Cell had been closed on 25th September, 2008, since the matter was subjudice on the aspect whether the appellant is the legally wedded wife of respondent No. 4 or not.

5. It was also stated on behalf of respondent No. 4 that marriage between the appellant and respondent No. 4 was dissolved by mutual consent by a Bhutan court on 29th September, 1988. He further stated that the appellant has filed for divorce before the District

Court, Jorhat vide Matrimonial Suit No. 10/91. It has been stated that a divorce decree was granted and this fact had been admitted by the appellant herself in paragraphs 2 and 6 of her plaint in Suit No. 351/2000 filed by her against her brothers before the District Court, Patna. He further stated that in the year 1996, the appellant had also approached the British court for seeking divorce from respondent No. 4, although she was already divorced in 1989 itself. She obtained an *ex parte* decree of divorce, which was made absolute on 22nd April, 1999. The appellant in response submitted that the divorce decree obtained from the court in Bhutan had no force, since the court in Bhutan had no jurisdiction to grant the said decree. She further submitted that it was respondent No.4, who had initiated the suit in the court of District Judge, Jorhat to seek divorce against her. She submitted that the aforesaid suit was dismissed on 30th May, 1998 for non-prosecution and thus, there was no valid decree of divorce between the appellant and respondent No. 4 and, therefore, the marriage subsists.

6. The learned Single Judge held that the appellant and respondent No. 4 were divorced on the basis of a divorce decree passed by District Court, Jorhat which remained completely unsubstantiated. The learned Single Judge also took note of the fact that the appellant did not deny the fact that she had initiated divorce proceedings against respondent No. 4 in U.K. which resulted in a final and absolute decree of divorce between the appellant and respondent No. 4. To this divorce decree, her reply was that the High Court of England did not have the jurisdiction to dissolve the

marriage between the appellant and respondent No. 4 which had been solemnized in Patna, India.

7. The learned Single Judge took note of the fact that it was not disputed by the appellant that in a title suit filed by her against her brothers in respect of certain properties, the stand taken by the appellant was that her marriage with respondent No. 4 stood dissolved.

8. The learned Single Judge rightly came to the conclusion that the issue whether the appellant was the legally wedded wife of respondent No. 4 or not was, therefore, a highly contested issue and involved the determination of disputed questions of fact as the appellant who was confronted with mutual divorce decree passed by the court in Bhutan and the divorce obtained by her from the British Court contended that these were forged and fraudulent decrees passed by courts without jurisdiction. The learned Single Judge rightly observed that the said issue would have to be determined by a competent court before whom this issue is raised keeping in view the pleadings of the parties.

9. We also find no fault with the finding of the learned Single Judge that the appellant could not have asserted a right of residence in the said apartment even if she is assumed to be the legally wedded wife of respondent No. 4, till the said apartment continued to remain the property of the mother of respondent No. 4. Only after respondent No. 4 was recognized as the owner of the said apartment,

such a right could be claimed by the appellant, provided she had succeeded in establishing her status as the 'wife' of respondent No. 4. Merely by disposing off the said apartment, respondent No. 4 could not have avoided his liability (if such a liability exists). The learned Single Judge, thus, held that even if it is accepted that the said apartment had been disposed of by respondent No. 4 in August, 2008, if the appellant was able to establish her status as the 'wife' of respondent No. 4, she could lay a claim to live in any premise owned by respondent No. 4 and such a claim would have to be examined on its merits and would not be liable to be rejected at the threshold without examination on merits.

10. The learned Single Judge also took note of the fact that the appellant had already initiated proceedings under Section 12 of the PWDV Act in the court of Additional Chief Metropolitan Magistrate (in short 'ACMM'), Patiala House Courts, New Delhi in Suit No. 51/2008 which is being contested by respondent No. 4. Relief sought in those proceedings by the appellant was for a direction to respondent No. 4 herein to secure the same level of alternative accommodation for the appellant as last enjoyed by her in her shared household or to pay rent for the same and to restrain respondent No. 4 from entering into the said accommodation. The learned Single Judge, thus, correctly held that the appellant having invoked an alternative efficacious remedy should pursue the same.

11. We see no infirmity in the finding of the learned Single Judge that the learned Magistrate would be much better equipped to deal

with all the issues, including the issue as to whether the marriage between the appellant and respondent No. 4 herein subsists or not, since the fundamental premise on which the relief sought by the appellant is based on the fact that she continues to be the legally wedded wife of respondent No. 4. The learned Single Judge was right in not being inclined to issue any direction to the respondent police authorities since the police authorities stated that they did not perceive any threat to the life of the appellant. However, the learned Single Judge left it open to the appellant to approach the police, in case, any threat was received by her to her life, liberty or property and the police was directed to take timely and appropriate measures upon assessment of any further threat perception in respect of the appellant. The writ petition was correctly disposed of by the learned Single Judge leaving the appellant free to pursue her rights and remedies under the law including the Suit No. 51/2008 pending before the learned ACMM, Patiala House Courts, New Delhi.

12. The appellant has contended in the present appeal as also in her application under Sections 26 and 36 of PWDV Act that respondent No. 4 was disposing of all the joint family properties along with the matrimonial home. The appellant has also submitted that she has been brought on the road through circumstances created by respondent No. 4. The appellant has also claimed monetary relief as she is without any source of income and is unable to maintain herself.

13. During the pendency of the proceedings before us, we had

passed an order directing respondent No. 4 to produce before the Court the following amongst other documents:-

- (a) His salary certificate.
- (b) His monthly income from his salary and other sources.
- (c) Copies of income tax returns for the assessment years 2007-08 and 2008-09.

Pursuant to our directions, an affidavit was filed by respondent No. 4 placing these documents before us. From a perusal of these documents, it appears that respondent No. 4 has a take home pay of approximately Rs. 3.49 lacs per month.

14. Although we are in agreement with the findings of the learned Single Judge and conscious of the fact that the petitioner has resorted to proceedings under PWDV Act, we cannot be unmindful of the physical and mental state of the appellant, as was evident to us during the course of hearing. A perusal of the proceedings in Suit No.51/2008 reveals that the hearing on the interim application has been delayed for a long time. C.C. No. 51/2008 was registered on 17th July, 2008. To begin with, summons could not be served as no proper facilities were provided to the Protection Officer. The Chief Secretary was directed to file a report on 22nd July, 2008 as to why proper facilities had not been made available to the Protection Officer. Thereafter, the matter came to be listed from time to time. The appellant made a prayer for *interim* relief however, the learned Magistrate was of the view and observed in his order dated 12th August, 2008 that only after the matter is argued at length, the question of grant of relief to the appellant could be considered. The

appellant also moved a revision petition before the Additional Sessions Judge as she had not been granted any *interim* relief. On 27th September, 2008, the appellant was permitted to withdraw her revision petition with liberty to pursue her matter before the learned Magistrate and also to move an application for early hearing. The trial court was also directed by the learned Additional Sessions Judge to expedite disposal of the *interim* application of the appellant. Thereafter, again the matter was listed on several dates but got adjourned on some ground or the other. The respondent was proceeded *ex parte* on 9th January, 2009. Thereafter, the matter was again adjourned from time to time. The respondent moved an application for setting aside the *ex parte* order dated 9th January, 2009. On 16th February, 2009, the *ex parte* order against the respondent was set aside in the interest of justice. Thereafter, the same story continued and the matter was adjourned for one reason or the other. However, no order was passed on the application of the appellant for *interim* relief. The appellant's application for *interim* relief and maintenance is still pending.

15. Though the appellant is a qualified Doctor, to us it appears that she is not in a state to practice as a professional and earn a living. Given the physical and mental condition of the appellant, as was evident to us during the course of hearing, we deem it fit and proper in the interest of justice to direct the respondent No.4 to pay to the appellant *interim* maintenance of Rs. 25,000/- per month till the decision on grant of *ad interim* maintenance is taken in Suit No.51/2008. The respondent will also deposit the litigation

expenses amounting to Rs. 25,000/- in Suit No. 51/2008 before the learned Magistrate which the appellant would be entitled to withdraw to enable her to pursue her legal remedies. We are persuaded to grant this *interim* maintenance because of the hapless condition of the petitioner and the fact that she does require some bare minimum maintenance for her upkeep and well being. The learned Magistrate shall decide the application for interim maintenance as expeditiously as possible and in any event within a period of three months from today.

16. No observation made in this order shall be taken as an expression of a view by this Court on the merits of the case of either party. The appeal is, accordingly, disposed of in the above stated terms. All the pending applications also stand disposed of.

CHIEF JUSTICE

NEERAJ KISHAN KAUL, J

May 6th, 2009
sb/RS