

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

Date of Reserve: September 20, 2010

Date of Order: 4th October, 2010

+ Crl.M.C.No. 4246/2009

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04.10.2010

Razia Begum

... Petitioner

Through: Mr. Ajay M. Lal, Advocate

Versus

State, NCT of Delhi & Ors.

... Respondents

Through: Mr. Sunil Sharma, APP for the State

Mr. S.D.Ansari, Advocate for the respondents

Crl.M.C.No. 4375/2009

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04.10.2010

Abdul Rub & Ors.

... Petitioners

Through: Mr. S.D.Ansari, Advocate

Versus

Razia Begum

... Respondent

Through: Mr. Ajay M. Lal, Advocate

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether judgment should be reported in Digest?

JUDGMENT

These two petitions have been filed assailing order dated 29th October, 2009 passed by the learned Additional Session Judge. One petition has been filed by the Smt. Razia Begum widow of the deceased Abdul Rauf and other has been filed by her father-in-law, brothers-in-law and others who were made respondents in the application under Section 22 of Protection of Women from Domestic Violence Act, 2005 (in short ***Domestic Violence Act***) by Razia Begum.

2. In her application under Domestic Violence Act, Razia Begum had made 11 respondents and she specified her relations with respondents as under:

2. That the complainant/aggrieved person married to one Abdul Rauf on 1.10.1995 who was the son of respondents no. 3, 7 & 9 and brother of respondents no. 1, 2, 4, 5, 8, 10 & 11 and dewar (brother-in-law) of respondent no.6. That the marriage between the complainant/aggrieved person with the aforesaid late Abdul Rauf was duly performed and solemnized on 1.10.1995 in accordance with all essential Muslim/Islamic customs rites and ceremonies, and law at Delhi. However, unfortunately the husband of complainant/aggrieved person had expired on 2.9.2006.

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4. That respondent no.1 and respondent no.8 are the jeth of the complaint/aggrieved person respondent no.2 is the father-in-law, respondents no. 3 & 4 are dewars, respondents no. 5 & 9 are mothers-in-law, respondent no.6 is the jethani of the complainant, respondent no. 7, 10 & 11 are nands (sisters-in-law).

3. The order of learned MM passed under Section 22 of Domestic Violence Act shows that the order was passed against five male respondents and all woman respondents seem to have been dropped. The five respondents against whom order has been passed are Abdul Rab, Abdul Samad, Abdul Khaliq, Kasim and Abdul Wahab. While first four respondents have been shown as residents of H.No. 450 Chawri Bazar, Chittla Gate, Jama Masjid but the fifth respondent i.e. Abdul Wahab has been shown as resident of H.No. 1456, Kala Mehal, Khirki, Jama Masjid, Delhi. Vide her order, the learned MM directed payment of maintenance of ₹ 10,000/- p.m. to the wife from the date of filing of petition and also held that widow was entitled to stay/reside at the second floor of the joint household and could be evicted only after due process of law. However, order of learned MM did not specify which of the respondents was liable to pay what amount and why

4. In appeal before the learned Additional Sessions Judge, the relatives of widow did not assail the order regarding residence given to the widow and stated that she was already living there and they have filed civil suit in this respect but

assailed the order for granting maintenance. The learned Session Judge in appeal reduced the maintenance from ₹ 10,000/- to ₹ 6,000/- vide his order dated 29th October, 2009 both the parties are before the Court.

5. Neither the order of learned MM nor the order passed by learned Additional Sessions judge specify as to which of the respondent out of the five would be liable to make the payment and why. The learned MM has only discussed the broad allegations and counter allegations but her order is conspicuously silent as to who were in the domestic relationship with the widow and who out of the five persons had deprived the widow of financial resources, if any, and who was liable to pay maintenance. Same is true in respect of the order passed by learned Additional Session Judge. The order of learned Additional Sessions Judge is equally silent as to who would be liable to pay the maintenance.

6. It has to be noticed that although Domestic Violence Act is not a penal law but it is a peculiar Act where non-compliance of the order passed under the Act has been made as an offence under Section 31 of the Act and an FIR can be registered against the person who does not comply with the order and this offence is triable by the same Magistrate who passed the interim order for protection or maintenance. In view of this provision under Section 31, it becomes incumbent and responsibility of the Magistrate to be careful in passing order and to specify as to whether there was domestic relationship between the aggrieved person and the respondent and who was the person responsible for compliance of the order.

7. Under Domestic Violence Act every relative of the husband cannot be made as a respondent. Only those persons can be made respondents, who satisfy the definition of Section 2(q) which reads as under:

“respondent” means any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act:

Provided that an aggrieved wife or female living in a relationship in the nature of a marriage may also file a complaint against a relative of the husband or the male partner.

8. Thus, in order to fix liability upon a respondent the respondent must be a person who is or has been in domestic relationship with the aggrieved person. Domestic relationship is defined in Section 2(f) of the Act which reads as under:

“domestic relationship’ means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family.”

Thus, it is apparent from above definition that in order to constitute domestic relationship there must have been living together in a shared household and there must be relationship as specified in Section 2(f).

9. The entire complaint of the complainant/Razia Begum does not show that she was in domestic relationship with each of the respondents nor the orders of the learned MM or Sessions Judge show that why the order has been passed against all male relatives named by the complainant in her complaint, without coming to a conclusion whether any domestic relationship existed between the aggrieved person and the respondents.

10. One of the respondents against whom order has been passed is Abdul Wahab. He has not lived even in the house where aggrieved person Razia was living. The learned MM and learned Sessions Judge passed maintenance order against him also. The parentage of respondent Kasim has not been given in the complaint. The complaint also shows that even cousin (brother) of the husband has been made a respondent. It is expected from the trial Court that before passing an order under Domestic Violence Act, it must be satisfied that there existed a domestic relationship between the petitioner and the respondent. It is also incumbent upon the Court to specify as to which of the respondents would be liable to make the payment of interim maintenance and why, keeping in view the provisions of the Act and the

decision of this Court in CrI. M.C. No.3878/2009 Vijay Verma v. State NCT of Delhi & Anr. [MANU/DE/1946/2010] decided on 13th August, 2010 and CrI. Rev. P. No. 253/2010 Harbans Lal Malik v. Payal Malik [MANU/DE/1842/2010] decided on 29th July, 2010

11. The trial Court and the Sessions Judge passed interim orders without satisfying themselves of basic requirement of domestic violence act that the order can be passed only against the 'respondents' who had been in 'domestic relationship' with the 'aggrieved person'. The order passed by the learned MM and the learned Sessions Judge are hereby set aside the matter is remanded back to learned MM to pass order in accordance with law and in accordance with judgments given in CrI. M.C. No.3878/2009 Vijay Verma v. State NCT of Delhi & Anr. and CrI. Rev. P. No. 253/2010 Harbans Lal Malik v. Payal Malik.

12. However, till the order is passed by the learned MM afresh, Razia Begum shall not be dispossessed from the portion of house in her occupation and petitioner Abdul Rub and Abdul Khaliq till then shall jointly pay a sum of ₹5,000/- p.m. as maintenance to Razia Begum from the date of application.

Both the petitions stand disposed of.

October 04, 2010
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SHIV NARAYAN DHINGRA, J.