

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

Judgment reserved on: August 08, 2011
Judgment delivered on: August 19, 2011

+ **CRL.M.C. NO. 2305/2008**

SATISH SHARMA

....PETITIONER

Through: Mr.S.C.Singhal, Advocate.

Versus

STATE & ANR.

....RESPONDENTS

Through: Ms. Jasbir Kaur, APP for R-1.
Mr. Vivek Singh Bishnoi, Advocate for
Mr.V.K.Ohri, Advocate for R-2.

CORAM:
HON'BLE MR. JUSTICE AJIT BHARIHOKE

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

AJIT BHARIHOKE, J.

1. Satish Sharma, the petitioner herein vide the instant petition under Section 482 Cr.P.C. is seeking following prayer:

"i) Criminal Complaint Case No.1363/2001 titled as "Shipali Sharma Vs. Gaurav Sharma & Ors" pending in the court of Shri Pooran Chand, Metropolitan Magistrate, New Delhi and the summoning order dated 31.05.2008 in the aforesaid complaint case be quashed so far as petitioner is concerned.

ii) Cost of the petition may also be kindly awarded in favour of the petitioner and against the respondent."

2. Briefly stated, facts relevant for the disposal of this petition are that the petitioner is husband of Late maternal aunt of Gaurav Sharma. Respondent No.2 Shipali Sharma was married to Gaurav Sharma on 29.04.2005. The marriage between them was not a success, which led to filing of a divorce petition by Gaurav Sharma. When respondent No.2 was served with the notice of divorce petition, she filed a complaint under Section 12 of the Protection of Women from Domestic Violence Act, 2005(for short "the Act") against Gaurav Sharma and five others, including the petitioner. Learned Metropolitan Magistrate, on consideration of the complaint under the Act found prima facie case against four out of six respondents named in the complaint and issued process for appearance against them. Petitioner is one of those named accused persons.

3. Feeling aggrieved by the above, petitioner Satish Sharma has preferred this petition under Section 482 Cr.P.C. seeking quashing of the complaint against him.

4. Learned Sh. S.C.Singhal, Advocate appearing on behalf of the petitioner has submitted that the complaint against the petitioner as also the summoning order dated 31st May, 2008 qua him are liable to be set aside for the reason that the learned Trial Court has totally ignored the definition of domestic relationship as given in Section

2(f) of the Act and failed to appreciate that the petitioner does not even fall within the definition of the respondent as given in Section 2(q) of the Act. Learned counsel submitted that the Trial Court has failed to appreciate that the petitioner is only a distant relative of husband of the respondent No. 2, being the husband of late sister of mother-in-law of the respondent No. 2, as such, in all probabilities, he is not expected to get involved in the domestic issues of matrimonial family of the respondent No.2. Learned counsel further argued that the Trial Court, while appreciating the complaint and preliminary evidence, has totally ignored that the allegations against the petitioner are highly vague and they relate to the year 2005 and 2006 whereas the complaint has been filed much later in May, 2008 as a counterblast to the divorce petition filed by Gaurav Sharma, husband of the respondent No. 2. Learned counsel contended that the petition under Section 12 of the Act filed by the respondent No. 2 is an abuse of process of law and is nothing but an attempt to rope in entire family of her husband with a view to pressurize them. Thus, he has urged for quashing of complaint as well as the summoning order dated 31st May, 2008 qua the petitioner.

5. Learned APP as also counsel for respondent No.2, on the contrary, has contended that the complaint under Section 12 of the Act, prima facie, discloses the involvement of the petitioner in domestic violence meted out to respondent No.2. Therefore, the

impugned summoning order cannot be faulted. Thus, they have strongly urged for dismissal of the petition under Section 482 Cr.P.C.

6. In order to appreciate the rival contentions, it would be useful to have a glance over the relevant provisions of the Act. Section 12 of the Act entitles an aggrieved person, or a Protection Officer, or any other person acting on behalf of the aggrieved person to apply to the Magistrate for grant of one or more reliefs under the Act. Section 18 of the Act enumerates the orders which the Magistrate can pass in favour of the aggrieved person. These orders include order prohibiting the respondent from (a) committing any act of domestic violence; (b) aiding or abetting in the commission of acts of domestic violence; (c) entering the place of employment, or school in the case of the child, of the aggrieved person; (d) attempting to communicate with the aggrieved person, (e) alienating any assets or operating bank accounts and bank lockers used or enjoyed by both the parties, or singly by the respondent and (f) causing violence to the dependants or other relatives of the aggrieved person. The list of protection orders mentioned in Section 18 of the Act is not exhaustive and it is open to the Magistrate to pass any other appropriate order in consonance with the objective of the Act. Section 19 of the Act confers power on the Magistrate to pass a Residence Order on being satisfied that domestic violence had taken place. Such order may restrain the respondent from

dispossessing the aggrieved person or disturbing her possession from the shared household, restrain him or any of his relatives from entering any portion of the shared household where the aggrieved person resides, restrain him from alienating or disposing of the shared household or creating encumbrances on it, restrain him from renouncing his rights in the shared household, and may also direct the respondent to remove himself from the shared household or to secure same level of alternate accommodation for the aggrieved person as was enjoyed by her in the shared household or to pay rent for the same. Under Section 20, the Magistrate while disposing of an application under Section 12 of the Act can direct the respondent to pay monetary relief to the aggrieved person in respect of loss of earnings, medical expenses, loss caused due to destruction, damage or removal of any property from her control and maintenance of the aggrieved person as well as her children. He can also order a lump sum payment or monthly payment of the maintenance. Under Section 21 of the Act, the Magistrate may grant temporary custody of the children to the aggrieved person and may deny visit of the respondent to the children of the aggrieved person. Under Section 22, the Magistrate can direct the respondent to make payment of compensation and damages for the injuries, including mental torture and emotional distress. Under Section 23, the Magistrate is competent to pass against the respondent such interim order as he

deems fit in the facts and circumstances of the case. It would thus be seen that on an application moved by the aggrieved person under Section 12 of the Act, the Magistrate can pass orders against the respondent granting relief to the aggrieved person and such orders are essentially civil in nature.

7. Respondent has been defined thus under Section 2(q) of the Act:

“(q) “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.”

8. From reading of above, it is apparent that respondent means a male adult person who is or has been in a domestic relationship with the aggrieved person. Domestic relationship has been defined under Section 2(f) of the Act:

“(f) “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.”

9. On reading of above definition, it is clear that 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 a relationship in the nature of marriage, adoption or are family members living together as a joint family. In the instant case, there is nothing in the complaint to suggest that the petitioner ever resided together with the respondent No.2 after her marriage or he ever shared the matrimonial home of respondent No.2 at any given time. Perusal of the copy of the complaint under Section 12 of the Act annexed with the petition would show that in the complaint, respondent No.2/complainant has shown her address as that of her matrimonial home H-1/125, Ground Floor, Vikas Puri, and the address of the petitioner as B-336, Hari Nagar, Delhi. From this, it is evident that the petitioner, who is husband of late sister of mother-in-law of respondent No.2, has been living at a different place, as such there is no question of his being in a domestic relationship with respondent No.2. As such, he does not fall within the definition of the “respondent” as defined under Section 2(f) of the Act. Perusal of the impugned order would show that the learned Metropolitan Magistrate, while passing the impugned summoning order, dropped the names of maternal uncle and aunt of husband of respondent No.2 from the array of accused persons for the reason that they do not fall within the definition of “respondent” under the act. The allegations against the maternal uncle and aunt of husband of respondent No.2 in the complaint are exactly similar to the

allegations against the petitioner, who also does not fall within the definition of “respondent”. Therefore, it is beyond comprehension as to how and for what reasons the learned M.M. has made a distinction between the petitioner and maternal uncle and aunt of husband of respondent No.2. Thus, in my view, the impugned order dated 31.05.2008 of learned M.M. suffers from inherent defect and cannot be sustained.

10. Coming to the merits of the case. The allegations against the petitioner in the complaint under Section 12 of the Act are reproduced thus:

“After the wedding on 29/4/2005, when I reached my in-laws in the morning all the respondents including Mrs. And Mr. Neeraj Sharma (*Maami and Maama*) Mr. Satish Sharma (Mausaji), who were also there in the house, told me in many words that the gifts and the cash given by my parents is not as per their status. They told me that my parents, should have given at least ₹20 lakhs in cash, my mother-in-law took over the entire cash, jewellery and gifts given to them by my parents and till date they are with my mother-in-law.....”

“Mrs. And Mr. Neeraj Sharma (*Maami and Maama*) Mr. Satish Sharma (Mausaji) used to visit our house frequently also used to force me to either to bring ₹20 lakhs from my father or to give divorce to my husband.....”

“On my first karwah chouth function I had put mehndi on my hands but my husband got angry and shouted at me saying that he did not consider me as his wife. He slapped me on my face and my mother in law washed off my mehndi forcefully. Mrs. and Mr. Neeraj Sharma (*Maami and Maama*) Mr. Satish Sharma (Mausaji) appreciated the treatment given to me.....”

“I am living in my matrimonial home and my in-laws including my brother-in-law and Mrs. and Mr. Neeraj Sharma (*Maami and Maama*) Mrs. Satish Sharma (Mausaji) told me that I should listen to their advice to get my husband back who has gone missing without leaving his address. They further told me

that I should bring ₹ 20 lakhs in cash so they can clear off their loans and she can settle with her husband. In last two years my parents have sent goods of worth ₹5 lakhs on asking of my in-laws on different festivals.”

11. On reading of the above, it is apparent that allegations made in the complaint qua the petitioner are vague and general in nature. The allegations relate to the alleged incidents of the year 2005 and 2006. Admittedly, prior to filing of complaint under Section 12 of the Act, respondent No.2 did not file any complaint with the Police or any authority regarding harassment or cruel treatment meted out to her by her in-laws or the petitioner. It is not disputed that husband of respondent No.2 had filed a divorce petition against her and she was served with the notice of divorce petition on 21.01.2008. The complaint under Section 12 of the Act has been filed after the receipt of the notice of the divorce petition. From this, it can be safely inferred that the complaint filed by respondent No.2 is a counterblast to the divorce petition. Otherwise also, undisputedly the petitioner is residing separately in his house at B-336 Hari Nagar which is at a fair distance from the matrimonial home of respondent No.2 i.e. H-1/125, Ground Floor, Vikas Puri. Therefore, I find it difficult to believe that the allegations of domestic violence made in the complaint against the petitioner are correct. On overall consideration of facts of this case, it appears that the complaint so far as the petitioner is concerned, appears to be motivated and it

appears to have been filed by respondent No.2 with a view to exert pressure upon her in-laws, particularly the husband who has filed divorce petition against her. Thus, in my view, the complaint qua the petitioner is nothing but an abuse of process of law, as such the complaint as well as the summoning order dated 31.05.2008 qua the petitioner are liable to be set aside.

12. In view of the discussion above, petition is allowed and the complaint under Section 12 of the Protection of Women from Domestic Violence Act, 2005 as also the summoning order dated 31.05.2008 qua the petitioner are hereby set aside.

(AJIT BHARIHOKE)
JUDGE

AUGUST 19, 2011

pst/akb