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THE HIGH COURT OF DELHI AT NEW DELHI

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CRL.M.C. 3071/2008

Date of Decision: 02.06.2012

Mr. Sunil Madan

....Petitioner

Through: Ms. Malvika Rajkotia & Mr.
Bandan Kumar, Advocates.

Versus

Mrs. Rachna Madan & Anr.

....Respondents

Through: Ms. Sugam Puri, Advocate.

CORAM:

HON'BLE MR. JUSTICE M.L. MEHTA

M.L. MEHTA, J.

1. This petition under Section 482 CrPC is filed seeking quashing of the criminal complaint No. 2622/1 filed against the petitioner by his wife and daughter (respondents No. 1 & 2 herein) under Section 12 of Protection of Women From Domestic Violence Act, 2005 (for short the 'Act').

2. At the outset, it may be noted that in the aforesaid complaint of the respondents, no order other than that of maintenance @ Rs. 30,000/- per month was passed by the Metropolitan Magistrate and even none of the parties have challenged the said order of maintenance. Thus, there is no order which is sought to be impugned in the present petition. Under the Act and particularly Chapter IV thereto, the Magistrate has been

empowered to hear and dispose of the applications for various reliefs. This is the Magistrate alone having jurisdiction, who has been empowered to pass the order of protection as also of residence including interim etc. under the Act. Then, the provisions also envisage ensuring the compliance of those orders by the Magistrate and even proceeding for punishment in breach of orders. Further, under Section 29 of the Act, an appeal has been provided to the court of Sessions from the orders of the Magistrate. This being the scheme of the Act and the primary duty and power being with the Magistrate and there being no order which is sought to be impugned, the complaint being at the nascent stage, I was outrightly of the view not to entertain this petition and remand back the matter to the concerned Magistrate. However, since after filing of the present petition under Section 482 CrPC, some proceedings have taken place before this court and the parties have also been heard, I am of the view that to some extent, the controversy can be addressed here leaving the rest to be done by the Magistrate.

3. The couple was married on 27.2.1990. A daughter (respondent No.2) was born on 4.4.1991. The aforementioned complaint was filed by the respondents in the court of M.M. on 8.10.2007. In the said complaint, the main allegations levelled by the wife (respondent No.1) against the petitioner were that he is an alcoholic and drug abuser, which he has not been able to give up despite repeated promises and some treatments. She alleged that after drinking, the petitioner would go violent and break expensive household things. She has mentioned about few specific instances of the petitioner having behaved in this manner and breaking

certain household articles. She alleged that even the petitioner would pick up quarrels and beat her after getting drunk. She has also mentioned few instances of having been beaten by the petitioner. She averred that she had been tolerating this at the cost of her social deprivation and embarrassment and also suffering due to his addiction as also his behaviour, but it has become difficult to stay with him as he often becomes aggressive and could harm anyone. She stated that now, she is unable to bear anymore at the hands of the petitioner and intends to live a peaceful life even if it requires living separately. She has specifically stated that now, it is not possible for her to live together. She alleged that having seen him throughout, she has bona fide apprehension that the petitioner may throw her and her daughter out of the matrimonial house where she has been living for about nine years. She alleged the petitioner to be owning various movable and immovable properties in his name, the details of which are stated in Paras 25 and 26 of the complaint. She further stated that she being the Director of the petitioner's company, was getting Rs. 22,000/- per month and was also being provided Rs. 98,000/- (approximately) per month as towards the household expenses. She sought restraint order against the petitioner from selling, alienating or creating third party interest in those properties. She has also sought the relief that the petitioner be restrained from taking possession of the car from her, which was in the name of the company.

4. The petitioner in reply to the complaint before Magistrate not only denied all the allegations levelled against him, but levelled various

counter allegations against his wife. He also, with equal force levelled allegations of his wife not at all being caring, picking up fights, using abusive language, not doing any household activities and even causing physical violence and being highly materialistic. This being the state of affairs, both levelling allegations of domestic violence against each other, it was not at all possible to determine in the present proceedings, all these allegations, all and counter allegations, all being triable issues. However, this being the admitted factual situation that both of them cannot live together any longer, some solution was required to be found out for resolving the controversies.

5. The wife had claimed the following reliefs in the complaint against the petitioner:

- (i) restraint order against the petitioner from selling, alienating or creating any third party interest in the assets mentioned in the complaint;
- (ii) restraint order against the petitioner from taking forcible possession of the Car DL-3CY-9031 from her;
- (iii) restraint order against the petitioner from dispossessing her from the premises where she has been living over the last nine years; and
- (iv) protection order for their safety and security from the petitioner.

6. In the aforesaid complaint, an interim order of maintenance dated 3.11.2007 was passed by the M.M., directing the petitioner to pay Rs. 33,000/- per month to the respondents, which the petitioner undisputedly has been paying to his wife.

7. The present petition is filed by the petitioner seeking quashing of the complaint filed against him by the respondents. The main grounds which have been alleged are that; (i) he was paying Rs. 33,000/- per month as maintenance to his wife apart from the expenses of running of the house. Undisputedly, he has been paying monthly maintenance as also the household expenses; (ii) he has given his wife fair amount of money over the years of their marriage and she has saved the same in the shape of deposits amounting Rs. 80 lakhs in her accounts; (iii) she has been seeking claims, interests and divisions in his self acquired assets, which was not permissible in the present summary criminal proceedings. In this way, she has been abusing the benevolent provisions of the Act. Now, since they cannot live together and the house where they are living was owned by him, she is insisting to stay in this house only and wants him to leave. In this regard, it is submitted that he is willing to offer her a reasonable two bedroom accommodation in the area of similar standard, and that she has been rejecting this offer only to extort large sums of money from him and strip him completely of his earnings.

8. On all these premises, the petitioner, while maintaining his offer to maintain his daughter and continue to pay the maintenance as also the alternative residential accommodation to his wife, has sought quashing of the complaint.

9. In the present proceedings, she also claimed removal of the petitioner from the said premises where she has been living for last nine

years; the educational expenses of their daughter studying in Australia; and the claim in the properties of the petitioner.

10. In reply to the present petition, the respondent wife while maintaining the behaviour and conduct of the petitioner to be aggressive, abusive etc. as mentioned in the complaint, has maintained to have right of residence in the same house where she has been living for the last about nine years, which she claims to be 'shared household' and also matrimonial home and asserts that the petitioner is liable to be removed therefrom. With regard to the offer of alternative accommodation given by the petitioner, it is stated that it does not debar her from the entitlement of the shared household in the same premises. With regard to the plea that she was being given adequate maintenance by the petitioner, it is stated that the monetary relief envisaged under Section 20 (2) of the Act presupposes the entitlement of adequate, fair and reasonable maintenance consistent with the standard of living to which aggrieved person is accustomed and which cannot be below par with that of the husband. With regard to the plea that she had savings of about Rs. 80 lakhs, it is stated that the question as to whether the petitioner has given his wife a fair amount of money over the years of their marriage as alleged by him, is a subject matter of trial. In this regard, it is also stated that she of her own had made investments of Rs. 40 lakhs under mutual funds which cannot be withdrawn and some meagre amount out of the savings made by her is lying in her saving account, which is insufficient to meet the exigencies of life and cannot be used by them for day to day living. With regard to the plea of the petitioner that the summary

criminal proceedings could not be used as division or claim of properties of the husband, it is stated that as per Section 26 of the Act, any relief may be sought under Sections 18 to 22 of the Act in addition to any other relief that an aggrieved may seek before a civil or criminal court and thus, she was entitled to seek claim in the properties.

11. I have heard learned counsels for the parties and perused the record.

12. With regard to the claim of the respondent regarding aforesaid car, the petitioner is stated to be having no objection in the respondent continuing to use the same for her personal travel if it was agreed that as and when this vehicle was required for the official or business works, the same would be made available. Since she has been using said car without any objection for considerable time, I am of the view that she can be permitted to use the same exclusively for her personal travel.

13. With regard to the maintenance, there is no dispute that the petitioner has been paying Rs. 30,000/- per month in terms of the order of the M.M. passed in the complaint.

14. With regard to her seeking claim in the properties of the petitioner, the learned counsel for the respondents stated that she had a right to claim her share. I do not find myself in agreement with the learned counsel for the respondents in this regard. As per Section 26 of the Act, all the reliefs which could be claimed under the Act, could be claimed by her in any

other suit or proceedings, but it nowhere provides for claiming of reliefs of shares or interests in the immovable assets of her husband by partition or otherwise. She could not claim these rights under the present summary criminal proceedings.

15. With regard to her claim of residence in the premises alleging the same to be shared household, there is no dispute. The admitted fact is that the premises in question where they both are living is a flat and that they both cannot live together any longer. On the one hand, the petitioner has offered alternative residential accommodation to his wife, who, on the other hand, has sought direction of his removal from the said premises, alleging that he can stay in the farm house at Sohna, Haryana. The question that may arise is as to whether she, while having a right of residence in the shared household where she has been living for about nine years, and that when both of them cannot live together, and the flat cannot be partitioned, whether the petitioner should be directed to remove himself or the petitioner can be directed to make arrangement of alternative accommodation. In fact, this seems to be the real bone of contention between the parties. They both are adamant to stay in this premises. The objective of providing right of residence to the wife was that she should not be left homeless by an action of the husband. In a situation like this, I cannot persuade myself to agree with the wife that the petitioner, who is the owner of the house and in view of the settlement that was arrived at between them by virtue of which she got few properties, should be directed to leave the premises and made to stay in a farm house at far away place. In the case of **Ajay Kumar Jain Vs.**

Baljit Kaur Jain, 160 (2009) DLT 401 (DB), this court observed that a wife cannot have right to live in a particular property and the same cannot become a clog on the property denying the right of the husband to deal with the property when he is willing to provide an alternative matrimonial home to her. It was also held that she cannot insist on residing in the suit property alone when the husband had offered a suitable alternative arrangement for her. In the given facts situation, the petitioner, who undisputedly has acquired this house in his name from his earnings cannot be made to leave this house and go and suffer alone in a far away place at this age. The offer given by the petitioner seems to be quite just and reasonable and till such time alternative arrangement of a suitable two bed room accommodation is made by the petitioner for the residence of his wife, she would continue to stay there and in case, they are unable to continue to live together any longer, the petitioner would give her market rent of the two bed room accommodation in the similar locality which the Magistrate will determine after hearing both the parties. Suitable order will be passed by the Magistrate in this regard.

16. With regard to the claim of the educational expenses of their daughter, the petitioner had been maintaining that this being his responsibility, he shall bear all the expenses of education and maintenance of his daughter till she is married or able to maintain herself. That aspect will also be further determined by the M.M. as from the material available on record, it is not gathered as to whether the daughter still continues to be entitled to maintenance by the petitioner.

17. With regard to her claim seeking protection from the petitioner, so long the couple continues to reside in the same premises, it is expected that they shall not give any cause of complaint to each other. However, protection order, if any required, will be passed by the Magistrate.

18. The scheme of the Act does not envisage passing of any restraint order against the petitioner in respect of his assets, movable or immovable except the shared household. Thus, no order can be passed restraining the petitioner in dealing with the properties in the manner he likes. The remedy, if any, in this regard, would be available to the respondents not in the present proceedings, but elsewhere.

19. There was a settlement agreement arrived at between the parties on 2.6.2011. Though copy of the settlement is not on record but, it is gathered that one of the terms of settlement was that two plots bearing Nos. 1225 & 1226, C-Block, Sushant Lok, Phase I, Gurgaon were to be exclusively owned by the petitioner's wife. In one of the proceedings, the documents of these plots were given by petitioner to his wife. However, it was later pointed out by her that some of the documents were missing and one of the plot was in occupation of a third person. The petitioner had agreed to accompany her to the aforesaid plots and hand over the vacant possession of those plots to her. The learned M.M. will deal with this aspect and after hearing the parties, shall take appropriate measures for giving effect to this part of settlement.

20. In view of above discussion, the case is remanded back to the court of learned M.M. to decide the remaining issues and pass appropriate orders. The parties are advised to appear before the court of M.M. on 10th July, 2012.

21. With these directions, the petition is disposed of.

M.L. MEHTA, J.

JUNE 02, 2012

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