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

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Reserved on: 16.08.2023
Pronounced on: 04.09.2023

+ **CRL.M.C. 1794/2020, CRL.M.A. 12573/2020 & CRL.M.A. 17293/2020**

SANJEEV BATRA AND ANOTHER Petitioners

Through: Mr. Dhan Mohan, Mr. Ravi Mishra, Ms. Tanisha Bhatia and Ms. Pooja, Advocates

versus

SIMRANJEET KAUR AND ANOTHER Respondents

Through: Ms. Shefali Menezes, Advocate

CORAM:
HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. The present petition under Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C') has been filed on behalf of petitioners challenging order dated 02.05.2019, 30.07.2019 and 17.08.2020 passed by the learned Metropolitan Magistrate (Mahila Court), South District, Saket Courts, New Delhi ('Trial Court') vide which petitioner no. 1 and 2 have been summoned by the learned Trial Court



in CC No. 10069/2019 filed under Section 12 of Protection of Women from Domestic Violence Act, 2005 ('DV Act').

2. In the present case, respondent no. 1 and 2 herein (complainant no. 1 and 2 respectively before the learned Trial Court) had filed a complaint before the learned Trial Court under Section 12 read with Section 18, 19, 20, 21 and 22 of DV Act against six respondents namely (i) Rajiv Batra i.e. husband, (ii) Sanjiv Batra i.e. brother-in-law, (iii) B.S. Batra i.e. father-in-law, (iv) Kalpana Batra i.e. sister-in-law, (v) Manish Grover i.e. sister-in-law, and (vi) Poonam Gupta i.e. sister-in-law.

3. The learned Trial Court *vide* order dated 02.05.2019, after hearing arguments on summoning, had observed that there were *prima facie* allegations of violence against the husband of respondent no. 1 herein and against petitioner no. 1 i.e. brother-in-law of respondent no. 1 and that there was *prima facie* sharing of domestic relationship in a shared household. Thereafter, upon receipt of Domestic Incident Report, summons were issued to father-in-law of respondent no. 1 and to petitioner no. 2 herein i.e. sister-in-law of respondent no. 1 and wife of petitioner no. 1. By way of order dated 17.08.2020, the petitioner no. 1 was directed to file his income affidavit, since the case of respondent no. 1 was that petitioner no. 1 is the biological father of her child i.e. respondent no. 2 and was thus liable to pay her maintenance.

4. Aggrieved by these orders, the present petition had been preferred by the petitioners challenging their summoning in the



present case. This Court, *vide* order dated 11.09.2020 had stayed the operation of summoning orders against the petitioners herein.

5. The case set out in the present petition, and argued by the learned counsel for the petitioners, is that respondent no. 1 and 2 had filed a false complaint under DV Act after a gap of 13 years of alleged offence. It is stated that respondent no.1 had got married in the year 2004 with the elder brother of petitioner no. 1 who is respondent no.1 before the learned Trial Court and after marriage, the respondent no.1 had conceived during the period of March, 2005 to October, 2005. It is stated that petitioner no.1 is brother-in-law/*devar* and petitioner no. 2 is sister-in-law/*devrani* of respondent no. 1, who had got married in the year 2005 and had shifted to the first floor of the property where they had facility of a separate kitchen and they had no concern with any of the family disputes between the complainant and her husband or father-in-law. It is stated that several disputes had arisen between respondent no. 1 and her husband i.e. elder brother of petitioner no. 1 during the year 2005-2007 and respondent no. 1 used to beat her husband and father-in-law, and several police complaints had been lodged in this regard. In this regard, it is stated that in the month of April-May, 2005, a *Kalandra* under Section 107/151 of Cr.P.C. had been registered between the family members and on 23.05.2005, respondent no. 1 had given a statement to the police that she will take divorce from elder brother of petitioner no. 1 and she had also mentioned that she was 19 years of age. It is further stated that in the year 2007, respondent no. 1 had left the matrimonial home of the elder brother of petitioner no. 1, however, after a gap of almost 12 years,



she had got the FIR bearing no. 266/2018 registered under Sections 376/506 of IPC at Police Station Mayapuri on 23.11.2018 against petitioner no.1 and both the elder brother i.e. her husband and father of petitioner no. 1 i.e. her father-in-law. It is stated that respondent no. 1 has herself admitted in the FIR that she had left the matrimonial home in the year 2007. It is also stated that the sole purpose of lodging the said FIR was to grab the property of father of petitioner no. 1 at D-137, Janakpuri, New Delhi which is a self-acquired property of the father of petitioner no. 1 and to extort money from both the petitioners. It is stated that on 24.11.2018, statement of respondent no. 1 under Section 164 Cr.P.C. was recorded before the learned Magistrate and after investigation, chargesheet was filed on 17.01.2019 and the trial of the said case is pending before the concerned Court in Tis Hazari, Delhi. It is stated that only petitioner no. 1 was arrested in the said FIR, merely on the basis of a DNA test, and he was later enlarged on bail by this Court *vide* order dated 11.09.2019.

6. It is further stated by learned counsel for the petitioners that the respondent no. 1 had then filed a petition under DV Act wherein the petitioner no. 1 and 2 were summoned vide orders dated 02.05.2019 and 30.07.2019, without following the procedure established by law. It is also pointed out that the learned Trial Court on 19.11.2019 had passed an order against the elder brother of petitioner no. 1 granting *ad-interim* maintenance to respondent no. 1, which was challenged by the elder brother of petitioner no. 1 before the court of learned Additional Sessions Judge-03, South, Saket Courts, New Delhi and



vide order dated 17.03.2020, the learned ASJ had set aside the order of the learned Trial Court. It is stated that during the period of lockdown due to Covid-19 pandemic, the matter had got adjourned from time to time. It is stated that on 17.08.2020, the counsel for the petitioner had received a call from the learned Trial Court that the matter was listed before the Court and the counsel for the petitioners got to know that the Trial Court proceedings are going on without considering the case of petitioners and that the Court is passing ex-parte orders against the petitioners and even the dates had been pre-poned by the Court without any intimation to the petitioners or their counsels. It is stated that on 17.08.2020, the learned Trial Court passed an order directing petitioner no.1 to file his income affidavit.

7. It is further argued on behalf of petitioners that the present case is not a case of domestic violence or sexual assault, rather it is a case of grabbing property of the father of petitioner no.1 by hook or by crook. It is stated that the sisters of petitioner no. 1 are married and are also working in connivance with the respondents to grab the said property, since both the real sisters of petitioner no. 1 had made efforts to take forcible possession of the said property. It is stated that the actual dispute had arisen when father of petitioner no. 1 had cancelled all his previous wills and had decided to handover the said property as per his own choice to petitioners and had not given any share to the daughters or the respondents. It is stated that immediately thereafter, the FIR under Section 376 IPC and complaint under D.V. Act had been filed in connivance with sisters of petitioner no. 1 by respondent no. 1. It is stated that petitioner no. 1 is about 51 years of age and



petitioner no. 2 is about 45 years of age and they are law abiding citizens. It is stated that the petitioners were residing separately since the marriage and had nothing to do with the respondents. It is stated that there are no specific allegations leveled against petitioner no. 2 in the complaint filed before the learned Trial Court, and that all the allegations against petitioner no. 1 are false, frivolous and baseless. It is stated that respondent no. 1 was not residing in her matrimonial home after the year 2007, therefore, the allegations in the complaint under D.V. Act are baseless. It is also stated that order dated 02.05.2019, 30.07.2019 and 17.08.2020 are liable to be set aside and the petitioners are liable to be discharged since the learned Trial Court has failed to consider that the complaint is malafide and that the petitioners being brother-in-law and sister-in-law are not entitled to pay any maintenance to the respondents. It is therefore, prayed that the summoning orders dated 02.05.2019 and 30.07.2019 be set aside and petitioner no. 1 be discharged.

8. Conversely, the learned counsel for respondents has argued that there are specific allegations against the petitioners in the complaint filed under DV Act and it is only after examining the contents of the complaint and DIR that the learned Trial Court had summoned the present petitioners. It is also stated that as per DNA report, petitioner no. 1 is the biological father of respondent no. 2 i.e. daughter of respondent no. 1 who would be liable to pay maintenance to her, though it is not disputed that petitioner no. 1 is brother-in-law/*devar* of respondent no.1. It is also stated that there is an inordinate delay on part of petitioners in challenging the summoning orders and they have



not invoked the proper remedy i.e. an appeal under Section 29 of DV Act, and the instant petition has been filed only to delay the trial. It is thus argued that it is not a case of discharge and there is no illegality in the orders passed by the learned Trial Court.

9. This Court has heard arguments addressed by the learned counsel for petitioner as well as learned counsel for respondents at length. The material placed on record has also been perused and considered.

10. In light of the submissions made before this Court, it has to primarily decide whether the order passed by the learned Trial Court summoning the petitioners in the complaint filed under Section 12 of DV Act by the respondents is required to be set aside or not.

11. The order dated 02.05.2019 passed by learned Trial Court, pursuant to filing of the complaint under Section 12 of DV Act, reads as under:

“Heard, prima facie there were allegations of violence against respondent no. 1 & 2. The aggrieved has also prima facie brought on record that there was sharing of domestic relationship in a shared household between aggrieved and respondent no. 1 & 2.

Summoning against respondent no. 3 to 6 is deferred till filing of DIR. Notice be issued to the respondent no. 1 & 2 on filing of Pf/Rc and speed post. Notice be issued to the Protection Officer on filing of Pf. An extra set of petition be filed for supplying to Protection Officer accordingly, process be issued through SHO concerned. Step be taken within 1 week .

Put up for report on notice/filing of DIR on 30.07.2019.”

12. After filing of DIR, the learned Trial Court had issued summons against some other respondents in the complaint, including the



petitioner no. 2 i.e. wife of petitioner no. 1. The said order reads as under:

“As per the DIR, respondent no. 5 to 6 did not reside with the aggrieved in shared household. Accordingly, as there was no sharing of domestic relationship in shared household between aggrieved and respondent no. 5 to 6 no ground for summoning respondent no. 5 to 6 is made out.

Sufficient ground for summoning respondent no.3 and 5 is made out.

Notice be issued to the respondent no.3 and 4 on filing of Pf/Rc and speed post. Ordinary process be issued to SHO concerned steps be taken within 1 week.

Summons to respondent no. 1 and 2 received back unserved issue process summon to the respondent no.1 on filing of Pf/Rc for NDOH.

Summons be also served by way of affixation in case of non availability of respondent/refusal/premises locked.

Respondent no.2 is stated to be in custody in Tihar Jail in view of the same, issue production warrants against the respondent no.2 on filing of Pf returnable to 30.09.2019.”

13. In the given set of facts and circumstance, this Court takes note of the allegations levelled against petitioner no. 1 (respondent no. 2 in the complaint) by the respondent no. 1 in her complaint filed under DV Act, which reads as under:

“...13.4. On a certain day in March 2004, the Complainant No. 1's brother-in-law, Respondent No. 2, sent his father (Respondent No. 3) to Respondent No. 6's house at night from 9 p.m. to 10 p.m. and sent Respondent No. 1 to buy alcohol and cigarettes. It is imperative to be mentioned here that the Complainant No. 1's mother in law was invalid. After sending everyone out of the house on separate errands, Respondent No. 2 started threatening the Complainant No. 1, "Tumhari family kuch nahi kar sakti. Tum bohot gareeb ho. Mai tumhe jaisa kahu, tumhe waisa hi karna padega." He then forcefully had sexual intercourse with the Complainant No. 1. On multiple occasions Respondent No. 2 has forcefully had sexual intercourse with the Complainant No. 1 after



this incident and every time, he threatened her, "isske baare mai kisiko bhi pata nahi lagna chaheye, nahi toh tumhe bohot bhaari nuksaan chukana padega." The Complainant No. 1 was terrified of Respondent No. 2 after this and Respondent No. 2 took full advantage of the same.

13.5. This became a regular affair, Respondent No. 2 would send Respondent No. 3 and Respondent No. 1 out of the house and would have sexual intercourse with the Complainant No. 1 against her will.

13.6. After a while, Respondent No. 2 crossed all limits wherein he entered the bedroom which was shared by Respondent No. 1 and the Complainant No. 1, and stated that he would sleep with them today. When the Complainant No. 1 told him to sleep next to his mother where he used to sleep normally, Respondent No. 2 started beating her up and told Respondent No. 1 to do the same. Eventually, both of them beat up the Complainant No. 1 and then forced themselves on her and sexually abused her. It is pertinent to note that Respondent No. 2 taught Respondent No. 1 how to have sexual intercourse on that night. Slowly, this became a daily and routine affair.

13.10. In 2005, the Complainant No. 1's in-laws arranged the marriage of Respondent No. 2 and the violence meted out to her by the Respondents reduced. It is pertinent to note that on 10.05.2005, Respondent No. 2 and 4 got engaged to be married and on the same month the Complainant No. 1 received her pregnancy report which was positive. The Complainant No. 1 hoped against hope that everything would be fine now, and she would not be mistreated by the Respondents anymore. However, her hopes were dashed when the Respondent No. 2 continued to sexually abuse the Complainant No. 1 on a daily basis till March 2005, even after he was engaged to Respondent No. 4 for as long as his wedding dates were not finally fixed, even after knowing that the Complainant No. 1 was pregnant.

13.19. The next day when Respondent No. 1 returned, Respondent No. 2 advised him, "jab yeh raat ko so jae, toh isske pet par laath maar de aur kissa hi khatam ho jaega." After this, the Complainant No. 1 started living in fear wherein she would lock her room door at night before sleeping and constantly be looking behind her shoulder lest Respondent No. 1 do anything to kill her child. Complainant No. 1 would stay awake the whole night in fear of Respondents No. 1 and 2.

13.27. A few days after this arrangement, the Complainant No. 1's mother-in-law passed away and the Respondents once again started



torturing and beating the Complainant No. 1 regularly. The Complainant No. 1 would be beaten up by Respondent No. 4 for something as simple as putting more salt in food instead of spice....It exceeded to an extent wherein even Respondent No. 2 would beat her up for no rhyme or reason.

13.32. In 2007, when the Complainant No. I was at home and was alone, Respondent No. 2 once again tried to sexually abuse the Complainant No. 1 and she started yelling due to which he ran away. The Complainant No. 1 immediately called her mother and asked her to come over, however, her mother could only arrive after two days from the incident. When Respondent No. 4 returned home, the Complainant No. 1 told her everything and instead of understanding her plight, she started beating her up and said that the Complainant No. 1 was merely trying to defame Respondent No. 2.

13.35. One day, Respondent No. 1 and 2, completely intoxicated, entered the Complainant No. 1's bedroom and Respondent No. 2 told Respondent No. 1, "aaj hum dono iss ke saath maze karenge" and started misbehaving with the Complainant No. 1. The Complainant No. 1 somehow managed to push them aside and run outside. She also started screaming at the same time. Alarmed by the screams, Respondent No. 3 and 4 also came out of their rooms to investigate the cause of commotion. When the Complainant No. 1 told Respondent No. 3 and 4 of her plight, Respondent No. 4 caught the Complainant No. 1 by her hair and started beating her up and Respondent No. 3 did nothing to stop her even though he was both their father-in-law and as such had the authority to say something..."

14. Thus, there are specific allegations against the petitioner no. 1 to the effect that he had sexually abused and assaulted the respondent no. 1 and had established forceful sexual intercourse with her on multiple occasions in their home. The petitioner no. 1 is also alleged to have physically abused respondent no. 1 by beating her without any reason on certain occasions as well as emotionally/verbally abused respondent no. 1.



15. It is also pertinent to note that the respondent has placed on record the report of a DNA test which reveals that the petitioner no. 1 who is brother-in-law of the complainant/respondent no. 1, is the biological father of respondent no. 2 i.e. daughter of respondent no.1. It is the case of respondent no. 1 that the report of DNA test further strengthens her case of sexual abuse against petitioner no. 1 and that he, being the biological father of respondent no. 2, should be liable to pay her maintenance. It is to be noted that this paternity test had been conducted after an FIR had been lodged under Section 376 of IPC by respondent no. 1 herein. This Court, however, does not wish to comment on any such allegations at this stage, lest it may have any bearing on the case of petitioner no. 1 during trial of that case.

16. Further, with respect to petitioner no. 2, the respondent no. 1 in her complaint has alleged as under:

“...13.11. In April 2005, the Complainant No. 1 was once again thrown out of her matrimonial home and she went to her maternal home for a few days where her mother took care of her ill health which was caused due to the pregnancy. It is pertinent to note that this was the Complainant No. 1's third month into her pregnancy. At this point, the Complainant No. 1's mother after seeing her ill health told her that if the Respondents found out that something untoward had happened to the child belonging to them, they would kill her. The Complainant No. 1 thereby gathered her courage and went back to her matrimonial home. Upon ringing the doorbell, the Respondent No. 4 opened the door and she was followed by Respondent No. 6 who asked her, "Tu kis Haq se yaha ayi hai? Yeh bacha toh humara hai hi nahi!" The Respondents continued to abuse her and turned her away from the doorstep.

13.16. Respondent No. 2 and 4 also raised a huge issue on the topic of the Complainant No. 1 returning to her matrimonial home and they vehemently refused to allow her to enter her matrimonial home.



13.22. In the Complainant No. 1's ninth month of pregnancy, Respondent No. 4 actively started harassing the Complainant No. 1. She stated that the Complainant No. 1 would have to cook food for everyone in the house. Even though it was the ninth month of her pregnancy, and she was weak and fatigued, the Complainant No. 1 still had to agree to this. The Complainant No. 1 would cook for everyone and would only get to eat when everyone else had finished eating their food. On 15 October 2005, the Complainant No. 1 started getting labour pains and Respondent No. 3 asked her to cook food for the family to which the Complainant No. 1 had replied that her labour pains had started. Respondent No. 3 then asked Respondent No. 4 to cook food for everyone wherein Respondent No. 4 responded by saying that, "khaana toh woh bhi khaati hai, mai toh khaana nahi banaungi. Nahi toh khaana bahar se aayega."

13.27. A few days after this arrangement, the Complainant No. 1's mother-in-law passed away and the Respondents once again started torturing and beating the Complainant No. 1 regularly. The Complainant No. 1 would be beaten up by Respondent No. 4 for something as simple as putting more salt in food instead of spice....It exceeded to an extent wherein even Respondent No. 2 would beat her up for no rhyme or reason.

13.31. On 25 December 2006, the Complainant No. 1's mother and sister visited her matrimonial home and gifted Respondent No. 1, the Complainants clothes and sweets. The next day, Respondent No. 4 started abusing the Complainant No. 1 and stated that the Complainant No. 1's family members should not be allowed to visit the matrimonial home ever again as they did not have the "aukat" to do so.

13.32. In 2007, when the Complainant No. 1 was at home and was alone, Respondent No. 2 once again tried to sexually abuse the Complainant No. 1 and she started yelling due to which he ran away. The Complainant No. 1 immediately called her mother and asked her to come over, however, her mother could only arrive after two days from the incident. When Respondent No. 4 returned home, the Complainant No. 1 told her everything and instead of understanding her plight, she started beating her up and said that the Complainant No. 1 was merely trying to defame Respondent No. 2.

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Complainant No. 1 somehow managed to push them aside and run outside. She also started screaming at the same time. Alarmed by the screams, Respondent No. 3 and 4 also came out of their rooms to investigate the cause of commotion. When the Complainant No. 1 told Respondent No. 3 and 4 of her plight, Respondent No. 4 caught the Complainant No. 1 by her hair and started beating her up and Respondent No. 3 did nothing to stop her even though he was both their father-in-law and as such had the authority to say something...”

17. Thus, respondent no. 1 has also detailed out specific acts of domestic violence attributable to petitioner no. 2 including physical abuse as well as verbal and emotional abuse.

18. As regards the contention that petitioners had shifted to the first floor of property after their marriage in the year 2005 and thus, there could be no shared household between the respondents and petitioners is concerned, this Court notes that *firstly*, the allegations of domestic violence including sexual, physical and emotional abuse against the petitioner no. 1 relates to year 2004-2005 also i.e. period before his marriage, when he, admittedly, used to stay on the same floor with his elder brother and respondent no. 1. *Secondly*, the respondent no. 1 in her complaint has categorically stated that even though the present petitioners had started residing on the first floor of property, they all used to live as a joint family, share a common kitchen and used to eat together. Whether such allegations and averments made in the complaint by respondent no. 1 are correct or not can only be decided by the learned Trial Court after hearing both the parties and taking the evidence on record and such disputed questions of facts cannot be decided by this Court in the present petition.



19. The learned Trial Court, *vide* orders dated 02.05.2019 and 30.07.2019, had also considered the nature of allegations against the respondents therein, and had initially summoned only petitioner no. 1 and his elder brother and it was only after receiving the domestic incident report that the Court had summoned the father-in-law of respondent no. 1 and petitioner no. 2 i.e. sister-in-law of respondent no. 1 and wife of petitioner no. 1 and had not issued summons to respondent no. 5 and 6 in view of the fact that they resided separately in their matrimonial homes and were not a part of 'shared household'. Needless to say, the allegations in the complaint filed under DV Act are sufficient for the purpose of summoning the petitioners herein.

20. Therefore, considering the overall facts and circumstances of the case and in view of specific allegations against the petitioners, this Court finds no reasons to interfere with the impugned orders passed by the learned Trial Court.

21. Accordingly, the present petition alongwith pending applications if any, stands dismissed.

22. It is however clarified that the observations made hereinabove are solely for the purpose of deciding the present petition and the same shall not be construed as opinion of this Court on the merits of the case.

23. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

SEPTEMBER 4, 2023/zp