

Reserved

Court No. - 12

Case :- APPLICATION U/S 482 No. - 2203 of 2018

Applicant :- Padmakar Ram Tripathi

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Ankit Kumar Trivedi, Avi Mukteshwar Nath Singh, Pradeep Kumar Rai, Prakarsh Pandey, Praveen Kumar Shukla, Umesh Kumar Yadav, Yogeshwar Sharan Srivasta

Counsel for Opposite Party :- Govt. Advocate, Candra Bhusan Pandey, Digvijay Nath Dubey, Manish Pandey

Hon'ble Rajeev Singh, J.

1. Heard Shri P.K. Rai, learned counsel for the applicant, Shri Digvijay Nath Dubey, learned counsel for the private respondent, learned A.G.A. and perused the record.

2. Present application is moved to quash the order dated 25.04.2017 and 03.11.2017 passed by Additional Chief Judicial Magistrate-VIII, Lucknow as well as entire proceedings of Complaint Case No.2425 of 2016, under Section 12 of D.V. Act.

3. Learned counsel for the applicant submitted that the marriage of applicant was solemnized with the private respondent on 18.04.2012 and the applicant belonged to very low profile family and the private respondent belonged to a high profile family, as initially the applicant was reluctant to enter into the marriage with the private respondent due to status gap but on the insistence of the father of private respondent, the marriage was solemnized, and thereafter, they resided together at Andaman and Nicobar island but the applicant was being scolded by the private respondent as he was seven years elder to her and with the passage of time, the relationship between them was deteriorated, thereafter, despite his best effort to reconcile the relationship, she left the company of the applicant, thereafter, on the basis of frivolous facts, F.I.R. No.168 of 2016 under Sections 498A, 323 I.P.C. and Section 3/4 of D.P. Act was lodged, thereafter, application under Section 125 Cr.P.C. was also moved before the Principal Judge, Family Court at Lucknow on 07.01.2017 which was registered as Criminal Misc. Case No.35/2017 under Section 125 Cr.P.C., Smt. Akansha Tripathi Vs. Padmakar Ram Tripathi.

4. Learned counsel for the applicant submitted that in the

aforesaid case, the interim maintenance of Rs.4,000/- per month was granted in favour of the private respondent, as the private respondent was not satisfied with the order passed by the Principal Judge, Family Court, thereafter, with the intention to harass the applicant as well as his family members, she filed a complaint of case in question under Section 12 of Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as 'the Act, 2005') along with the application under Section 23 of the Act, 2005. with the prayer to grant interim maintenance. He further submitted that learned Magistrate passed an order dated 25.04.2017 by granting interim maintenance of Rs.30,000/- per month along with the one time maintenance of Rs.50,000/-, thereafter, applicant preferred application under Section 25(2) of the Act, 2005 on 03.10.2017 with the averment that private respondent is a well qualified lady and she has obtained Masters in Social Work and is running a N.G.O. (Non-governmental Organization) and also runs a business of beauty parlor. He further submitted that a detailed reply was also filed but the aforesaid application under Section 25(2) of the Act, 2005 of applicant was rejected on 03.11.2017, feeling aggrieved, appeal bearing no.361/2017 was preferred under Section 29 of the Act, 2005 before the District Judge, but the appeal was pending and during the pendency of the said appeal, order dated 26.02.2018 was passed for recovery in pursuance of order dated 25.04.2017.

5. Learned counsel for the applicant submitted that interim maintenance amounting Rs.4000/- was granted on the application of private respondent under Section 125 Cr.P.C. but this fact was not mentioned in the application filed before the concerned Magistrate under section 12 of the Act, 2005 which is a clear violation of the statutory provisions of the principles laid down by hon'ble Apex Court in the case of **Rajnesh Vs. Neha and Anr.** reported in **(2021) 2 SCC 324**.

6. Learned counsel for the applicant submitted that at the time of granting interim maintenance, the income of the applicant was also not taken into consideration before passing of the order dated 25.04.2017 as well as order dated 03.11.2017 by which his application for modification/alteration was rejected.

7. Learned counsel for the applicant relied on the decision of Jharkhand High Court in the case of **Niraj Kathuriya Vs. State of Jharkhand and Anr.** in **Criminal Revision No.535 of 2022** by submitting that it is a moral duty of husband to pay maintenance to his wife so that she may also reside in a same status as would have been in her matrimonial house but it does not mean to squeeze milk from husband that marriage becomes felony for him.

8. Learned counsel for the applicant submitted that before passing of order of granting interim maintenance dated 25.04.2017, no adequate opportunity was given, therefore, matter should be remanded for giving opportunity of hearing.

9. Learned counsel for private respondent submitted that applicant is not entitled to get relief as he tried to mischief, as he has not disclosed his service details in the application that he belongs to All India Services and presently he is posted as Joint Secretary, Administrative Reforms Department, Delhi Secretariat, Government of N.C.T. of Delhi, at New Delhi 110002.

10. Learned counsel for the private respondent submitted that learned counsel for the applicant also tried to mislead this Court by saying that the application under Section 125 Cr.P.C. was moved prior to the filing of complaint case under Section 12 of the Act, 2005 but the correct fact is that the application under Section 12 of the Act, 2005 was filed on 28.10.2016 before Additional Chief Judicial Magistrate- VIII at Lucknow, her application was registered as Criminal Case No.2425 of 2016. He further submitted that in the application dated 03.10.2017 moved by the applicant under Section 25(2) of the Act, 2005 for modification/alteration of the order dated 25.04.2017, he himself has admitted that on 25.04.2017, vakalatnama was filed by respondent no.6 but his counsel did not cooperate in the proceedings.

11. Learned counsel for the private respondent submitted that applicant has not disclosed his gross income as he belongs to All India Services Cadre, as private respondent is also entitled to reside in the same status as the applicant is residing.

12. Learned counsel for the private respondent submitted that private respondent always tried to protect her married life but the applicant was insisting her for residing at her native place in Village Saraiya Tiwari, District- Gorakhpur as he was posted at Delhi and he was residing with his nephew, namely, Prabhat Ram Tripathi. He further submitted that in the marriage of private respondent, about 30,00,000/- was invested by her father as well as a Honda City Car, ornaments, cash, clothes and some house hold articles were given to the applicant and relatives of private respondent also gave several gifts to the applicant, thereafter, she was being victimized by the applicant and was also being pressurized for bringing Rs.25,00,000/- from her father, she also informed other in-laws but they did not support her as they also started victimizing her.

13. Learned counsel for the private respondent submitted that

the applicant was having an extramarital affair with one Divya Pandey and the conversation between them on mail dated 27.02.2013 and 04.03.2013 are the evidences, thereafter, after interference of the family members of the private respondent, applicant agreed to keep the private respondent in Delhi but he was annoyed, in the meantime, in the year of 2015-16, he was transferred to Dadar and Nagar Haveli as the Deputy Secretary in Home Department in Silvassa, there was a residential facility and he was ready to keep the private respondent with him again with the interference of the family members and relatives, and thereafter, she went to the house of applicant on 06.07.2016 and found that he was residing with one lady namely, Renu as she raised objection then she was beaten by the applicant and Renu also assisted him. Learned counsel for the private respondent submitted that complaint was made to the concerned Police Station and the private respondent was medically examined on 06.10.2016 at Shri Vinova Bhawe Civil Hospital, Silvassa (her O.P.D. Registration Number was 1045420), in which, three injuries were found on her body, thereafter, she informed to her family members about the incident, then she was brought back by her parents, since then, private respondent is residing at her parents' house. He further submitted that the applicant is getting a salary of more than Rs.75,000/-, therefore, there is no illegality in the order passed by learned Magistrate and the application is liable to be dismissed.

14. Considering the rival submission of learned counsel for the parties, going through the contents of application, impugned order and other enclosures, as well as other relevant documents, as it is evident that the applicant belongs to the All India Services Cadre and presently, he is posted as Joint Secretary, Administrative Reforms Department, Delhi Secretariat, Government of N.C.T. of Delhi, at New Delhi 110002, and also taken photocopy of his identity card bearing no.AR/109/2022 issued by Deputy Director (Admin) Administrative Reforms Department, Delhi Secretariat, Government of N.C.T. of Delhi, Mob. No.9953916491, as the applicant also admitted that he is getting a salary of more than Rs.75,0000/-, as it is evident from the record that private respondent was medically examined at Shri Vinova Bhawe Civil Hospital, Silvassa, Dadar and Nagar Haveli and three injuries were found on her body and the F.I.R. was also registered against the applicant as Case Crime No.168/2016 (supra).

15. As the private respondent moved application under Section 12 of D.V. Act before the concerned Magistrate, in which, the notices were issued, at the same time, she also filed application under Section 125 Cr.P.C. before the Principal Judge, Family Court which was registered as Case No.35/2017 and in which,

the interim maintenance of Rs.4,000/- was awarded to the private respondent, as the notice was served on the respondent in the application under Section 12 of D.V. Act and the respondent no.6/brother of applicant filed his vakalatnama but he tried to avoid the proceedings then the interim maintenance of Rs.30,000/- was awarded, and thereafter, application for modification/alteration of the aforesaid order was filed by the applicant before the Court below but the same was rejected on 03.11.2017 and the trial court at the time of rejecting the application dated 03.11.2017 observed that he was aware about the pendency of the case in question but the appearance was only put in by Dileep Ram Tripathi.

16. As it is evident from the record that application was filed by the applicant under Section 25(2) of the Act, 2005 for modification/alteration of the order dated 25.04.2017, as vague grounds of modification/alteration was mentioned in the application and only it is stated that order dated 25.04.2017 is giving irreparable loss to him as the frivolous application was given for alteration of order, therefore, trial court has rightly rejected the same.

17. As the appeal was also filed under Section 29 of the Act, 2005 against the order dated 03.11.2017 and it is also evident from the contents of the appeal that fribble facts have been mentioned by saying that he is also maintaining his parents and other members of his family as well as one widow sister but his income has not been disclosed in his appeal, in such circumstances, the trial court has rightly passed the order dated 25.04.2017 for granting interim maintenance of Rs.30,000/- per month along with Rs.50,000/- as one time maintenance in favour of the private respondent and there is no illegality and the proceedings cannot be quashed, therefore, I am of the view that the application is liable to be dismissed.

18. Accordingly, the present application is hereby **dismissed**.

Order Date :- 18 November, 2023.

V. Sinha