

Court No. - 29

Case :- CRIMINAL REVISION No. - 765 of 2019

Revisionist :- Smt.Ranjana And 2 Others

Opposite Party :- State Of U.P. And Anr.

Counsel for Revisionist :- Prabhat Kumar,Arjun Kumar Kaushal

Counsel for Opposite Party :- Govt. Advocate

Hon'ble Mrs. Renu Agarwal,J.

1. Instant Criminal Revision under Section 397/401 Cr.P.C. has been preferred against the impugned judgment and order dated 25.05.2019 passed by the Additional District and Sessions Judge/Special Judge (Anti Corruption) Court No. 2, Lucknow in Criminal Appeal No. 136 of 2011 "Smt. Ranjna and Ors. Vs. Pramod Kumar Sakya and Anr." and order dated 04.07.2011 passed by the Additional Chief Judicial Magistrate, Court No. 32, Lucknow in Case No. 213 of 2010 "Smt. Ranjna and Ors. Vs. Pramod Kumar Sakya and Anr." under Section 12 of the Protection of Women from Domestic Violence Act, 2005 Police Station-Gazipur now Indira Nagar District-Lucknow.

2. Heard learned counsel for the revisionist, learned counsel for the opposite party No. 2 as well as learned AGA for the State and perused the entire material brought on record.

3. It is submitted by learned counsel for the revisionists that impugned order dated 25.05.2019 has been passed by the Additional District and Sessions Judge/Special Judge Anti Corruption Court No. 2 Lucknow dismissing the appeal No. 136 of 2011 and order dated 04.07.2011 passed by Additional Chief Judicial Magistrate, Court No. 32, Lucknow in Case No. 213 of 2010 are illegal

and beyond jurisdiction. It is submitted that revisionists have filed application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 against the husband/opposite party No. 2 wherein she submitted that she along with husband/opposite party No. 2 is residing in House No. 51B Mayur Vihar Colony Fareedi Nagar, Police Station-Gazipur Now Indira Nagar, District-Lucknow. It is further submitted that revisionist along with two others moved an application under Section 12 of the Domestic Violence Act, which was decided vide order dated 04.07.2011 and the opposite party No. 2 was directed not to repeat that act of domestic violence in future, opposite party No. 2 was also directed not to eject that revisionist from the joint residence of the revisionist as well as opposite party No. 2 without following the legal procedure, opposite party No. 2 was directed to pay Rs. 3000/- per month as maintenance to the revisionist along with one time compensation of Rs. 50,000/- within one month of the date of order. It is contended that despite the order 04.07.2011 restraining the opposite party No. 2, opposite party No. 2 is trying to dispossess the revisionist without following due procedure of law, the opposite party No. 2 sold the said property on 05.07.2011 which is illegal. The revisionist preferred an appeal before the learned Sessions Judge which on 08.07.2011 which was dismissed on 25.05.2019 and the order dated 04.07.2011 was upheld, hence it is prayed that the judgment and order dated 25.05.2019 passed by the Additional District and Sessions Judge/Special Judge Anti Corruption Court No. 2, Lucknow in Criminal Appeal No. 136 of 2011 be set aside and the order dated 04.07.2011 passed by the Additional Chief Judicial Magistrate, Lucknow be modified by providing right to residence and possession of the shared house.

4. Learned counsel for the opposite party No. 2 has submitted that in compliance of the order dated 04.07.2011 passed by the Additional Chief Judicial Magistrate, Lucknow, opposite party No. 2 had already paid Rs. 50,000/- to the revisionist and is regularly paying Rs. 3000/- per month as maintenance.

5. I have heard the rival submissions advanced on behalf of the parties and perused the entire material brought on record.

6. Perusal of the record reveals that impugned order dated 04.07.2011 is challenged by way of Criminal Appeal No. 136 of 2011 (Smt. Ranjana and Ors. Vs. Pramod Shakya and Ors.) which was rejected vide order dated 25.05.2019 and the order of the trial court was confirmed. In the said appeal the appellant (revisionist in present case) did not challenge any of the direction passed by the trial court vide judgment dated 04.07.2011 and she just disputed the factum itself. appellate court found that there is no proof of income of husband by agriculture or income from practicing as a lawyer. Learned trial court did not find any evidence to the effect that opposite party runs Maruti Van for profit. It is found during trial that revisionist and opposite party No. 2 resides in Lucknow and opposite party No. 2 is practicing as an advocate in District Court, Lucknow.

7. Revisionist admitted during the course of evidence that home town of her husband and brother-in-law is Mainpuri and the house located in Mainpuri and agricultural land belongs to her father-in-law and no property is registered in the name of her husband and he only possess one motorcycle. It goes to show that all the properties are in the name of her father-in-law, therefore, the income accrued from agricultural lands belongs to her father-in-law.

8. There is no proof of the fact that opposite party no. 2 earns Rs. 1.5 Lac from his practice. Revisionist herself stated on oath opposite party No. 2 started business of School Bags and when they could not manage their expenses, revisionist also started beauty parlour in half portion of the shop. The contents of the application goes to show that opposite party no. 2 was not practicing lawyer and he was doing the business of school bags. It also goes to show that revisionist was also running a beauty parlour.

9. Learned family court directed the opposite party No.2 to share the joint residence at village Mahmudiya, Thana-Bewar, District-Mainpuri. It is apparent from the record that she never shared the joint house in compliance of the order dated 04.07.2011. During the pendency of the first appeal, it is prayed by revisionist not to dispose of the house situated in Mayur Vihar Colony, Lucknow. Learned Presiding Officer of the First Appellate Court found that said house has been disposed of prior to the filing of the said appeal, hence, the prayer has become infructuous. It is also concluded by the first appellate court that learned Magistrate has not created any right of revisionist in the house situated in Mayur Vihar Colony, Lucknow. She was directed to share the residence at Mainpuri, hence, First Appellate Court found no ground for directing opposite party No. 1 to abstain him from disposing of the property situated in Mayur Vihar, Lucknow.

10. So far as enhancement of maintenance amount is concerned, revisionist could not prove the income of opposite party No. 2 from agricultural land as well as from the practicing as an advocate. It is admitted by revisionist herself that she started beauty parlour when the income was not sufficient for them this

also goes to show that the income of the opposite party No. 2 was not sufficient to cope with the household expenses. Opposite party No. 2 was directed to pay Rs. 3000/- per month to revisionist and Rs. 50,000/- as a lump-sum amount.

11. Learned Trial Court as well as appellate court discussed the relevant points in their judgment and allowed the application moved under Section 12 of the Protection of Women from Domestic Violence Act, 2005. There is no illegality, irregularity or perversity in the judgment passed by the first appellate court or the judgment passed by learned ACJM, Court No. 32, hence, the impugned order dated 04.07.2011 and 25.05.2019 are liable to be upheld and revision is liable to be dismissed.

8. In view thereof, revision is **dismissed**.

(Renu Agarwal,J.)

Order Date :- 4.1.2024
Karan