

Court No. - 80

Case :- CRIMINAL REVISION No. - 875 of 2024

Revisionist :- Vimal

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

Counsel for Revisionist :- Balbeer Singh, Rakesh Dubey

Counsel for Opposite Party :- Ajay Dubey, G.A.

Hon'ble Ram Manohar Narayan Mishra, J.

Instant Criminal Revision has been filed against judgment and order dated 31.01.2024 passed by the Court of Additional Session Judge, Court No.17, Agra in Criminal Appeal No.56 of 2023 (Smt. Seema Vs. Vimla and others) under Section 29 of the Protection of Women from Domestic Violence Act, 2005, Police Station Tajganj, Agra, which was filed against the judgment and order dated 04.03.2023 passed in Complaint Case No.687 of 2012 (Smt. Seema Vs. Vimla and others) under Section 12 of the Protection of Women from Domestic Violence Act, 2005, Police Station Tajganj, District Agra, whereby learned Magistrate dismissed the complaint filed by the opposite party No.2. The Court of Additional Session Judge, Court No.17, Agra has been pleased to allow the Criminal Appeal No.56 of 2023, and set aside the order dated 04.03.2023 passed by the Court of Civil Judge (Junior Division)/Fast Track Court, Court No.1, Agra and consequently passed the impugned order against the revisionist to pay Rs.7000/- (seven thousands) per month as maintenance to the opposite party No.2/wife, the revisionist has also been directed to provide a residence to the opposite party No.2/wife as she had been accustomed to live failing which the revisionist is directed to pay Rs.3000/- (three thousand rupees) per month as house rent to the opposite party

No.2/wife in lieu of providing her residential facility, the revisionist shall pay Rs.150000/- (One Lakh fifty thousand rupees) as a lump sum amount to the opposite party No.2/wife as compensation for mental torture and the emotional distress as well as for economical sufferings caused/has been causing to the opposite party No.2/wife/complainant. The effect of this order shall be come into existence from the date of filing of the complainant/application before the learned Court below i.e. dated 12th July 2012, in this regard this is also directed and it is made clear that the revisionist/husband shall pay all the arrears incurred in consequence to this order to the opposite party No.2/wife/complainant, And the revisionist/husband shall have to comply this order within one month of the passing of this order otherwise in case of breach of the same the revisionist/husband shall be liable to be prosecuted under Section 31 of the Protection of Women from Domestic Violence Act, 2005, and for this the opposite party No.2/wife may avail her right as per the said provisions of the Protection of Women from Domestic Violence Act, 2005.

Heard learned counsel for the revisionist, learned counsel for the respondent No.2 and learned A.G.A. for the State-respondent and perused the material available on record.

Learned counsel for the revisionists submits that respondent No.2 filed a complaint under Section 12 of the Protection of Women from Domestic Violence Act, 2005, which was registered as Complaint Case No.687 of 2012 before the court of Chief Judicial Magistrate, Agra, the matter relates to Tajganj, District Agra. The complaint averred in the complaint that marriage was solemnized with the respondent on 19.02.2006 according to hindu rites and rituals, in which her father had spent around Rs.5 lakh and had

given sufficient gifts and valuables to the respondent and family members. He paid them Rs.5 lakh cash to ensure welfare of her daughter at the place of respondent, despite that her husband and in-laws were teasing her for not bringing a Jeep in dowry and ultimately on 11.07.2008 she was turned out from her matrimonial home at around 03:00 pm after giving her beating and respondent had left her by motorcycle to the village of his father near a bridge, respondents have also kept her stridhan and valuables with him. The complainant is an uneducated woman and she is not skilled in any sort of work to earn her livelihood, where as respondent is an able bodied person, he possesses personal Metador bearing registration in UP 80 BA 9971, a pucca house and a road side shop, he also possesses 42 bigha land, his monthly income from all sources is around Rs.1,30,000/-. First complaint was dismissed on 16.06.2012 in her absence. Therefore, she filed second complaint on 20.07.2012 with prayer to pass restraint order, monetary relief order, compensation order for all shorts of domestic violence.

Learned counsel further submitted that learned Civil Judge (JD)/FTC Court No.1, Agra has dismissed the complaint under Section Section 12 of the Protection of Women from Domestic Violence Act, 2005, vide order dated 04.03.2023 on the ground that from evidence it is established that the complainant resided with the respondent only for a period of 10-11 days and there is no specific averment of any sort of domestic violence and it is not proved by evidence on record that the revisionist/complainant was subjected to domestic violence.

The complainant filed Criminal Appeal No.56 of 2023, under Section 29 of the Protection of Women from Domestic Violence Act, 2005 before the court of session.

Feeling aggrieved, by the order of court of first instance and said appeal was allowed vide judgment and order dated 31.01.2024. By the impugned order learned appellate court allowed the appeal preferred by the complainant against judgment of learned Magistrate and awarded Rs.7,000/- per month as maintenance to the complainant together with Rs.3,000/- per month for procuring for the complainant a separate residence as well as Rs.1,50,000/- as lumpsum payment as compensation for mental torture, mental distress and economic suffice.

Learned counsel for the revisionist further submitted that even in domestic incident report filed by District Probation Office, no specific instance of domestic violence has been mentioned against respondent and vague assertion has been made when the complaint was subjected to domestic violence, and respondent left her at her parental place and thereafter never came to take her back. No specific domestic incident has been mentioned in domestic incident report dated 26.04.2016. He further submitted that it is difficult to comprehend as to how the complainant was subjected to domestic violence, when she stayed at her matrimonial place only for 10-11 days. No question of economic abuse arises as this is admitted fact that she was not deriving any independent income and she was not employed any where. He next submitted that the learned appellate court has traveled beyond the evidence on record while determining the monthly income of the revisionist as Rs.20,000/- per month, placing reliance on bald statement of the complainant. He was possessing a transport vehicle and operating a shop, in fact the revisionist is a casual driver and he used to drive private vehicles when requisitioned by any needy person. He does not get driving job on regular and day today basis. It does not sound natural that she was subjected to cruelty and torture by

opposite party and his family members whereas she remained there for 10 to 11 days only. In fact she is not willing to reside with her husband and left her matrimonial home on her own will.

With the above submissions, learned counsel for the revisionist prayed for setting aside the impugned order passed by learned appellate court.

Per contra, learned counsel for the respondent No.2 submitted that complainant was turned out from her matrimonial home and her husband himself left her in the limit of village, in which her parents reside and thereafter he never came to take her back. She was expelled from her matrimonial home, just after two days of her marriage and this fact itself shows highhandedness and cruelty practiced by the respondents against her.

He lastly submitted that the complainant got an FIR registered against her husband and parents-in-law under Section 498A, 323, 504, 506 IPC and Section 34 of D.P. Act, at P.S. Etmadpur, Agra in which learned Magistrate convicted the accused persons vide judgment and order dated 09.04.2021 and sentenced the revisionist who is husband of the informant for one year, imprisonment and Rs.10,000/- fine for charge under Section 498A IPC and six months imprisonment and Rs.10,000/- for charge under Section 34 of D.P. Act with default stipulation. However, co-accused persons were extended benefit of probation of good conduct and no substantive sentence was imposed against them.

Feeling aggrieved by the judgment and order of trial court the accused persons including the revisionist preferred Criminal Appeal No.53 of 2021, which was allowed by Additional Session Judge, Court No.56, vide judgment and order dated 05.01.2022 and all the appellants are acquitted of charge under Section 498A

IPC and Section 34 of D.P. Act and learned appellate court gave a finding that charge of demand of dowry and matrimonial cruelty has not been proved by the prosecution against the accused appellants for want of relevant evidence. In this fact situation allegation of domestic violence levelled against revisionist becomes insignificant.

The appellate court in Criminal Appeal No.53 of 2021 in its judgment has quoted the statements of PW-1 Smt. Seema recorded in criminal trial before court of Magistrate in which she stated that her husband near her parental village by motor cycle and concluded that from statement of the complainant/informant the incident dated 11.07.2008 becomes improbable, at one place she stated that she visited her matrimonial place only twice, and on both occasions her brother took her back to her parental place, then how it is possible that on 11.07.2008 her husband had left her at railway crossing near village Dhaurra after assaulting and torturing. However in instant case the appellate court has addressed the aforesaid issue in paragraph 6.3 of judgment and observed that nothing has been asked by the defence side in cross examination of the complainant regarding the incident dated 11.07.2008.

The issues of acquittal of revisionist in Criminal Case under Section 498A, 323, 504, 506 IPC and Section 34 of D.P. Act, over claim of monetary and other reliefs made by respondent No.2 in proceedings under Section 12 of the Protection of Women from Domestic Violence Act has been considered by lower appellate court in the impugned judgment, wherein in paragraph No.6.8 which may be reproduced as under:-

6.8 So, far it is concerned regarding one of the main pleas of the Id

advocate for the OPs that they have been declared acquitted from the charges U/s 498A IPC etc., and hence the case under the DV Act ends automatically. Regarding this, at first this must be kept in mind that the act of domestic violence is not an offence, further in the DV Act there several instances have been given which constitute acts of domestic violence and they all do not come under the category of offence. This is settled position of law that acts under the DV Act and the offence U/s 498A IPC have different hue and getting acquittal from the charges U/s 498A IPC is not a ticket of exoneration from the allegations under the DV Act. In this regard following rulings of the different Hon'ble High Court may be the guiding beacons:-

A. The Hon'ble Calcutta High Court observed in **CRR No. 2981 of 2018. Sri Chandan Kumar Sahoo and ors. vs Smt Putul Sahoo (decided on 22 January, 2019)** that

It is well settled that the proceedings under Section 498A IPC and under Section 12 of the Protection of Women from Domestic Violence Act, 2005 are quite different, standing on different footings. A proceeding under Section 12 of the Domestic Violence Act, 2005 is not a criminal proceeding even if there are allegations of facts which constitute one or more offences in the Penal Code. A proceeding under Section 12 of the Domestic Violence Act, 2005 is not a criminal proceeding even if there are allegations of facts which constitute one or more offences in the Penal Code. Whereas, proceeding under section 498A IPC is criminal in nature and the object is to try the perpetrators and punish the guilty while proceeding under Domestic Violence Act, 2005 is to provide civil remedies to the victims of domestic violence which is not available in the criminal law under section 498A IPC. **Standard of proof required in two proceedings are entirely different. In civil cases**

preponderance of probabilities would be sufficient to discharge the onus while in a criminal case the entire burden lies on the prosecution and the proof beyond reasonable doubt has to be given. In a criminal trial the degree of proof is stricter than what is required in a civil proceeding. A proceeding under the Domestic Violence Act, 2005 is quasi-criminal in nature and not criminal proceeding so as to attract Section 300 of the Code of Criminal Procedure.

Under such circumstances door can not be shut to the aggrieved person simply because of identical facts being pleaded in the previous proceeding under Section 498 A IPC which ended in acquittal.

The above observation and case law cited therein is very pertinent for present criminal revision also, wherein this appellate judgment has been challenged by the appellant. The impugned judgment and order is speaking, well reasoned and based on evidence appearing on record, every issue raised by appellant has been duly dealtwith in the impugned judgment and order. I find no substantial, factual or legal error in the impugned judgment and order, however, it deserves slight modification. So far as lumpsum payment of Rs.1,50,000/- as compensation for mental torture and emotional distress is directed to be paid by the revisionist to the complainant is concerned.

As this amount is excessive and this fact also can't lost sight that the respondent No.2 remained at her matrimonial place in periodic manner for short periods. Her marriage was solemnized with the revisionist on 19.02.2006, she stated that she was ultimately thrown out from her matrimonial place on 11.07.2008. That forgoing discussion, in my considered opinion the instant criminal

revision is does not carry much weight; the impugned appellate judgment is affirmed with only modification that the amount of compensation of Rs.1,50,000/- granted to the complainant /present respondent No.2 against the revisionist in Clause (c) of operative order is reduced from Rs.1,50,000- to Rs.50,000/-, keeping all other orders and directions intact.

The revision stands **partly allowed** with above modification.

Order Date :- 10.1.2025

Ashish/-