

Court No. - 80

Case :- CRIMINAL REVISION No. - 1073 of 2025

Revisionist :- Aman Verma

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

Counsel for Revisionist :- Vinod Kumar Shukla

Counsel for Opposite Party :- G.A.

Hon'ble Ram Manohar Narayan Mishra,J.

Sri Indradeo Maurya, learned Advocate appearing on behalf of respondent No.2, by filing his Vakalatnama, which is taken on record.

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.

Instant Criminal Revision has been preferred against judgment and order dated 23.01.2025 passed by learned Additional Session Judge Court No.05, Varanasi in Criminal Appeal No.113 of 2024, under Section 19 of Protection of Women from Domestic Violence Act as well as order 23.05.2024 passed by learned Special Chief Judicial Magistrate, Varanasi in Complaint Case No. 58 of 2019, under Section 12 of the Protection of Women from Domestic Violence Act. By the impugned order dated 23.05.2024 learned Special Chief Judicial Magistrate has passed an interim maintenance order under Section 19 of the Act as well as also awarded interim maintenance to the complainant to the tune of Rs.5,000/ per month which includes *inter alia* for medical expenses also. Learned Appellate Court has dismissed the criminal appeal preferred by the revisionist against the impugned order passed by Special Chief Judicial Magistrate in appellate judgment dated 23.1.2025 and affirmed the order of trial court.

Learned counsel for the revisionist submitted that the impugned judgment and order is wholly illegal and unreasonable and based on conjecture and surmises. Learned court below has failed to appreciate the fact, that the revisionist was earlier working in a private company, but he lost his job due to matrimonial discord with his wife and several complaints made by her. He is working as a helper in shop and hardly earns around Rs.8000/- per month.

Therefore, it is not possible for him to pay Rs.5,000/- as maintenance to this wife. He further submitted that in order passed by learned court below under Section 125 Cr.P.C. a sum of Rs.2,500/- per month has been awarded as maintenance to applicant Smt. Sangeeta Seth. Learned court below has not directed any sort of adjustment of said amount in the impugned order.

He next submitted that impugned order has been passed by learned Special CJM in a case under Section 12 of the Act and restraint order under Section 12, 18 and 19 has been passed alongwith an order for interim maintenance. There is no mention of the fact in the impugned as to under which section interim maintenance has been awarded to the applicant against the revisionist; initially the original complaint was filed under Sections 17, 18,19,20, 22 read with 23 of the Protection of Woman from Domestic Violence Act (hereinafter referred to as "the Act"), to which the revisionist objected that although relief is sought the above section, the claim should be filed under Section 12 of the DV Act. Therefore, the application under Section 12 of the DV Act should have been filed separately and not added in the above application; which is wholly illegal. He further submitted that the claim for interim maintenance should be in Section 23 of the Act and not on an application under Section 19 of DV Act. Section 19 of DV Act is the final relief which can only be granted at the stage of decision of the application, no application under Section 23 of the DV Act was filed by the opposite party No.2 while the impugned order was passed on an application 19 of DV Act. Therefore, there is great procedural irregularity in the proceedings and order.

Respondent No.2 was suffering from uterine diseases as she developed a tumor in her uterus due to which she could not become a mother and this essential fact was concealed by the parents to the revisionist at the time of marriage. He further submitted that revisionist has filed a divorce petition under Section 13 A of the Hindu Marriage Act, which is registered as Matrimonial Petition No. 91 of 2022 (Aman Verma Vs. Sangeeta Seth) and pending before Principal Judge, Family Court, Varanasi in which respondent No.2 has appeared and filed an application under Section 24 of the Hindu Marriage Act for pendente-lite maintenance which is still pending.

He lastly submitted that the order relating to a shared house hold can be issued by the trial court. Keeping in view the facts and circumstances of the case, whereas the order in question has been passed by trial court under Sections 18 and 19 of the Act which is

not legally permissible.

Per contra, learned counsel for the respondent No.2 submitted that the learned trial court has considered the issue of grant of interim maintenance to the applicant in proceedings under Section 125 Cr.P.C. vide order dated 11.04.2024 passed by learned Family Court, in which Rs.2,500/- was awarded as interim maintenance and Rs.5,000/- as cost of litigation to respondent No.2. On 28.06.2024 said exparte order was set-aside on Rs.10,000/- cost and presently no interim maintenance is provided to the respondent No.2 even in proceedings under section 125 Cr.P.C. Revisionist is suffering from acute financial crisis. She is not able to maintain herself nor bear her medical expenses for want of money. This is trite law that wrong mentioning of statutory section is not a ground to set-aside an order, if it is factually correct.

Section 12 of the Protection of Woman from Domestic Violence act, 2005 (hereinafter referred as "the Act") provides as under:-

Section 12 in The Protection of Women from Domestic Violence Act, 2005

12. Application to Magistrate

(1)An aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person may present an application to the Magistrate seeking one or more reliefs under this Act:Provided that before passing any order on such application, the Magistrate shall take into consideration any domestic incident report received by him from the Protection Officer or the service provider.

(2)The relief sought for under sub-section (1) may include a relief for issuance of an order for payment of compensation or damages without prejudice to the right of such person to institute a suit for compensation or damages for the injuries caused by the acts of domestic violence committed by the respondent:Provided that where a decree for any amount as compensation or damages has been passed by any Court in favour of the aggrieved person, the amount, if any, paid or payable in pursuance of the order made by the Magistrate under this Act shall be set off against the amount payable under such decree and the decree shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of

1908), or any other law for the time being in force, be executable for the balance amount, if any, left after such set off.

(3) Every application under sub-section (1) shall be in such form and contain such particulars as may be prescribed or as nearly as possible thereto.

(4) The Magistrate shall fix the first date of hearing, which shall not ordinarily be beyond three days from the date of receipt of the application by the Court.

(5) The Magistrate shall endeavour to dispose of every application made under sub-section (1) within a period of sixty days from the date of its first hearing.

A bare perusal of Section 12 of the act, reveals that an aggrieved person or Protection Officer or any any person on behalf of the aggrieved person may present an application seeking various protection orders provided under the Act in Chapter-IV. In Chapter XVIII the Magistrate may pass protection order, in Chapter XIX residence order, in Chapter XX, Monetary Relief order, Chapter XXI Custody Order, in Chapter XXII Compensation Order.

Section 22 Provides that in addition to other reliefs as may be granted under this Act, the Magistrate may on an application being made by the aggrieved person, pass an order directing the respondent to pay compensation and damages for the injuries, including mental torture and emotional distress, caused by the acts of domestic violence committed by that respondent.

Section 23 of the Act, provides as Under:-

"Section 23 Power to grant interim and ex parte orders.—(1) In any proceeding before him under this Act, the Magistrate may pass such interim order as he deems just and proper.

(2) If the Magistrate is satisfied that an application prima facie discloses that the respondent is committing, or has committed an act of domestic violence or that there is a likelihood that the respondent may commit an act of domestic violence, he may grant an ex parte order on the basis of the affidavit in such form, as may be prescribed, of the aggrieved person under section 18, section 19, section 20, section 21 or, as the case may be, section 22 against the respondent."

Thus various sorts of protection order including protection order, residence order, monetary relief order, custody order, compensation order may be passed by the Magistrate in proceedings filed under Section 12 of the Act. In Section 20 Magistrate may pass an maintenance order including an order under or in addition to an order of maintenance under section 125 of the Code of Criminal Procedure, or any other law for a time being inforce. The Magistrate may direct grant of monetary relief to the complainant for loss of argument, medical expenses, the loss caused due to the destruction, damage or removal of any property from the control of the aggrieved person.

The impugned order is a composite order under Section 23 in the form of interim order or in the nature of relief sought under Section 18,19,20, 21 and 22 of the Act.

The complainant had filed an application under Section of the Act on 02.02.2023, wherein she has stated that her marriage with the respondent No.1 Aman Varma was solemnized on 18.02.2017 according to hindu rites and rituals, in which her parents had given sufficient dowry and gifts to the respondents. However, an additional demand of Rs.5 lakh as dowry was made after the marriage and she was subjected to domestic violence on account of non-fulfillment of demand of additional dowry. She has lodged an FIR against husband and in-laws vide Case Crime No.265 of 2018, under Sections 498A, 323, 504, 506 IPC under Section 34 of D.P. Act, being aggrieved by domestic violence committed against her by the respondent she had to take shelter in her parental home and she is residing there since 09.11.2018 . Respondent No.1 works as a sales man in jewellery shop namely Kanhaiya Alankar, where he draws a salary of Rs.25,000/- per month. He also works as a mechanic of gold ornaments from which he also earns Rs.15,000/- per month. He is possessed of an ancestral house in which three shops are being run from which also he earns Rs.3,000/- as monthly rental. Therefore, she may be allowed to live in shared house hold and interim maintenance is also granted to her.

The above application should have been filed under Section 23 of the Act, but instead Section 19 of the Protection of Woman from Domestic Violence Act has been mentioned on margin of the application instead of Section 23. However, prayed made in application is clear and unambiguous an interim relief in the nature of Section 19 and 20 (1)(d) has been sought in the application and same has been allowed by learned trial court and a Criminal Appeal preferred by the revisionist has been dismissed, this is well settled law on this score that only in view of wrong mentioning of

any statutory provision in an application or petition will not disentitle the applicant to seek relief therein and the court concerned can treat the application in proper and correct provision, if the prayer made in the application is otherwise maintainable. Therefore, this application is supposed to be filed under Section 23 of the act. The reliefs given in the impugned order are maintainable and the amount of Rs.5,000/- granted as interim maintenance to the complainant is neither exorbitant nor unreasonable. Keeping in view the fact that this is admitted fact that respondent No.2 is suffering from serious ailment and a wife cannot be deserted only due to the fact that she is suffering from some serious ailment, she requires a reasonable sum of money as maintenance to meet out her necessary as well as medical expenses.

Similarly, she is also entitled to seek interim residence order in the shared household where the parties had lived together after the marriage. I find no illegality, irregularity or perversity in the impugned order passed by learned court below.

However, it is directed that any amount obtained by the respondent No.2 as interim maintenance in proceedings under Section 125 Cr.P.C. will be liable to be adjusted towards arrear of interim maintenance granted to her. With above observation, the revision is found devoid of merit and is liable to be dismissed.

The revision is ***dismissed***, accordingly.

Order Date :- 10.3.2025

Ashish/-