

Court No. - 79

Case :- CRIMINAL REVISION No. - 5328 of 2023

Revisionist :- Roshani

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

Counsel for Revisionist :- Neeraj Kumar Singh, Shikher Trivedi

Counsel for Opposite Party :- Ashwini Kumar, G.A., Ganesh
Shanker Srivastava

Hon'ble Ram Manohar Narayan Mishra, J.

1. Instant Criminal Revision has been preferred against the judgment and order dated 06.04.2023 passed by Session Judge, Varanasi in Criminal Appeal No.57 of 2022 under Section 29 of Protection of Woman From Domestic Violence Act (hereinafter referred to as “the Act”). By the impugned judgment and order learned court below has allowed the Criminal Appeal preferred by opposite party (the respondent) and set-aside the impugned order dated 24.03.2022 passed by learned Civil Judge (Junior Division)/ Judicial Magistrate FTC-I Varanasi and reduced the amount of maintenance awarded by learned Magistrate in proceedings under Section 12 and 20 of the Act from Rs.8,000/- per month to Rs.5,000/- per month. The learned court below has also reduced the lumpsum payment granted to complainant from Rs.6 lakh to Rs.50,000/- and directed respondent No.2 to provide one room instead of two rooms for residence of revisionist, in his house.

2. 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.

3. Learned counsel for the revisionist submitted that revisionist

had filed a complaint under Section 12 of the Act, 2005 before the Court of Civil Judge (JD)/FTC Judicial Magistrate on 28.10.2014, wherein she has prayed for various reliefs provided under Sections 14, 15, 17, 18, 19, 20, 21 and 22 of the Act with allegation that her marriage was solemnized with son of respondent No.2, namely Vimal Joshi on 06.07.2011 according to hindu rites and rituals. She was sent off to her matrimonial home after the marriage where a girl child was born out of her wedlock with her husband. Her husband has two real sisters who entered into love marriage, her two sisters-in-law used to demand money from their father for business of their respective husband which was opposed by her husband, whereupon her husband Vimal Joshi and sisters-in-law used engage in quarrel and they indulge marpeet with her husband. Her father-in-law Vinod Joshi and mother-in-law also engaged in marpeet used to pickup quarrel with her husband late Vimal Joshi. Her parents-in-law threatened that they would sell out 20 Biswa land from ancestral property and pay the sale consideration to their daughters. Her husband unfortunately died in the road accident in 2014, she was subjected to matrimonial cruelty and torture after the death of her husband by her parents-in-law and sisters-in-law and they are trying to expell her from matrimonial home any how.

4. The complainant has prayed for Rs.20,000/- as monthly maintenance from respondents, who are her parents in law and claimed for right to accommodation in shared house hold and to engage in farming in agricultural land of the respondents and for that her legal share be provided to him.

5. Leaned Magistrate allowed the complaint vide judgment and order dated 24.03.2022 and issued direction that the respondents shall provide two room accommodation to the complainant in

shared house hold. Respondent No.1 will provide Rs.8,000/- as maintenance to the complainant and her daughter, and Rs.6 lakh as lumpsum grant as damages. It is also directed in the said order that any default in compliance of this order will create an encumbrance in the share of her late husband in ancestral property. The respondents assailed the judgment of Magistrate before the court of session, by way of filing an appeal under Section 29 of the Act. The appeal was allowed vide order dated 06.04.2023, whereby amount of maintenance has been reduced from Rs.8,000/- per month to Rs.5,000/- per month and Rs.6 lakh as lumpsum amount for damages has been reduced to Rs.50,000/- and only one room has been provided for residence of the revisionist instead of two rooms provided to her in order of Magistrate.

6. Learned counsel for the revisionist next submitted that learned appellate court has failed to consider the factual aspect of the case in right perspective and the impugned appellate judgment is an outcome of misappreciation of evidence on record. Respondent No.1 the father-in-law of the revisionist and owns huge property, he has recently executed a gift deed in favour of his daughter Smt. Vandana Kapoor of a land which market value is shown as Rs.2,56,78,000/- in gift deed dated 05.07.2022. He has also executed gift deed in favour of his second daughter Smt. Ranjana Singh of a property worth Rs.2,37,41,000/- on 28.07.2022. He has also executed gift deed of a house in favour of his daughter Ranjana Singh's minor son which market value is shown as Rs.67,60,000/-. He has also executed a sale deed of his land in favour of one Kashi Nath Yadav for a consideration of Rs.13 lakh, whereas market value of the property is shown as Rs.62,69,000/- and Stamp has been paid on market value. He further submitted that respondent No.1 has been disposing of his ancestral personal

property in various mode in order to deprive the revisionist from her genuine share in property which would have come to the share of her husband. He next submitted that learned court below has not assigned any cogent reason while reducing the amount of maintenance as well as amount of compensation order from Rs.6 lakh to Rs.50,000/- only.

7. Learned appellate court has observed in the impugned judgment that the lower court has estimated income of opposite party No.1 as Rs.10 lakh, which is erroneous and cannot be held to be proper and with this observation has reduced the amount of maintenance.

8. Learned appellate court has placed reliance on statement of respondent No.2 Vimal Joshi, wherein he has stated that he has only 5-7 Biswa share in joint Khata of grove and 2 and ½ Bigha agricultural land for farming. He next submitted that the finding and order of learned Magistrate is just and reasonable and same has been interfered with by the appellant court without sufficient reason, therefore, appellate judgment and order is liable to be set-aside.

9. Per contra, learned counsel for the respondent No.2 submitted that learned Magistrate had given a wrong finding that the estimated income of the opposite party No.1 Vinod Joshi was Rs.10 lakh annually and fixed amount of maintenance Rs.8,000/- and Rs.6 six lakh as economic relief to the complainant. He further submitted that revisionist has filed various suits of injunctions regarding entire property of the respondent No.2 in which Stay order has been issued by the competent Court.

10. He next submitted that the finding of order of learned appellate

court is supported with logical reasoning and need no interference in present revision. It need not to be added that gift deed is always without consideration and executed due to natural love and affection to a close relative.

11. From perusal of record it appears that revisionist has filed a complainant under Section 12 of the Act, 2005 before the Court of Civil Judge (Junior Division)/Judicial Magistrate, Varanasi which was registered as Complaint Case N o.1709 of 2017, wherein she has prayed for protection order under Section 18, residence order, maintenance order for herself and he minor daughter. Restoration of stridhan from respondents who are her parents-in-law and she has also claimed property right in ancestral property of her in-laws and the share of her late husband Vimal Joshi, who died in the road accident in the year 2014. It also appears that the relationship of husband and the complainant was not cordial with his parents. Both sides have levelled wild allegations against each other on their respective pleadings and evidence.

12. Leaned trial court after considering the evidence of the parties in light of their respective pleadings has given a finding that the complainant victim of physical, oral and notional violence and thus she is victim of domestic violence.

13. Learned Magistrate directed the respondents to provide two room to the complainant in the shared household for her living. Learned court below has also directed respondent No.1 to provide the complainant her stridhan and refrain from causing any short of domestic violence against the complainant. The complainant has also been provided Rs.6 lakh as one time compensation, and Rs.8,000/- as monthly maintenance for herself and her minor

daughter. The judgment and order dated 24.03.2022 passed by learned trial court was assailed by the respondent No.1, the father-in-law of the complainant before the Court of Sessions, which was registered as Criminal Appeal No.57 of 2022. Learned Appellate Court after hearing submissions of learned counsel for the parties and re-appreciation of evidence on record allowed the appeal preferred by Vinod Joshi, the father-in-law of the complainant and set-aside the impugned judgment and order passed by learned Magistrate dated 24.03.2022. The appellate court allowed application under Section 12 of the Act filed by the complainant partially and directed respondent No.1, the appellant Vinod Joshi to provide a room in his house for residence of his complainant and her daughter and to pay Rs.5,000/- per month as maintenance to the complainant and for maintenance of herself and her daughter. The economic relief of Rs.6 lakh granted by the Magistrate has been reduced to Rs.50,000/-.

14. Feeling aggrieved by the appellant judgment the original complainant Smt. Rashmi wife of late Vimal Joshi has filed present Criminal Revision before this Court.

15. Learned appellate court has given a finding on the basis of re-appreciation of evidence on record that the order passed by learned trial court restoration of stridhan of the complainant is not proper. It is proved from the evidence on record that complainant has visited her matrimonial home after death of husband and took away her entire stridhan and clothes from there and no stridhan is left with the appellant. Therefore, the order of trial court regarding restoration of stridhan of the complainant is not sustainable.

16. Learned appellate court has also observed in the impugned

judgment that the finding of trial court to the effect that in case of non compliance of maintenance order passed by the court, by respondent an encumbrance will be created in the ancestral property, which would have come to the share of late husband of the complainant, is not sustainable as this is beyond jurisdiction of trial court.

17. However, learned appellate court has rightly observed in affidavit of declaration of income the respondent Vinod Joshi has shown his annual income based agricultural earning as Rs.1,80,000/- and the trial court has wrongly observed in the impugned judgment that he has shown his annual income as Rs.10 lakh and on that basis fixed Rs.8,000/- as monthly maintenance and Rs.6 lakh as damages/compensation as lumpsum of grant.

18. From perusal of affidavit of Vinod Kumar Joshi dated 08.03.2022 filed before the court below, wherein he has stated his gross agricultural income comes to Rs.1,80,000/- annually. However, this Court is not inclined to subscribe the view of learned appellant court on this score that learned trial court has travelled beyond jurisdiction to create a charge on ancestral property of respondent, which might have come to the share of late husband of the complainant. The complainant is wife of pre-deceased son of respondent No.2 and for that reason she is Class-I heir of the respondent No.2 under Hindu Succession Act as well as under U.P. Revenue Code, together with her sisters-in-law.

19. Therefore, in considered opinion of this Court in the case of default of compliance of maintenance order on the part of respondent No.2 and a charge will create on ancestral property of respondent to the extent of share of the husband of the

complainant. There is force in contention of the revisionist that respondent No.2 has disposed of his various properties in the form of gift deeds to her daughters and also executed a sale deed of his land in favour of some other person, and that might be a reason to deprive the revisionist from her share in the property of her in-laws in future. The various photographs of the shared household reveal that the house is in very poor condition and is not properly maintained and the learned appellate court has also given a finding that there are only three rooms in the house, therefore, it is not feasible to provide two rooms to the complainant for her living along with her minor daughter. Therefore this finding is based on evidence on record and sustainable. The amount of maintenance Rs.5,000/- provided by appellate court to the complainant is also just and fair, in view of the fact that respondent has stated that he possessed two and half bigha agricultural land and has shown his annual income Rs.1,80,000/-. He has shown sale consideration of Rs.13 lakh from a property sold to another person, other transfers of immovable property are in the form of gift deeds to his daughters. Therefore, the appellate order is liable to be affirmed with certain modifications in following manner:-

- i. He will pay and keep on paying Rs.5,000/- per month as maintenance to the revisionist.
- ii. The original respondents Vinod Joshi and Smt. Radha Devi, the parents-in-law of the revisionist are directed to refrain from committing any sort of domestic violence against the revisionist.
- iii. The respondent No.2 is entitled to live in a one room accommodating, properly maintained by the respondent No.2 in her matrimonial home along with her daughter.
- iv. The amount of modified maintenance Rs.5,000/- per month in

appellate judgment will relate to back the date of passing of judgment and order dated 24.03.2022 by the trial court. Lumpsum amount of Compensation as Rs.50,000/- modified by appellate court is enhanced to Rs.2 lakh.

20. With above observations/modifications the appellate judgment is affirmed.

21. The revision stands **partly allowed**, accordingly.

Order Date :- 18.3.2025

Ashish/-