

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

CRM M-25037 of 2011

Date of Decision: February 10, 2015

Vikram and another

.....Petitioners

Vs.

Bhagwati Devi and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI.

-. -

Present:- Mr.Kunal Dawar, Advocate
for the petitioners.

Mr. A.S. Khara, Advocate
for the respondents.

-. -

M.M.S. BEDI, J.

Petitioners have filed the present petition under Section 482 Cr.P.C. for quashing of the order dated June 6, 2011 passed by the Appellate Authority i.e. Additional Sessions Judge, Faridabad dismissing the appeal under Section 29 of the Protection of Women from Domestic Violence Act, 2005, for short 'the Act' against order dated May 31, 2010 passed by Judicial Magistrate Ist Class, Faridabad under Sections 12 and 20 of the Act.

Brief facts of the case relevant for decision of the present petition are that respondent Bhagwati Devi and her daughter Krishna Bhati, as aggrieved persons filed a petition under Section 12 and 20 of the Act alleging that respondent No.1 was married with Kiranpal on February 9, 1975, brother of the petitioners and stayed with Kiranpal alongwith other family members in their matrimonial home. Respondent No.2 was born on November 6, 1982. The behaviour of her husband Kiranpal and other family members was cruel towards respondent No.1. On July 18, 2007, her husband alongwith petitioners gave beatings to the respondents, snatched all dowry articles and jewellery and forced her out of the matrimonial home. The respondent- aggrieved persons approached the respectables of the village who compelled Kiranpal to take back both the respondents in the matrimonial home. As the respondents were harassed, a report was made to DSP, Ballabhgarh, and SHO Police Station Tigaon on August 21, 2007 and August 26, 2007. The husband of respondent No.1 had illicit relations with Nanhi wife of Boda. The aggrieved persons also lodged FIR under Section 498 A and 506 IPC and Section 31 of the Act. The aggrieved persons claimed that they remained unwell on account of mental tension and harassment faced by her as such she claimed compensation for physical violence suffered by them. Aggrieved persons claimed two rooms in matrimonial home under Section 19 of the Act. The husband Kiranpal, non-petitioner denied that the aggrieved person ever lived as husband in the matrimonial home. Even the relationship between the aggrieved persons and

Kiranpal was denied by him. The husband filed re-joinder but stopped appearing after March 28, 2009 despiteailable warrants and warrants of arrest having been issued as such he was proceeded against ex-parte on September 30, 2009. Nanhi wife of Boda was impleaded as respondent. She being females, it was held that she did not fall under the definition of the respondent under Section 2 q of the Act as such complaint was held not maintainable against her. The petitioners denied that respondent No.1 was wife of Kiranpal or that respondent No.2 was daughter of Kiranpal. The aggrieved person relied upon the voter's card list of the year 2006 where she was shown as wife of Kiranpal. The stand of respondent No.1 as raised by his counsel was that Kiranpal had sold his agriculture land to meet the expenses for getting Cancer treatment to his brother. He had sold his land on September 26, 2007 and September 27, 2007, during the pendency of the petition under Section 12 of the Act. So far as Cancer treatment record Ex.R-2 and R-13 are concerned, these pertain to year 2002. The husband of respondent No.1 sold the property to his brothers during the pendency of the matrimonial dispute, therefore, the Magistrate held the petitioners and Kiranpal jointly responsible to pay sum of Rs.2000/- per month to each of the respondents as maintenance. Domestic incident report was also taken into consideration while deciding the application. Taking into consideration the spirit of legislation behind Section 19 of the Act, protection order was granted to the respondents directing that they would remain in possession of one room in the shared house-hold.

Aggrieved by the order passed by the learned Magistrate, the petitioners preferred appeal under Section 29 of the Act. The respondents also preferred an appeal against the order dated May 31, 2010 claiming that sufficient relief had not been granted for direction that two rooms should be given to the respondents. The petitioners claimed that they do not have any relationship with the respondents. Both the appeals were taken up together and the Appellate Court vide order dated June 6, 2011 ordered that the maintenance awarded to the respondent shall be in addition to the amount of maintenance granted under Section 125 Cr.P.C. Appeal filed by the petitioners was also dismissed. Aggrieved by the said order, the petitioners who are brothers of Kiranpal have preferred the petition.

It has been argued by Mr. Kunal Dawar, counsel for the petitioners that the petitioners are the brothers of Kiranpal, husband of respondent No.1 and father of respondent No.2. It was argued that neither Kiranpal had any relationship with the respondents nor the petitioners have any liability to pay any amount to the respondents. It was also argued that the Appellate Court has acted illegally in allowing additional sum of Rs.2000/- per month to each of the respondents under Section 125 Cr.P.C. It was argued that neither mandatory relief can be claimed from the petitioners nor residence order can be enforced against the petitioners.

I have heard learned counsel for the petitioners as well as counsel for the respondents and carefully gone through the orders passed by the Courts below. It is an admitted fact that the respondent No.1 and

respondent No.2 are mother and daughter. The application under Section 125 Cr.P.C. filed by respondent No.1 against Kiranpal for grant of maintenance was allowed observing that there was relationship of husband and wife between them. The document voters list indicates the fact that Kiranpal, brother of the petitioners had domestic relationship with respondent No.1. The Husband of respondent No.1 Kiranpal has not denied the relationship with respondent No.1 in a statement made before the Court as is apparent from order dated September 8, 2007 in case State Vs. Kiranpal. The credibility of Kiranpal stands impeached from his conduct that he has made an attempt to evade his liability arising out of the domestic violence committed by him by not only ignoring the respondents but also by abandoning his right in the property owned by him by selling the same to none else but his real brothers who are the petitioners. The definition of domestic violence is quite wide. Any act, omission or commission or conduct of the husband or his family members would constitute domestic violence in case said acts harm or injure or endanger the health, safety, life and well-being of aggrieved person. The deprivation of any economic or financial resources to which the aggrieved person is entitled also falls under the Economic Abuse under Section 3 (iv) (a) of the Act. As per sub-clause (b) of sub-section (vi) of Section 3 of the Act, disposal or alienation of assets whether moveable or immovable in which the aggrieved person has interest would also fall in the definition of economic abuse. The petitioners are the real brothers of Kiranpal and he has sold the property to them. As

per Section 17 of the Act, a woman in domestic relationship shall have right to reside in the shared household whether or not she has any right, title or beneficiary interest in the same. Under Section 17 (2) of the Act, an aggrieved person cannot be evicted or excluded from the shared household or any part of it by the respondent save in accordance with procedure established by law. Respondent as per definition of Section 2 (q) of the Act, means any adult male person who is or has been in domestic relationship with the aggrieved person against whom the aggrieved person has sought any relief under the Act. Shared household under Section 2 (s) of the Act means a household where the person aggrieved lives or at any stage has lived in domestic relationship either singly or alongwith the respondent and includes such a household as whether owned or tenanted either jointly by the aggrieved person and the respondent. Shared household also includes a household which may belong to the joint family of which the respondent is a member.

So far as petitioners are concerned, they are the real brothers of Kiranpal, the husband of respondent No.1 who further alienated his property in favour of the petitioners and disappeared. The respondents fall under the definition of respondent being adult male persons having remained in domestic relationship with the Kiranpal. The respondents are victims of domestic violence at the hands of petitioners as well as their brother who has abandoned. The petitioners having domestic relationship with the respondents are liable to fulfill their obligation to provide residence to the

respondents which is the statutory right of the respondent under Section 17 of the Act. The right to reside in shared household cannot be snatched by husband making an attempt to abandon his right in the property in favour of his brothers. As the domestic violence against the victim/ respondents stand established, the respondents cannot be deprived of their right to stay in the shared household. The entire property of Kiranpal, husband of respondent No.1 now vests in his brothers i.e. the petitioners.

In view of the above circumstances, there is no scope for interference in the order passed by the Courts below to prevent domestic violence and to grant residence order to the respondents.

Since the petitioners have acquired right of title and possession in the property of Kiranpal husband of respondent No.1 by two sale deeds executed by him in their favour after the filing of the complaint under the Act, the rights of the respondents cannot be defeated.

The petition is dismissed to prevent the abuse of the process of the Court to grant mandatory relief and protection order to the respondents.

February 10, 2015
sanjay

(M.M.S.BEDI)
JUDGE