

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

Crl.Misc. No.M-7199 of 2014

Date of Decision : 21.8.2015

Poonam

.....Petitioner

Vs.

Vijay Kumar Jindal

.....Respondent

...

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

...

Present : Petitioner in person.

Mr. R.S. Rana, Advocate for the respondent.

...

1. To be referred to the Reporter or not ?
2. Whether the judgement should be reported in Digest ?

RAMESHWAR SINGH MALIK, J

Present petitioner, claiming herself to be an aggrieved person having lived together with the respondent, in domestic relationship in a shared household, through a relationship in the nature of marriage, has called upon this court to answer an important question of law, as to whether having lived in such a domestic relationship, she is entitled for different reliefs, mainly the monetary relief, under the relevant provisions of law contained in Chapter IV of the Protection of Women from Domestic Violence Act, 2005 ('DV Act' for short).

By way of instant petition, under Section 482 of the Code of Criminal Procedure ('Cr.P.C.' for short), petitioner has invoked the inherent jurisdiction of this court, for quashing of the order dated 7.11.2013 (Annexure P-13), passed by the learned Additional District Judge, Kurukshetra, whereby Crl. Revn.No.163 of 2013 (Vijay Kumar Jindal Vs. Poonam) and Crl.

Rev.No.350 of 2013 (Poonam Vs. Vijay Kumar Jindal) were decided together, thereby dismissing the revision of the petitioner for enhancement of maintenance amount and allowing the criminal revision filed by the respondent, declaring the petitioner not entitled to any amount towards maintenance, from the respondent, under the DV Act.

Notice of motion was issued and pursuant thereto, respondent appeared through counsel. However, no reply has been filed on behalf of the respondent. Trial court record was requisitioned and respondent was directed to keep on paying the interim maintenance @ Rs.3000/- per month to the petitioner, vide order dated 4.6.2014 passed by this court. Again, vide order dated 29.9.2014 passed by this court, respondent was directed to pay an amount of Rs.15000/- to the petitioner, in addition to the amount of Rs.9000/- paid by him in compliance of the above said order dated 4.6.2014.

Petitioner appeared in person and submitted that earlier she was married and was having a child from her first marriage. However, her first husband namely; Sanjay Kumar got an ex-parte decree of divorce by playing fraud on her in the year 1993-94. Since the petitioner and respondent were known to each other closely, their relationship further developed and took the shape of marriage. Respondent used to say that he will adopt the son of the petitioner after the marriage. Respondent told the petitioner that he was unmarried. Petitioner believed the respondent. When the petitioner was assured by the respondent of a happy married life and he also assured adoption of her son from the earlier marriage, petitioner agreed for marriage with the respondent. She submits that finally marriage between the petitioner and respondent took place on 17.9.2005 in a temple situated in Grain Market, Tohana, as per the Hindu rites and ceremonies.

Petitioner and respondent started living together as husband and wife. Petitioner alongwith her son used to reside with the respondent in the shared household. Respondent adopted the son of the petitioner for all intends and purposes, however, it was not reduced to writing. They were living in a rented accommodation at H.No.1812, Sector 7, Kurukshetra. They lived at this address from the month of February 2007 to 2010 and earlier to that they had been living in other rented accommodations mentioned by the petitioner, in her pleadings. Petitioner would next contend that respondent was a wealthy businessman owning huge property. He had been running a rice sheller at Dhuri, Distt. Sangrur, in the State of Punjab. He had been performing all the duties of a husband, while cohabiting with the petitioner. He used to bring all the household articles in the matrimonial home and also used to deposit the amount in her bank account, as and when required by the petitioner and her son, her bank account no. being 2949000100164536 in Punjab National Bank, Pipli, Kurukshetra, which is a matter of record. In this regard, she refers to the bank statements as Annexure P-1 to show that the last deposit by the respondent in this bank account was Rs.10000/- in the month of November 2010.

Petitioner submits that behaviour of the respondent started changing after about 4 years of their marriage. He started neglecting the petitioner and her son. When the petitioner tried to persuade the respondent in this regard, he also started beating the petitioner. Thereafter, he stopped visiting the matrimonial home in the shared household and also stopped maintaining the petitioner and her son. Having been left high and dry by the sudden change in the behaviour of the respondent, petitioner sent a legal notice to the respondent at Dhuri. After receiving the legal notice, respondent

became more violent. He came to Kurukshetra at matrimonial home. He was very angry and started scolding the petitioner. When she tried to pacify him, respondent slapped the petitioner in front of the son and left the matrimonial home. Petitioner would next contend that having been left with no other option, she had to move an application dated 15.3.2011 under Section 12 of the DV Act at Annexure P-2.

Having been served in the said application, respondent filed his written statement (Annexure P-3). He denied in toto all the allegations levelled by the petitioner. Petitioner has also placed on record numerous documents, including the revenue record and the documents regarding M/s Nav Jyoti Rice Mill, Sultanpur-Dhuri, regarding the ownership of the respondent qua the land as well as sole proprietorship of rice mill, in the form of Annexure P-5. Annexure P-6 is the sworn affidavit dated 20.10.2010 of the respondent, claiming himself to be the sole proprietor of M/s Nav Jyoti Rice Mill in Village Sultanpur (Dhuri). Annexure P-7 is again the documents pertaining to the ownership of the respondent regarding above said M/s Nav Jyoti Rice Mill. Annexure P-8 is the copy of the detailed order dated 1.3.2012 passed by the learned Judicial Magistrate Ist Class, Kurukshetra, whereby interim maintenance was granted to the petitioner @ Rs.3000/- p.m. in her application under Section 12 of the D.V. Act.

Petitioner has also placed on record copy of Civil Suit no.352 dated 8.12.2010 filed by the respondent for permanent injunction against the present petitioner as Annexure P-10 and the application under Order 39 Rules 1 and 2 read with Section 151 C.P.C. as Annexure P-9. However, this suit was withdrawn by the respondent vide order dated 15.10.2012 (Annexure P-11) in view of the statements suffered by the defendant and the learned counsel for

the plaintiff. Annexure P-12 is the revision petition filed by the petitioner for enhancement of interim maintenance from Rs.3000/- p.m. to Rs.26000/- p.m. and Annexure P-13 is the copy of impugned judgement dated 7.11.2013 passed by the learned Additional Sessions Judge, Kurukshetra, whereby revision filed by the petitioner was dismissed, whereas the revision filed by the respondent was allowed. Annexure P-14 are some of the photographs and Annexure P-17 is the statement of the respondent, whereby he is stated to have made payment of Rs.10,000/- to his wife-present petitioner. Annexure P-25 is the statement of son of the petitioner about the domestic relationship of petitioner and respondent.

Referring to the above said numerous documents available on the record, petitioner submits that she had been living with the respondent in domestic relationship after performing marriage with him. She submits that respondent claimed himself to be unmarried, concealed the material fact of his earlier marriage, so as to win over her faith. However, during the present litigation, petitioner was shocked to know from the pleadings of the respondent that he was already married when he performed the marriage with the petitioner. She also refers to the photographs Annexures P-11 to P-16 available at page 257 of the lower court record, to contend that respondent has not only performed marriage with the petitioner and thereafter lived in domestic relationship with her, but he has also adopted her son from the earlier marriage. Petitioner would next contend that since the respondent was a wealthy businessman and was having huge property, she is entitled for the maintenance @ Rs.26000/- p.m., because she was no more working due to her ill health and was not having any source of income. Petitioner prays for setting aside the impugned judgement dated 7.11.2013 (Annexure P-13) passed by the

learned Additional Sessions judge, Kurukshetra, by allowing the present petition.

Per contra, learned counsel for the respondent vehemently argued that the entire case of the petitioner was based on a concocted story put forth by her, which was based on totally false averments. As the respondent has completely denied the allegations levelled by the petitioner, she is not entitled for any kind of compensation from the respondent or any relief at the hands of this court. Respondent had no relationship of any kind, whatsoever, with the petitioner. He would next contend that the petitioner has been trying to black mail the respondent without their being any basis for her claim. At the most, status of the petitioner would be that of a concubine and since she does not qualify for any kind of relief under the D.V. Act from the respondent, present petition is misconceived and liable to be dismissed with costs. He prays for dismissal of the present petition.

Having heard the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the rival contentions raised, this court is of the considered opinion that keeping in view the peculiar facts and circumstances of the case, noticed herein above, instant petition deserves to be allowed, for the following more than one reasons.

Before proceeding further on the merits of the case and also with a view to appreciate the scheme and objects of the D.V. Act, it is necessary to refer to the statement of objects and reasons of the D.V. Act and the same are as under :-

STATEMENT OF OBJECTS AND REASONS

Domestic violence is undoubtedly a human rights

issue and serious deterrent to development. The Vienna Accord of 1994 and the Beijing Declaration and the Platform for Action (1995) have acknowledged this. The United Nations Committee on Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) in its General Recommendation No.XII (1989) has recommended that State Parties should act to protect women against violence of any kind especially that occurring within the family.

2. The phenomenon of domestic violence is widely prevalent but has remained largely invisible in the public domain. Presently, where a woman is subjected to cruelty by her husband or his relatives, it is an offence under Section 498-A of the Indian Penal Code. The civil law does not however address this phenomenon in its entirety.

3. It is, therefore, proposed to enact a law keeping in view the rights guaranteed under articles 14, 15 and 21 of the Constitution to provide for a remedy under the civil law which is intended to protect the woman from being victims of domestic violence and to prevent the occurrence of domestic violence in the society.

4. The Bill, inter alia, seeks to provide for the following

(i) It covers those women who are or have been in a relationship with the abuser where both parties have lived together in a shared household and are related by consanguinity, marriage or through a relationship in the

nature of marriage or adoption. In addition, relationships with family members living together as a joint family are also included. Even those women who are sisters, widows, mothers, single women, or living with the abuser are entitled to legal protection under the proposed legislation. However, whereas the Bill enables the wife or the female living in a relationship in the nature of marriage to file a complaint under the proposed enactment against any relative of the husband or the male partner, it does not enable any female relative of the husband or the male partner to file a complaint against the wife or the female partner.

(ii) It defines the expression “domestic violence” to include actual abuse or threat or abuse that is physical, sexual, verbal, emotional or economic. Harassment by way of unlawful dowry demands to the woman or her relatives would also be covered under this definition.

(iii) It provides for the rights of women to secure housing. It also provides for the right of a woman to reside in her matrimonial home or shared household, whether or not she has any title or rights in such home or household. This right is secured by a residence order, which is passed by the Magistrate.

(iv) It empowers the Magistrate to pass protection orders in favour of the aggrieved person to prevent the respondent from aiding or committing an act of domestic violence or

any other specified act, entering a workplace or any other place frequented by the aggrieved person, attempting to communicate with her, isolating any assets used by both the parties and causing violence to the aggrieved person, her relatives or others who provide her assistance from the domestic violence.

(v) It provides for appointment of Protection Officers and registration of non-governmental organisations as service providers for providing assistance to the aggrieved person with respect to her medical examination, obtaining legal aid, safe shelter etc.”

A bare reading of the above said statement of objects and reasons of the D.V. Act would show that the legislative intent behind this piece of legislation is to provide various rights to aggrieved women against domestic violence, in addition to the ones already provided to them under different statutes. It is an Act to provide for more effective protection of the rights of women guaranteed under the Constitution, who are victims of violence of any kind occurring within the family and for matters connected therewith or incidental thereto.

The definitions of aggrieved person, domestic relationship, monetary relief, respondent and shared household, which are relevant for the purpose of deciding the instant petition and provided under Section 2(a) (f) (k) (q) and (s) of the D.V. Act, read as under :-

Section 2 – In this Act, unless the context otherwise requires -

(a) **“aggrieved person”** means any **woman** who is, or has been, in a domestic relationship with the respondent and who alleged to have been subjected to any act of domestic violence by the respondent;

(f) **“domestic relationship”** means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family;

(k) **“monetary relief”** means the compensation which the Magistrate may order the respondent to pay to the aggrieved person, at any stage during the hearing of an application seeking any relief under this Act to meet the expenses incurred and the losses suffered by the aggrieved person as a result of the domestic violence;

(q) **“respondent”** means any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act'

Provided that an aggrieved wife or female living in a relationship in the nature of a marriage may also file a complaint against a relative of the husband or the male partner.

(s) **“shared household”** means a household where the person aggrieved lives or at any stage has lived in a

domestic relationship either singly or along with the respondent and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household.”

Section 3 of the D.V. Act provides the definition of domestic violence and relevant part thereof contained in clauses (a), (b), (c) and (d) followed by explanation I (i), (ii), (iii), (a), (b) and (iv) (a) as well as Explanation II, read as under :-

Section 3 – Definition of domestic violence —For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it—

(a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse or

(b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related

to her to meet any unlawful demand for any dowry or other property or valuable security; or

(c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or

(d) otherwise injures or causes harm, whether physical or mental to the aggrieved person.

Explanation I – For the purpose of this section -

(i) “physical abuse” means any act or conduct which is of such a nature as to cause bodily pain, harm or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force;

(ii) “sexual abuse” includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman;

(iii) “verbal and emotional abuse” includes -

(a) insults, ridicule, humiliation, name calling and insults or ridicule specially with regard to not having a child or a male child; and

(b) repeated threats to cause physical pain to any person in whom the aggrieved person is interested.

(iv) “economic abuse” includes -

(a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a

court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the share household and maintenance;

(b) disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person; and

(c) prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.

Explanation II – For the purpose of determining whether any act, omission, commission or conduct of the respondent constitutes “domestic violence” under this section, the overall facts and circumstances of the case shall be taken into consideration.

The above said provisions of law, when applied to the peculiar fact situation of the present case, no room for doubt is left that petitioner is an aggrieved person as defined in Section 2(a) and she has been living in

domestic relationship with the respondent, through a relationship in the nature of marriage, as defined in Section 2 (f). She is certainly entitled for the monetary relief as provided under Section 2 (k) and the present respondent has been found as an adult male person, who has been in a domestic relationship with the aggrieved person, petitioner herein, and against whom the aggrieved person has sought the relief under this Act, as provided under Section 2(q). It is also established on record that the petitioner and respondent had been living in a domestic relationship in a shared household, as defined under Section 2(s).

After a close perusal of the above said peculiar facts and circumstances of the case, numerous documents available on the record as well as the lower court record, it has been found that the respondent has committed the domestic violence against the petitioner, as defined under Section 3 of the D.V. Act. In fact, the definition of domestic violence is very wide and the present case clearly falls within the ambit thereof.

Now coming to Chapter IV, which is the heart and soul of the D.V. Act, Sections 12, 19, 20, 22 and 26 thereof, being necessary for the decision of the instant matter, read as under :-

Section 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.

19. Residence orders – (1) While disposing of an application under sub-section (1) of section 12, the

Magistrate may, on being satisfied that domestic violence has taken place, pass a residence order -

- (a) restraining the respondent from dispossessing or in any other manner disturbing the possession of the aggrieved person from the shared household, whether or not the respondent has a legal or equitable interest in the shared household'
- (b) directing the respondent to remove himself from the shared household;
- (c) restraining the respondent or any of his relatives from entering any portion of the shared household in which the aggrieved person resides;
- (d) restraining the respondent from alienating or disposing off the shared household or encumbering the same;
- (e) restraining the respondent from renouncing his rights in the shared household except with the leave of the Magistrate; or
- (f) directing the respondent to secure same level of alternate accommodation for the aggrieved person as enjoyed by her in the shared household or to pay rent for the same, if the circumstances so require;

Provided that no order under clause (b) shall be passed against any person who is a woman.

(2) The Magistrate may impose any additional conditions or pass any other direction which he may deem reasonably

necessary to protect or to provide for the safety of the aggrieved person or any child of such aggrieved person.

(3) The Magistrate may require from the respondent to execute a bond, with or without sureties, for preventing the commission of domestic violence.

(4) An order under sub-section (3) shall be deemed to be an order under Chapter VIII of the Code of Criminal Procedure, 1973 (2 of 1974) and shall be dealt with accordingly.

(5) While passing an order under sub-section (1), sub-section (2) or sub-section (3), the court may also pass an order directing the officer-in-charge of the nearest police station to give protection to the aggrieved person or to assist her or the person making an application on her behalf in the implementation of the order.

(6) While making an order under sub-section (1), the Magistrate may impose on the respondent obligations relating to the discharge of rent and other payments, having regard to the financial needs and resources of the parties.

(7) The Magistrate may direct the officer-in-charge of the police station in whose jurisdiction of the Magistrate has been approached to assist in the implementation of the protection order.

(8) The Magistrate may direct the respondent to return to the possession of the aggrieved person her stridhan or any other property or valuable security to which she is entitled

to.

20. **Monetary reliefs** – (1) While disposing of an application under sub-section (1) of Section 12, the Magistrate may direct the respondent to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of the domestic violence and such relief may include, but is not limited to -

- (a) the loss of earnings;
- (b) the medical expenses;
- (c) the loss caused due to the destruction, damage or removal of any property from the control of the aggrieved person; and
- (d) the maintenance for the aggrieved person as well as her children, if any, including an order under or in addition to an order of maintenance under Section 125 of the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force.

(2) The monetary relief granted under this section shall be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved person is accustomed.

(3) The Magistrate shall have the power to order an appropriate lump sum payment or monthly payments of maintenance, as the nature and circumstances of the case

may require.

(4) The Magistrate shall send a copy of the order for monetary relief made under sub-section (1) to the parties to the application and to the in-charge of the police station within the local limits of whose jurisdiction the respondent resides.

(5) The respondent shall pay the money relief granted to the aggrieved person within the period specified in the order under sub-section (1).

(6) Upon the failure on the part of the respondent to make payment in terms of the order under sub-section (1), the Magistrate may direct the employer or a debtor of the respondent, to directly pay to the aggrieved person or to deposit with the court a portion of the wages or salaries or debt due to or accrued to the credit of the respondent, which amount may be adjusted towards the monetary relief payable by the respondent.

22 Compensation orders – 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.

26. Relief in other suits and legal proceedings – (1)
Any relief available under sections 18, 19, 20, 21 and 22

may also be sought in any legal proceedings before a civil court, family court or a criminal court, affecting the aggrieved person and the respondent whether such proceeding was initiated before or after the commencement of this Act.

(2) Any relief referred to in sub-section (1) may be sought for in addition to and along with any other relief that the aggrieved person may seek in such suit or legal proceeding before a civil or criminal court.

(3) In case any relief has been obtained by the aggrieved person in any proceedings other than a proceeding under this Act, she shall be bound to inform the Magistrate of the grant of such relief.”

It is pertinent to note here that monetary relief provided under Section 20(1)(d) of the D.V. Act provides for an adequate, fair and reasonable monetary relief, which should be consistent with the standard of living, to which the aggrieved person is accustomed. The Magistrate has been empowered under Section 20(3) of the D.V. Act to order an appropriate lump sum payment or monthly payments of maintenance, as the nature and circumstances of the case may require. In addition to the other reliefs provided under this Act, Section 22 empowers the Magistrate directing the respondent to pay compensation and damages to the aggrieved person for the injuries, including mental torture and emotional distress, caused by his acts of domestic violence.

Further, Section 26 of the D.V. Act entitles the aggrieved person for seeking the relief available under Sections 18, 19, 20, 21 and 22 by way of

any legal proceedings before a civil court, family court or a criminal court. Thus, the scheme of the D.V. Act makes it crystal clear that aggrieved person like the petitioner herein, are entitled for seeking the relief, including monetary reliefs from the respondent, under the above said provisions of law contained in different sections of Chapter IV of the Act.

Coming to the peculiar fact situation obtaining in the instant case, this court is of the considered opinion that petitioner has brought on record sufficient material, so as to establish that respondent had been living in domestic relationship with her, through a relationship in the nature of marriage. It is so said because the person may tell lie, but circumstances don't. A bare glance at the photographs available on the lower court record in the form of Ex.P-11 to Ex.P-16 at pages 257 as well as 259 and also a separate photograph at page 245 of the lower court record, makes out a clear case in favour of the petitioner and against the respondent, so as to conclude that they had been living in domestic relationship, through a relationship in the nature of marriage, as provided under Section 2 (f) of the D.V. Act.

Respondent himself suffered a statement vide Annexure P-17 at page 164 and 164-A of the paper book, to the effect that he made a payment of Rs.10,000/- to his wife Poonam-present petitioner. This statement made in the court has been duly signed by the respondent. He is an educated person and cannot claim any innocence in this regard. Further, conduct of the respondent, while denying the allegations of the petitioner in toto, has exposed him to such an extent that has rendered himself unreliable.

During the course of hearing, when a pointed question was put to learned counsel for the respondent, as to whether he has anything to say about the relationship between the parties, he fairly conceded that some kind of

relationship was there between the parties. When confronted with numerous photographs available on the record, learned counsel for the respondent had nothing to say and rightly so, it being a matter of record. Having said that, this court feels no hesitation to conclude that the learned Magistrate rightly passed the order dated 1.3.2012 (Annexure P-8) in favour of the petitioner, however, an amount of Rs.3,000/- p.m. towards maintenance was on much lower side.

So far as the impugned order dated 7.11.2013 (Annexure P-13) passed by the learned Additional Sessions Judge, Kurukshetra, is concerned, the same has been found to be patently illegal and the same cannot be sustained. Objects of the D.V. Act as well as the legislative intent behind enactment of this piece of legislation, recognising fast changing social norms in our civil society, have been completely ignored by the learned revisional court. In fact, the learned Additional Sessions Judge has proceeded on a legally misconceived and factually incorrect approach, while passing the impugned order, which has resulted in serious miscarriage of justice.

Provisions of the D.V. Act fell for consideration of the Hon'ble Supreme Court in the cases of **D. Velusamy Vs. D. Patchaiammal** 2010 (10) SCC 469, **Chanmuniya Vs. Virendra Kumar Singh Kushwaha and another**, 2011(1) SCC 141, **Indra Sarma Vs. V.K.V. Sarma**, 2013(15) SCC 755, **Badshah Vs. Sou. Urmila Badshah Godse and another**, 2014(1) SCC 188 and **Bhuvan Mohan Singh Vs. Meena and others**, 2015 (6) SCC 353.

Similarly, the law laid down by the Hon'ble Supreme Court regarding grant of compensation in favour of the woman, though in slightly different fact situation, in **Bhuvan Mohan Singh's case (supra)**, which aptly apply to the facts of the present case, read as under :-

“8. At the outset, we are obliged to reiterate the principle of law how a proceeding under Section 125 of the Code has to be dealt with by the court and what is the duty of a Family Court after establishment of such courts by the Family Courts Act, 1984. In **Smt. Dukhtar Jahan Vs. Mohammed Farooq**, 1987 (1) RCR (Crl.) 375 : (1987) 1 SCC 624, the Court opined that proceedings under Section 125 of the Code, it must be remembered, are of a summary nature and are intended to enable destitute wives and children, the latter whether they are legitimate or illegitimate, to get maintenance in a speedy manner.

9. A three-Judge Bench in **Vimla (K.) V. Veeraswamy (K.)**, 1991(3) RCR (Crl.) 639 : (1991) 2 SCC 375, while discussing about the basic purpose under Section 125 of the Code, opined that Section 125 of the Code is meant to achieve a social purpose. The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife.

10. A two-Judge Bench in **Kirtikant D. Vadodaria V. State of Gujarat and another**, 1996(3) RCR (Crl.) 147 : (1996) 4 SCC 479, while adverting to the dominant purpose behind section 125 of the Code, ruled that :

“While dealing with the ambit and scope of the provision contained in Section 125 of the Code, it has to be borne in mind that the dominant and primary object is to give social justice to the woman, child and

infirm parents etc. and to prevent destitution and vagrancy by compelling those who can support those who are unable to support themselves but have a moral claim for support. The provisions in Section 125 provide a speedy remedy to those women, children and destitute parents who are in distress. The provisions in Section 125 are intended to achieve this special purpose. The dominant purpose behind the benevolent provisions contained in Section 125 clearly is that the wife, child and parents should not be left in a helpless state of distress, destitution and starvation.”

11. In **Chaturbhuj V. Sita Bai**, 2008(1) RCR (Crl.) 163 : 2008 (1) RCR (Civil) 136 : 2007 (6) R.A.J.) 416 : (2008) 2 SCC 316, reiterating the legal position the Court held :-

“Section 125 Cr.P.C., is a measure of social justice and is specially enacted to protect women and children and as noted by this court in **Captain Ramesh Chander Kaushal V. Veena Kaushal** (1978) 4 SCC 70 falls within the constitutional sweep of Article 15 (3) reinforced by Article 39 of the Constitution of India. It is meant to achieve a social purpose. The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife. It gives effect to fundamental rights and natural

duties of a man to maintain his wife, children and parents when they are unable to maintain themselves.

The aforesaid position was highlighted in **Savitaben Somabhai Bhatiya V. State of Gujarat**, 2005(2) RCR (Crl.) 190 : 2005(2) RCR (Civil) 151 : 2005(1) Apex Criminal 596 : (2005) 3 SCC 636.”

12. Recently in **Nagendrappa Natikar V. Neelamma**, 2013 (2) RCR (Crl.) 424 : 2013 (2) RCR (Civil) 469 : 2013 (2) (R.A.J.) 390 : 2013 (3) SCALE 561, it has been stated that it is a piece of social legislation which provides for a summary and speedy relief by way of maintenance to a wife who is unable to maintain herself and her children.

13. The Family Courts have been established for adopting and facilitating the conciliation procedure and to deal with family disputes in a speedy and expeditious manner. A three-Judge Bench in **K.A. Abdul Jaleel V. T.A. Shahida**, 2003(3) RCR (Civil) 645: (2003 (4) SCC 166, while highlighting on the purpose of bringing in the Family Courts Act by the legislature, opined thus :-

“The Family Courts Act was enacted to provide for the establishment of Family Courts with a view to promote conciliation in, and secure speedy settlement of, disputes relating to marriage and family affairs and for matters connected therewith.”

Reverting back to the facts of the case in hand and respectfully

following the law laid down by the Hon'ble Supreme Court in the cases referred to herein above, it is unhesitatingly held that the petitioner has been found to be an "aggrieved person" under Section 2(a), she had been living in "domestic relationship" with the respondent, as defined under Section 2(f), "through a relationship in the nature of marriage" in a "shared household" and she is entitled for the "monetary relief" from the respondent, as defined in Section 2(k) of the D.V. Act. It is so said because the respondent has been found as an "adult male person" in view of the definition provided under Section 2(q) of the D.V. Act and he has also been found responsible for the "domestic violence" as defined under Section 3 of the D.V. Act.

Above said seems to be the only purposive, harmonious and constructive interpretation of different provisions contained in Sections 2 and 3 as well as in Chapter IV of the D.V. Act. Any contrary interpretation will run counter to the true spirit of the objects sought to be achieved and also the legislative intent adopted by the legislature in legislating the D.V. Act. It is the reason that the law laid down by the Hon'ble Supreme Court in **Bhuvan Mohan Singh's case (supra)** in a matter under Section 125 Cr.P.C., is being applied to the facts of present case and being followed herein because the aggrieved person-only woman-petitioner in the instant case, has been granted the right of monetary relief including monthly maintenance under the D.V. Act, in addition to her right under Section 125 Cr.P.C., as provided under Section 20(1) (d) of the D.V. Act. Thus, it can be safely concluded that the learned Magistrate rightly passed the order dated 1.3.1992 (Annexure P-8), which deserves to be upheld, however, with a reasonable increase in the amount of maintenance, whereas the impugned judgement dated 7.11.2013 (Annexure P-13) passed by learned Additional Sessions Judge, cannot be

sustained and the same is liable to be set aside, having been found to be suffering from patent illegality.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this court is of the considered view that the present petition deserves to be allowed. Consequently, impugned judgement dated 7.11.2013 (Annexure P-13) passed by the learned Additional Sessions Judge, Kurukshetra, is hereby set aside. Order dated 1.3.2012 (Annexure P-8) passed by the learned Judicial Magistrate Ist Class, Kurukshetra is ordered to be restored, with modification only qua the amount of maintenance.

Consequently, keeping in view the totality of facts and circumstances of the case discussed herein above, including the laudable object of Section 20 (2) of the D.V. Act and above all our constitutional philosophy reflected from Articles 14, 15 and 21 of the Constitution of India, the amount of maintenance has to be and the same is hereby increased from Rs.3,000/- p.m. to Rs.12,000/- p.m. Any lesser amount of monthly maintenance, in the given fact situation obtaining in the instant case, will not meet the ends of justice. However, the increase in the amount of monthly maintenance will be from the date of filing the present petition i.e. 26.2.2014. Respondent is directed to pay the arrears of maintenance to the petitioner within a period of three months and he shall pay the monthly maintenance to the petitioner on or before 10th of every month.

Resultantly, with the above said observations made and directions issued, present petition stands allowed, however, with no order as to costs.

21.8.2015
GS

(RAMESHWAR SINGH MALIK)
JUDGE

