

(1)

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.1008 OF 2016

Syed Abdul Tahewar s/o Syed
Taherulla Hussaini,
Age : 32 years, Occu. Business,
R/o Shivaji Nagar, Main Road,
Nanded

..PETITIONER

VERSUS

1. Saira Begum w/o Syed Abdul Tahewar,
Age : 28 years, Occu. Household,
R/o Shivaji Nagar, Tq. & Dist. Nanded
At present Madina Nagar, Degloor Naka,
Nanded
2. Syed Taherulla Hussain s/o
Age : 60 years, Occu. Business,
3. Shamim Begum w/o Syed Taherulla
Hussaini,
Age : 55 years, Occu. Household,
4. Anjum Begum w/o Masood,
Age Major, Occu. Household,
5. Syed Abdul Gaffur s/o Syed Taherulla
Hussaini,
Age : Major, Occu. Business,

Respondent no.2 to 5
R/o Shivaji Nagar, Main Road,
Nanded

6. The State of Maharashtra
(Formal party)

..RESPONDENTS

Mr Md. Waseemullah, Advocate for petitioner;
Mr H.I. Pathan, Advocate for respondent no.1;
Mr D.R. Bhadekar, Advocate for respondents no.2 to 5;
Mr K.D. Munde, Addl. Public Prosecutor for respondent no.6

(2)

CORAM : N.W. SAMBRE, J.**DATE : 21st September, 2016****ORAL ORDER :**

The present petitioner was married to respondent no.1 on 14th November, 2010. As there were differences between them, an application under section 12 of the Protection of Women from Domestic Violence Act, 2005 (for short "DV Act"), being Misc. Criminal Application No.95 of 2012, came to be moved before the learned Judicial Magistrate First Class, Nanded. In the said proceedings, the petitioner, his father/mother/sister and brother were added as parties.

2. The learned Magistrate, by an order dated 8th November, 2014, awarded maintenance of Rs.3,000/- to be paid by the petitioner - husband and compensation of Rs.25,000/- to be paid by respondents no.1 to 5.

3. The petitioner - husband did not prefer any appeal under the DV Act. However, the other relatives, i.e. father, mother, brother and sister of the petitioner preferred Criminal Appeal No.115 of 2015, whereas respondent no.1 – wife Sairabegum preferred Criminal Appeal No.84 of 2014. The appeal preferred by respondent no.1 – wife came to be allowed by learned Additional Sessions Judge-1, Nanded, by judgment and order dated 21st June, 2016, whereby directions were issued to pay compensation of Rs.50,000/- and Rs.3,60,000/- towards marriage expenses to respondent no.1.

(3)

4. Learned Counsel appearing on behalf of the petitioner – husband submits that the petitioner was not aggrieved by the order of the learned Magistrate granting maintenance of Rs.3,000/- and amount of Rs.25,000/- towards compensation and as such, no appeal under the DV Act was preferred.

5. While questioning the order of the learned Sessions Judge enhancing compensation to Rs.50,000/- and the marriage expenses of Rs.3,60,000/-, learned Counsel appearing on behalf of the petitioner, would urge that conjoint reading of section 12 with that of section 20 of the DV Act does not empower learned Sessions Judge to grant enhancement in an appeal. He would then urge that the order is *de hors* the provisions and as such liable to be set aside. Apart from above, he has not pressed into service any other issue.

6. Learned Counsel appearing on behalf of respondent no.1 – wife strenuously opposed the petition on the ground that scope of section 20 of the DV Act, in its ambit covers even expenses of marriage. According to him, the present petition is without any merit and is liable to be dismissed.

7. Sub-section (1) of section 20 of the DV Act reads as under :-

“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

(4)

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.”

8. The object with which the legislation i.e. D.V. Act is brought into effect is required to be appreciated. Amongst other, gender sensitization and prevention of harassment of women are its objects which could be read down. In **Indra Sarma vs. V.K.V. Sarma**, reported in **(2013) 15 SCC 755**, the Apex Court, while dealing with the scope of reliefs that can be granted under Section 12 of the D.V. Act, in paragraphs 16 and 17, has observed thus :-

“16. Chapter IV is the heart and soul of the Domestic Violence Act, which provides various reliefs to a woman who has or has been in domestic relationship with any adult male person and seeks one or more reliefs provided under the Act. The Magistrate, while entertaining an application from an aggrieved person under [Section 12](#) of the Domestic Violence Act, can grant the following reliefs:

(5)

1) Payment of compensation or damages without prejudice to the right of such person to institute a suit for compensation or damages for injuries caused by the acts of domestic violence committed by the adult male member, with a prayer for set off against the amount payable under a decree obtained in Court;

2) The Magistrate, under [Section 18](#) of the Domestic Violence Act, can pass a “protection order” in favour of the aggrieved person and prohibit the respondent from:

- a) committing any act of domestic violence;
- b) aiding or abetting in the commission of acts of domestic violence;
- c) entering the place of employment of the aggrieved person or, if the person aggrieved is a child, its school or any other place frequented by the aggrieved person;
- d) attempting to communicate in any form, whatsoever, with the aggrieved person, including personal, oral or written or electronic or telephonic contact;
- e) alienating any assets, operating bank lockers or bank accounts used or held or enjoyed by both the parties, jointly by the aggrieved person and the respondent or singly by the respondent, including her stridhan or any other property held either jointly by the parties or separately by them without the leave of the Magistrate;
- f) causing violence to the dependants, other relatives or any person who give the aggrieved person assistance from domestic violence;
- g) committing any other act as specified in the protection order.

(6)

3) The Magistrate, while disposing of an application under [Section 12\(1\)](#) of the Domestic Violence Act, can pass a “residence order” under [Section 19](#) of the DV Act, in the following manner:

“19. Residence order- (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 cl. (b) shall be passed against any person who is a woman.

(7)

xxx

xxx

xxx"

(4) An aggrieved person, while filing an application under [Section 12\(1\)](#) of the Domestic Violence Act, is also entitled, under [Section 20](#) of the DV Act, to get “monetary reliefs” 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,-

“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 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.

xxx

xxx

xxx

xxx

xxx

xxx"

The monetary reliefs granted under the above mentioned section shall be adequate, fair, reasonable and consistent with the standard of living to which an aggrieved person is accustomed and the Magistrate has the power to order an appropriate lump sum payment or monthly payments of maintenance.

(8)

(5) The Magistrate, under [Section 21](#) of the Domestic Violence Act, has the power to grant temporary custody of any child or children to the aggrieved person or the person making an application on her behalf and specify, if necessary, the arrangements for visit of such child or children by the respondent.

(6) The Magistrate, in addition to other reliefs, under [Section 22](#) of the Domestic Violence Act, can 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 the respondent.

17. [Section 26](#) of the Domestic Violence Act provides that any relief available under Secs. 18, 19, 20, 21 and 22 may also be sought in any legal proceeding, 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. Further, any relief referred to above may be sought for in addition to and along with any other reliefs that the aggrieved person may seek in such suit or legal proceeding before a civil or criminal court. Further, if 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.”

Plain reading of the above observations further strengthens the objectivity with which the statute was enacted, that is to achieve the Constitutional principles as enshrined in Article 15 (3). The Honourable Apex Court has also taken into account the nature of remedy provided under the D.V. Act

(9)

being civil law for protection of women from being victims of domestic violence and to prevent the occurrences of domestic violence in the society, to provide full protection to rights of women who are victims of violence occurring within the family.

9. While dealing with Sections 18, 19, 20 and 22, Honourable Apex Court, in the matter of **Saraswathy vs. Babu**, reported in **(2014) 3 SCC 185** has given liberal and beneficial interpretation to the same, thereby ordering entitlement for compensation and damages for injuries including mental torture, emotional distress caused by domestic violence. From the plain reading of Section 20 what could be gathered is, the section is not restricted to only what has been stated in sub-section (1) as could be gathered from the language employed therein.

10. Having regard to the object with which the statute is enacted and the language used in the said section, in my opinion, the contention of the petitioner that the recovery of the marriage expenses cannot be ordered pursuant to the provisions of Section 20 or recovery of marriage expenses at the behest of applicant – respondent no.1 herein cannot be granted under Section 20, is liable to be rejected. In any case, upon plain reading of the section, it would not give rise to two meanings and even if being so, the meaning that achieves the object with which the statute is enacted, is required to be accepted. In this regard, appropriate support can be drawn from the judgment of Honourable Apex Court in **Whirlpool of India Ltd. vs. Employees' State Insurance Corporation**, reported in **(2000) 3 SCC 185**.

(10)

11. The order of payment of marriage expenses is based on the testimony of the father of the wife, who was not cross-examined by any of the respondents. In addition to oral evidence, receipts towards purchase of jewelery, furniture items, etc. were produced and duly proved.

12. There is one more aspect of which this court must take note of is that the father of respondent no.1 – wife, who had entered into the witness box, was not cross-examined. As such, his testimony is required to be accepted in entirety.

13. For ordering payment of marriage expenses, in my opinion, there is sufficient evidence, which is taken into account by the learned Sessions Judge. As such, no case for interference is made out. In view thereof, Criminal Writ Petition fails and stands dismissed.

(N.W. SAMBRE, J.)

amj