

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Reserved on: 07.07.2017

Delivered on: 09.08.2017

+ CRL.REV.P.380/2016

SHABANA

..... Petitioner

versus

SHAHID BEG

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr.Dalip Singh with Mr.Nakul Barsoya and
Mr.Rohit Chaprana.

For the Respondent : Mr.Rama Shankar with Mr.Feroz Ahmad
and Mr.Saurabh.

CORAM:-

HON'BLE MR JUSTICE ASHUTOSH KUMAR

JUDGMENT

ASHUTOSH KUMAR, J

1. The petitioner/wife had filed a complaint before the Metropolitan Magistrate, Mahila Court-01, Central, Delhi under Section 12 of The Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as "Act") which was registered as CC No.291/6/08 seeking protection order under Section 18; residence order under Section 19; monetary relief under Section 20 and compensation order under Section 22 of the Act.

2. The learned Magistrate vide order dated 13.07.2015 directed that the petitioner be paid an amount of Rs.10,000/- per month towards her and her minor daughter's maintenance and for her alternative accommodation from the date of the judgment. It was

specified that any amount paid to the petitioner in other proceedings would be adjusted. The respondent was directed to clear the arrears of maintenance within three months and to pay the maintenance of Rs.10,000/- by 10th day of every month of English calendar. The respondent was also restrained from causing any harassment or cruelty to the petitioner from the date of the order.

3. As against the aforesaid order passed by the learned Mahila Court, both, the petitioner and the respondent preferred respective appeals vide CA No.8/2015 and 5/2016. Both the appeals were heard together and vide order dated 22.02.2016, the appeal of the petitioner was dismissed but the appeal of the respondent was partly allowed to the extent that the monthly allowance to be paid by him was reduced to Rs.5000/- per month towards the maintenance of the minor daughter of the petitioner and nothing to her, payable from the date of filing of the complaint till the date of attainment of majority of the child.

4. The petitioner has challenged both the orders by the Courts below by the present petition.

5. The petitioner was married to the respondent on 07.08.2005 in accordance with Muslim custom. A child was born on 20.04.2006. It has been submitted on behalf of the petitioner that despite good amount of money having been spent in the marriage, she was not treated well and was subjected to cruelty and harassment. The paternity of the child was also doubted by the respondent. Because of such cruel behavior meted out to the petitioner, a complaint was made but ultimately, settlement was arrived at whereupon the petitioner

along with her child went to her parental home. Later, the petitioner was asked to move in a separate accommodation in Trilok Puri which was purchased by the respondent for an amount of Rs.5,22,000/-. Out of the aforesaid amount, only Rs.3,70,000/- was paid by the respondent and his family members whereas the balance amount was paid by the petitioner and her mother. Both, the petitioner and the respondent lived in the aforesaid accommodation at Trilok Puri for some time. The aforesaid accommodation was later sold out and the spouses shifted to a rented accommodation. Later, the petitioner was refused to be kept in the new flat which was purchased. The petitioner, as alleged, has been living with her mother since 14.10.2008. Hence the complaint.

6. The learned Mahila Court after taking into account the evidence brought before her, assessed the income of the respondent at Rs.30,000/- to Rs.35,000/- and directed for payment of Rs.10,000/- per month towards maintenance and accommodation of the petitioner and her daughter.

7. The Appellate Court though accepted, in principle, the assessment of the income of the respondent and the requirement of the respondent to maintain the daughter born out of the wedlock but refused to enhance the maintenance as was claimed by the petitioner; rather declined to grant any maintenance to the petitioner on the ground that she was earlier married to one Noor Mohd, which fact was never disclosed and that there was nothing on record to suggest that the aforesaid earlier marriage of the petitioner had been dissolved. As such, the Appellate Court directed the respondent to pay only an

amount of Rs.5000/- towards the maintenance of the daughter of the petitioner i.e. Rs.5000/- per month from the date of the filing of the complaint.

8. The only reason assigned by the Appellate Court for not granting maintenance to the petitioner is that the petitioner had married one Noor Mohd. Prior to her marriage with the respondent.

9. The provisions of the Act are for the benefit of persons in distress as well as for vindication of the rights of the aggrieved person which is guaranteed under Articles 14, 15 & 21 of the Constitution of India and for providing civil remedies for the purposes of protecting women from being victims of domestic violence and to prevent the occurrence of such domestic violence in society.

10. Section 2(a) of the Protection of Woman from Domestic Violence Act, 2005 defines aggrieved person as follows:-

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

11. From the aforesaid definition, it is very clear that apart from the woman who is in a domestic relationship with the respondent, a woman who has been in domestic relation, if is subjected to domestic violence, would also come under the category of “aggrieved person”.

12. Similarly, domestic relationship has been defined under Section 2(f) which means 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

joint family. Section 2(s) defines a shared household. From a bare reading of the aforesaid three definitions under the Act, there could be no two opinions about the fact that the petitioner is an aggrieved person who has been in a domestic relationship with the respondent and had a shared household.

13. The incidences of domestic violence have been enumerated in Section 3 of the Act which defines domestic violence and it includes physical, verbal, emotional and economic abuse. From the evidence on record, there is no dispute about the petitioner having been subjected to domestic violence. It would then make no difference, so far as maintenance is concerned, if the petitioner was earlier married to somebody else and the same fact was not brought on record.

14. The Court dealing with a complaint under Section 12 of the Act is not competent to decide the validity of any marriage between the parties, which could only be done by a competent Court in an appropriate proceeding by or between the parties and in compliance with other requirements of law.

15. It was thus not proper for the Appellate Court to have reversed the order of the Trial Court awarding maintenance to the petitioner and her daughter. The Appellate Court also does not seem to have taken into account that there were ample evidences to show that the petitioner had a domestic relationship with the respondent and lived in the shared household where she was subjected to domestic violence. The Appellate Court, perhaps, erred in focusing itself on the validity of the marriage of the petitioner with the respondent.

16. The case of the petitioner is that she was betrothed to one Noor Mohd while she was only 14 years of age and the marriage between her and Noor Mohd was never consummated as there was no rukhsati. Assuming but not admitting this fact to be incorrect, what cannot be doubted is that the petitioner had lived with the respondent and was subjected to domestic violence. The Appellate Court seems to have misdirected himself in taking it upon himself to decide whether a valid marriage existed between the petitioner and the respondent.

17. Thus the appellate order dated 22.02.2016 is set aside.

18. The order of the learned Magistrate stands restored on the setting aside of the Appellate order.

19. Since the Trial Court assessed the income of the respondent between Rs.30,000/- to Rs.35,000/- per month, the original order is modified to the extent that the respondent would be liable to pay Rs.12,500/- per month to the respondent towards her and her daughter's maintenance and alternative accommodation from the month of August, 2017. The respondent shall now be required to pay an amount of Rs.10,000/- to the respondent from the date of filing of the complaint till the month of July, 2017 and Rs.12,500/- per month from August, 2017 till the attainment of majority of the daughter of the petitioner.

20. The revision petition is disposed of accordingly.

ASHUTOSH KUMAR, J

AUGUST 09, 2017/k