

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

% **Judgment delivered on: 10th November, 2017**

+ **CRL.REV.P. 494/2015 and CrI.M.A.No. 11437/15**

SUKHJINDER SINGH SAINI

..... Petitioner

Through: Mr.Mahesh Kr. Tiwari
and Mr.Bishnu Tiwari,
Advocates with the
petitioner in person.

Versus

HARVINDER KAUR

..... Respondent

Through: Mr.R.D. Tyagi, and
Ms.Smriti Anupam,
Advocates with the
respondent in Person.

CORAM:

HON'BLE MR. JUSTICE I.S.MEHTA

JUDGMENT

I. S. MEHTA, J.

1. Instant revision petition is preferred by the petitioner- Sukhjinder Singh Saini under Sections 397 Cr.P.C. read with Section 482 Cr.P.C. for setting aside the impugned order dated 07.05.2015 passed the learned Special Judge CBI-03,(PC Act), Delhi in CA No. 04/2015, titled as “*Sukhjinder Singh Saini Vs.*

Harvinder Kaur” whereby the learned Special Judge has dismissed an appeal filed by the present petitioner under Section 29 of the Protection of Women from Domestic Violence Act, 2005 against the order dated 23.01.2015 passed by learned Metropolitan Magistrate-01, Central District, Tis Hazari Courts, Delhi in CC. No. 106/6/14 filed by the respondent- Harvinder Kaur under Section 12 of Protection of Women from Domestic Violence Act, 2005.

2. The brief facts stated are that the respondent/complainant and petitioner have met through a matrimonial advertisement which was advertise by the parents of the respondent/complainant and then with the consent of both the parties they got engaged on 21.12.2008 and thereafter the marriage was solemnized at Ambala according to Sikh rites and customs on 22.02.2009. Out of the wedlock a male child namely Daksh Preet was born on 11.06.2013. After their marriage the respondent/complainant started to live at her matrimonial house with her in-laws and petitioner/husband at Zirkpur, Panchkula, Haryana and spent around one month. During the stay, after one week, the mother-in-law of the respondent/complainant started taunting and commenting about fewer dowries. Further the mother-in-law and sister-in-law of the respondent/complainant always demanded a luxury car from her and pressurized her for above said demand. The respondent/complainant after feeling so much humiliation from hands of mother-in-law and sister-in-law, shifted to Delhi after spending 40 days in her matrimonial home. Since 05.01.2014 the

respondent/complainant is residing with her parents along with her minor child.

3. Subsequently, the respondent/complainant filed an application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 against the petitioner herein-Sukhjinder Singh Saini (husband of the respondent/complainant), Jaswinder Kaur (mother-in law of respondent/complainant) and Varinder kaur (sister in law of the respondent/complainant) along with an application under Section 23 (2) of the DV Act in the Court of learned Chief Metropolitan Magistrate, Tis Hazari Courts, Delhi in complaint case No.106/6/14.
4. Consequently, the learned Metropolitan Magistrate after hearing the argument of both parties and after perusal of the documents placed on record vide order dated 23.01.2015 directed the petitioner to pay interim maintenance of Rs. 40,000- per month which includes the maintenance of her minor child as well as maintenance for alternative accommodation, if any, from the date of filing of the petition, i.e. 06.06.2014, till she is legally entitle to receive the same or the final disposal of the case, whichever is earlier.
5. Aggrieved from the aforesaid order dated 23.01.2015 the petitioner preferred an appeal under Section 29 of the Protection of Women from Domestic Violence Act, 2005 before the learned Sessions Court and the learned Special Judge, CBI-03 (PC Act), Delhi vide order dated 07.05.2015 dismissed the appeal of the petitioner, i.e. CA No.04/15.

Hence the present petition.

6. The learned counsel for petitioner has stated that the learned Appellate Court and the Trial Court failed to consider the evidences placed on record, particularly the affidavits of the parties, documentary evidences which established that no cruelty or harassment has ever been caused by the petitioner and also the salary details of the respondent/complainant and passed the order in a very mechanical way.
7. The learned counsel for the petitioner has further submitted that the since the mother of the petitioner is suffering from cancer since 2009, who is under intensive treatment since then and the petitioner has to look after her mother as she is of old age, in addition to that there are certain other responsibility on the petitioner towards his parents as well as unmarried sister who is studying and their entire expenditure is being borne by the petitioner only as he is the sole bread earner, who can look after them, but this aspect has not been considered while passing the order dated 23.01.2015 by the learned Metropolitan Magistrate.
8. The learned counsel for the petitioner has further submitted that the petitioner is living in a rented accommodation at Bangalore at the place of employment and there are other expenditure towards lodging, food etc. which are necessary and after deducting all the necessary expenditure towards responsibility/liability including his own expenditure, statutory deduction and loans taken by him, a meager amount is left and such granting of interim maintenance of Rs. 40,000/- without any consideration of the above said aspects, is on very higher side and that too from the date of filing of the application.

9. The learned counsel for the petitioner has also submitted that the learned Trial Court has failed to appreciate the common question that unless domestic violence is proved, no relief can be granted to the respondent/complainant as per the mandate of the Protection of Women from Domestic violence Act, 2005.
10. The learned Counsel for the petitioner has further submitted that the respondent/complainant is a well educated lady and earning sufficiently and she does not require any maintenance and she is intentionally not doing the job, earlier she was earning Rs. 55,000/- per month. The learned counsel for petitioner in support of his submissions has relied upon the following decisions:-
- 1) ***Damanpreet Kaur vs. Indrmeet Juneja & Anr.; 2012 [4] JCC 2375.***
 - 2) ***Smt. Mamata Jaiswal vs. Rajesh Jaiswal; 2000(3) MPLJ 100.***
 - 3) ***Ravi Dutta vs. Kiran Dutta & Anr.;*** CrI. M.C. 3106/2008 decided on 11.02.2014.
 - 4) ***Krishna Murthy Nookula Vs. Y. Savitha;*** CrI. Revision Petition No.815/209 decided on 09.12.2009.
11. The learned counsel for the petitioner has further submitted that respondent/complainant has enough sufficient means to maintain herself and her minor child whereas the impugned order dated 07.05.2105 passed by the learned Sessions Court does not give any heed to the said order dated 23.01.2015 which is too harsh and therefore, is liable to be set aside.
12. On the contrary the learned counsel for the respondent/complainant has submitted that the respondent/complainant is having four year old

minor child and her father is a paralytic and she is residing with her parents and unable to maintain herself and her minor child. The petitioner is a man of means and he is under legal obligation to maintain her and her minor child and submits that the present petition be dismissed for want of merit.

13. It is an admitted fact coming on record that the main application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 is pending before the Trial Court. The determination of the same will be done by the Trial Court after leading of evidence by the respective parties and on the basis of material documents and income affidavits of the parties.
14. Since the respondent and her minor child are to be maintained by the petitioner, in the absence of denial of existence of the marriage and denial of paternity of the minor child, the petitioner cannot shy away from his statutory obligation of maintaining his legally wedded wife and his minor child.
15. It is a settled principle of law that both the parents have a legal, moral and social duty to provide to their child the best education and standard of living within their means. The mere fact that the spouse with whom the child is living is having a source of income, even if sufficient, would in no way absolve the other spouse of his obligation to make his contribution towards the maintenance and welfare of the child.
16. Sub-clause 2 of Section 23 of DV Act empowers the Magistrate to pass such interim order as he deems just and proper therefore, it is well within the jurisdiction of the Magistrate to grant the interim relief, if the

Magistrate is satisfied that the application prima facie discloses that the respondent is committing, or has committed an act of domestic violence or that there is a likelihood that the respondent may commit an act of domestic violence.

17. Moreover, the monetary relief can be granted to meet the expenses incurred and losses suffered by the aggrieved person and the child of the aggrieved person as a result of the domestic violence, and the question whether the aggrieved person, on the date of filing of the application under Section 12 of DV Act was in a domestic relationship with the respondent is irrelevant.
18. Furthermore, an act of domestic violence once committed, subsequent decree of divorce will not absolve the liability of the husband from the offence committed or to deny the benefit to which the aggrieved person-wife is entitled under the Domestic Violence Act, 2005 including monetary relief under Section 20, Child Custody under Section 21, Compensation under Section 22 and interim or ex parte order under Section 23 of the Domestic Violence Act, 2005. Reliance is placed on the judgment of the Apex Court in **V.D. Bhanot v. Savita Bhanot; (2012) 3 SCC 183**, has observed as under:-

"12. We agree with the view expressed by the High Court that in looking into a complaint Under Section 12 of the PWD Act, 2005, the conduct of the parties even prior to the coming into force of the PWD Act, could be taken into consideration while passing an order Under Sections 18, 19 and 20 thereof. In our view, the Delhi High Court has also rightly held that even if a wife, who had shared a household in the past, but was no longer doing so when the Act came into force, would still be entitled to the protection of the PWD Act, 2005."

19. Therefore, the contentions of the learned counsel for the petitioner and the judgments relied by him are not helpful in the facts and circumstances of the present case.
20. In view of the aforesaid, I find no infirmity in the impugned orders dated 07.05.2015 passed by the learned Special Judge, CBI-03 (PC Act), Delhi in CA No.04/15.
21. Consequently, the instant revision petition filed by the petitioner is dismissed having no merit.

However, this judgment shall not affect the merits of the case, application under Section 12 of DV Act pending between the parties as the determination of the same will be done by the Trial Court after considering the evidence on record and income affidavits of the parties.
22. The present petition is disposed of in the above terms. The Trial Court is directed to dispose of the application under Section 12 of DV Act filed by the respondent-wife as soon as possible and preferably within a period of six months from the date of this judgment.
23. Copy of this judgment be sent to the concerned Court(s). No order as to costs.
24. All pending applications (if any) are also disposed of accordingly.

I.S.MEHTA, J

NOVEMBER 10, 2017