

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

% **Judgment delivered on: 17<sup>th</sup> May, 2017**

+ **CRL.M.C. 4936/2015**

1. BHARAT BARARIA  
2. GEETA BARARIA  
3. YUVRAJ BARARIA ..... Petitioners

Through: Mr.B.N.Singhvi, Adv.

versus

1. PRIYANKA BARARIA ..... Respondent

Through: Mr.Vineet Mehta, Adv. with  
Mr.Prateek Kumar and Mr.Vikramjeet  
Singh, Adv.

**CORAM:**  
**HON'BLE MR. JUSTICE I.S.MEHTA**

**JUDGMENT**

**I. S. MEHTA, J.**

1. By way of the instant petition, the petitioners invoke the inherent jurisdiction of this Court under Section 482 of the Code of Criminal Procedure, 1973 to set aside the impugned orders dated 07<sup>th</sup> August, 2015 passed by the learned Special Judge (PC Act)-03: CBI, Patiala House Courts, New Delhi, in Criminal Appeal No. 03 of 2015 and the interim maintenance order passed by the learned Metropolitan Magistrate on 11<sup>th</sup> February, 2015 under Section 23 of the Protection of Women from Domestic Violence Act, 2005

(hereinafter referred to as “the DV Act”) in Complaint Case No. 20/4/14, wherein the learned Metropolitan Magistrate has granted interim maintenance amounting to Rs. 30,000/- (Rupees Thirty Thousand Only) in favour of the respondent.

2. The brief facts stated are that, the marriage between the petitioner No.3 and the respondent was solemnized on 26<sup>th</sup> August, 2010 as per Hindu rites and customs and out of the wedlock one female child named Alisha was born on 17<sup>th</sup> February, 2013. Thereafter, on 15<sup>th</sup> December, 2012 the respondent was forced to leave the matrimonial home with her minor daughter and she is completely dependent on her parents. It has been alleged by the respondent that the petitioners had neither taken her back nor made any provision for her maintenance. It has been further alleged that the petitioners have refused the respondent to stay in her matrimonial home and have further refused to hand over the stridhan articles including jewellery to the respondent despite repeated requests.
3. Subsequently, on 18<sup>th</sup> January, 2014, the respondent filed an application under Section 12 read with Sections 18, 19, 20, 21 and 22 of the Protection of Women from Domestic Violence Act, 2005 against the petitioners herein, along with an application under Section 23 (2) of the DV Act in the Court of Chief Metropolitan Magistrate, Patiala House Courts, New Delhi.
4. The learned Metropolitan Magistrate after hearing the arguments of both the parties and after considering the complaint, affidavit and other material on record, passed the order dated 11<sup>th</sup>

February, 2015 directing the petitioners herein to pay maintenance of Rs.30,000/- per month (including Rs.6000/- being paid by the petitioner no. 3 towards maintenance of baby Alisha) from the date of filing of the petition, i.e. 18.01.2014, and further directed the petitioner No.3 to clear the arrears by 31<sup>st</sup> March, 2015 and to pay a sum of Rs.5000/- p.m. towards the rent for the alternate accommodation of the respondent on supplying of documents.

5. Aggrieved by the said order, the petitioners filed an appeal under Section 29 of the DV Act being Criminal Appeal No. 03/15 before the Court of District and Sessions Judge (PC Act)-03, CBI Patiala House Courts, New Delhi on 21<sup>st</sup> February, 2015.

6. Consequently, the learned Special Judge (PC Act)-03, CBI Patiala House Courts, New Delhi vide impugned judgment dated 7<sup>th</sup> August, 2015 dismissed the aforesaid appeal of the petitioners for want of merit.

Hence, the present petition.

7. The learned counsel for the petitioners has submitted that the order dated 11<sup>th</sup> February, 2015 passed by the learned Metropolitan Magistrate is arbitrary and without any basis and is liable to be set aside.

8. The learned counsel for the petitioners has further submitted that maintenance cannot be permitted under Section 23 of the DV Act because as per Section 20 of the DV Act, it provides for interim relief, i.e. the monetary relief to meet the expenses incurred and losses suffered as a result of the domestic violence which is

different from maintenance either under Section 125 Cr.P.C. or Section 25 of the Hindu Marriage Act.

9. The learned counsel for the petitioners in order to support his contentions has relied upon the following judgments:

**1) *Indra Sarma v. V.K. Sarma*, (2014)(6) SCC (Crl) 593**

**2) *Juveria Abdul Majid Patni v. Atif Iqbal Mansoori*, 2014 (10) SCC 736.**

10. The learned counsel for the petitioners has further submitted that in the present case there is no element of any incident of domestic violence made out by the complainant and the learned Metropolitan Magistrate lost sight of the law even under Section 12 of the DV Act, where it primarily requires consideration of Domestic Incident Report submitted by the Protection Officer or any other person but not that of the complainant herself.

11. The learned counsel for the petitioners has submitted that the learned Metropolitan Magistrate found a *prima facie* case of Domestic Violence without even pursuing Section 20 of the DV Act as per which it was essential to record the instances of domestic violence suffered by the aggrieved person, i.e. the respondent/complainant.

12. The learned counsel for the petitioners has further submitted that neither inquiry nor investigation was ordered by the learned Metropolitan Magistrate in order to satisfy and pass an order under Section 23(2) of the DV Act. Therefore, the order passed by the learned Metropolitan Magistrate was arbitrary and *void ab initio* as it was passed contrary to the law and the learned Court of Sessions

simply confirmed the order passed by the learned Metropolitan Magistrate and dismissed their appeal for want of merit.

13. On the other hand, the learned counsel for the respondent has submitted that the order dated 11<sup>th</sup> February, 2015 passed by the learned Metropolitan Magistrate against the petitioners and in favour of the respondent has been rightly passed and does not suffer from any illegality or infirmity and the subsequent appeal filed by the petitioners has also rightly been dismissed by the learned Sessions Court vide impugned order dated 7<sup>th</sup> August, 2015

14. The learned counsel for the respondent has further submitted that the petitioners in the present petition have challenged the authority and jurisdiction of the learned Metropolitan Magistrate in granting interim maintenance to the respondent. The interpretation of the petitioners, that the Court of learned Metropolitan Magistrate was not competent to grant interim maintenance to the respondent under Section 23 read with Section 20 of the DV Act is wrong and baseless. The petitioners are interpreting Section 20 of the DV Act in manner that only monetary reliefs in the nature of expenses incurred and losses suffered by the aggrieved person and child of the aggrieved person as a result of the domestic violence can be granted. The said interpretation is incorrect as the petitioners have not gone through the entire Section 20 of the DV Act and based their opinion on incomplete knowledge of the same.

15. The learned counsel for the respondent has relied upon the judgment of the Hon'ble Supreme Court in *Shalu Ojha v. Prashant Ojha*, MANU/SC/0835/2014.

16. The learned counsel for the respondent has further submitted that Section 23 of the DV Act is clear and unambiguous and the learned Metropolitan Magistrate has to only satisfy itself that an application under Section 23 of the DV Act *prima facie* discloses the commission of acts of domestic violence by the petitioners herein qua the respondent/complainant.
17. The learned counsel for the respondent has submitted that the case of ***Indra Sarma v. V.K. Sarama*** (supra) cited by the petitioners does not apply to the present case and the other case relied upon by the petitioners, i.e. ***Juveria Abdul Majid Patni v. Atif Iqbal Mansoori*** (supra), the Hon'ble Supreme Court has upheld the maintenance granted by the learned Metropolitan Magistrate and has set aside the orders of the learned ASJ and High Court. The said judgment in fact supports the respondent.
18. The learned counsel for the respondent has further submitted that the order under challenge in the present petition is an interim order and is not the final order. The pleadings of the petitioners in the present writ petition are false and the same raises disputed question of facts which cannot be adjudicated in the writ jurisdiction. The same are required to be proved in the evidence by the petitioners before the Trial Court and not before this Court. Hence, the present petition is meritless and deserves to be dismissed.
19. 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.

20. Since the respondent and her minor daughter are to be maintained by the petitioner No.3, in the absence of denial of existence of the marriage and denial of paternity of the minor daughter, who is stated to be admitted in school and her school fees has been increased, the petitioner No.3 cannot shy away from his statutory obligation of maintaining his legally wedded wife and his minor daughter.

21. The monetary relief as provided under Section 20 DV Act is different from maintenance, which can be in addition to an order of maintenance under Section 125 Cr.P.C. or any other law, and can be granted to meet the expenses incurred and losses suffered by the aggrieved person and 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.

22. 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 ex parte 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.

23. Furthermore, an act of domestic violence once committed, subsequent decree of divorce will not absolve the liability of the respondent from the offence committed or to deny the benefit to which the aggrieved person 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.

24. The Apex Court in ***V.D. Bhanot v. Savita Bhanot; (2012) 3 SCC 183***, has observed that the conduct of the parties even prior to the coming into force of the Protection of Women from Domestic Violence Act, 2005 could be taken into consideration while passing an order under Sections 18, 19 and 20 of DV Act thereof. The relevant paragraph is reproduced 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."*

25. In view of the aforesaid, I find no infirmity in the orders dated 11<sup>th</sup> February, 2015 passed by the learned Metropolitan Magistrate and the impugned order dated 7<sup>th</sup> August, 2015 passed by the Court of learned Special Judge (PC Act)-03, CBI Patiala House Courts,

New Delhi affirming the order passed by learned Metropolitan Magistrate.

26. Consequently, the instant petition filed by the petitioners is dismissed. Reliance is placed on the judgment of the Apex Court in *Juveria Abdul Majid Patni v. Atif Iqbal Mansoori, 2014 (10) SCC 736*.

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.

27. 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.

28. Copy of this judgment be sent to the concerned Court(s). No order as to costs.

**I.S.MEHTA, J.**

**MAY 17, 2017**