

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRR-1162-2017(O&M)

Date of decision:-25.7.2018

Raman Ahuja

...Petitioner

Versus

Vandana

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Payal Mehta, Advocate
for the petitioner.

Mr.Ashok Sharma Nabhewala, Advocate
for the respondent.

H.S. MADAAN, J.

Petitioner – Vandana (herein respondent) had filed a complaint under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as '*the Act*') claiming several reliefs under Sections 18, 19, 20, 22 of the Act.

Inter alia, in the petition, she contended that she along with her minor child was thrown out of matrimonial home i.e. House No.3010, Sector 21-D, Chandigarh comprising four bed rooms, a kitchen and toilet on the first floor having rental value of Rs.15,000/- per month; that she was unable to work due to mental and physical torture at the hands of

respondent. According to the petitioner, she had filed a petition under Section 125 Cr.P.C. against her husband for grant of maintenance and had lodged FIR No.82 dated 20.5.2008 under Sections 406 and 498-A IPC against her husband Raman Ahuja @ Banti, father-in-law Joginder Parkash, mother-in-law Sudarshan Devi and Geeta Arora. According to the petitioner, she is a graduate having additional qualification of PG Diploma in Hotel Management having capacity to earn a sum of Rs.30,000/- per month but as a result of conduct of respondent, her future prospects are ruined. She claimed various reliefs under different heads.

On notice, the respondents had appeared and filed reply taking objections challenging maintainability of the petition against respondents No.3 and 4. Such respondents denied allegations with regard to domestic violence, harassment and mental torture submitting that no dowry articles were lying with respondents. According to such respondents, the petitioner herself had left the company of respondent No.1 and that SCO No.2405-2406, Sector 22-C, Chandigarh and House No.3010, Sector 21-D, Chandigarh are owned by respondent No.2 – Joginder Parkash and his wife Smt.Sudarshan being their self acquired property, as such, petitioner is not entitled to get any share from those properties. It is further contended that respondent No.1 has been earning more than Rs.10,000/- per month, therefore, the petitioner is not entitled to get any payment towards necessities or rent from respondent. The respondents further contended that respondent No.1 being natural guardian of the child is entitled to the custody and meeting rights as well. It was contended that no dowry articles are lying with respondents since

the same had been taken into possession by the police, whereas the remaining articles are with petitioner. While denying the remaining allegations, the respondents prayed for dismissal of the application.

During the course of trial, on the basis of statement made by learned counsel for the petitioner names of respondents No.3 and 4 were deleted from the array of respondents.

The parties were given opportunities to lead evidence in respect of their respective claims.

During the course of her evidence, the petitioner examined herself as PW1 and tendered some documents.

With that the evidence of the petitioner stood closed.

Whereas in rebuttal respondent No.1 appeared as RW1 besides examining Rajesh Kumar, Clerk from Estate Office, Chandigarh as RW2 and Varinder Singh, Clerk from Estate Office, Chandigarh as RW3. Thereafter, the respondents closed their evidence.

After hearing arguments, the trial Court granted maintenance allowance @ Rs.1,500/- per month to petitioner Vandana and Rs.1,000/- per month as rent to be paid by respondent No.1, whereas other reliefs were declined vide order dated 19.9.2014.

The petitioner Vandana had preferred an appeal seeking modification in the impugned order to the extent of enhancement of monetary reliefs. Whereas the respondents had filed an appeal for setting of the impugned order.

The appeal filed by petitioner Vandana titled 'Vandana Versus Raman Ahuja @ Banti' was partly allowed and the order dated

19.9.2014 passed by the trial Court was modified to the extent that maintenance allowance was enhanced from Rs.1,500/- per month to Rs.17,000/- per month i.e. Rs.10,000/- for appellant Vandana and Rs.7,000/- for minor child Bhavishya and besides it, rent amount was enhanced from Rs.1,000/- to Rs.8,000/- per month to be paid by respondent No.1 from the date of filing the petition.

Whereas the appeal filed by Raman Ahuja and others was allowed partly to the extent that maintenance granted to appellant Vandana shall not be in addition to the maintenance granted to her in petition under Section 125 Cr.P.C. and she would be at liberty to accept the maintenance amount in any of the petition granted to her and up to that extent only.

Still feeling aggrieved Raman Ahuja has approached this Court by way of filing the present revision petition, notice of which was issued to the respondent, who put in appearance through counsel.

I have heard learned counsel for the parties besides going through the record.

In the instant case relationship between the parties is not disputed i.e. Vandana being legally wedded wife of Raman Ahuja and Master Bhavishiya being their minor son. Obviously a matrimonial discord has taken place between the two spouses resultantly, they are locked in litigation. Petitioner Vandana had filed an application under Section 12 of the Act. On notice Raman Ahuja and her parents had appeared through counsel. Of the several reliefs claimed by Vandana, relief with regard to maintenance and payment of rent for the

accommodation to be provided to her had been allowed. The trial Court of Judicial Magistrate Ist Class, Chandigarh had allowed maintenance @ Rs.1,500/- per month and Rs.1,000/- per month as rent therein, which stood enhanced in appeal as discussed supra.

Learned counsel for the revisionist has argued that petitioner Vandana had failed to prove that she was subjected to domestic violence by her husband and parents-in-law. It being so, she was not entitled to claim any maintenance. In support of her such contention, she placed reliance upon order passed by Nagpur Bench of Bombay High Court in Criminal Writ Petition No.32 of 2014 titled **'Koushik Versus Sau Sangeeta Koushik Gharami and others'** decided on dated 5.5.2014 wherein while dealing with an appeal filed against an order in a complaint under Section 12 of the Act, it was examined as to whether any monetary relief could have been given to aggrieved person in terms of Section 20 of the Act and it was observed that monetary relief was available for the children of the aggrieved person, if the same is required to meet the expenses incurred by aggrieved person as a result of domestic violence and monetary relief is permissible in case losses are suffered by aggrieved person as a result of domestic violence. However, the aggrieved person is under obligation to establish that she had to meet the expenses incurred and losses suffered due to domestic violence on the part of the respondent. In that case, since the Magistrate has come to the conclusion that domestic violence could not be proved and that finding of Magistrate has not been challenged by the aggrieved person, it was observed that no relief could have been given to respondents No.2 and 3.

Learned Magistrate in para No.7 of the order has dealt with the aspect of domestic violence allegedly perpetrated upon petitioner Vandana by the respondent, coming to the conclusion that she had failed to establish the same on record. For ready reference, para No.7 of the order passed by the trial Magistrate is reproduced as under:

“7. In the present case the first set of relief sought by the petitioner/complainant can be broadly covered by category i.e.:- order of injunction against the respondent from commit acts of domestic violence, threatening complainant and her minor child, restraining the respondent from entering the premises of the complainant, from taking the minor child forcibly, illegally, from staying away from the friends/relative of the complainant/petitioner from beating the complainant/petitioner and using vulgar language etc. As far as this relief is claimed the petitioner has failed to prove any of the allegations made in the complaint regarding torture, harassment, use of vulgar filthy language or beatings. There is no medical record on the file which could corroborate the version of the complainant that she was mercilessly beaten. Further there is no evidence on record regarding the harassment or torture to her. No witness of locality or even relative of the complainant has been examined. It is also pertinent to note that vide judgment Ex.R-4 for offence under Section 406, 498-A, the Trial Court has already acquitted the respondent finding no strength in

the allegation of the complainant which are similarly to the allegations made in the present petition. As such, no ground is made out to grant the above mentioned reliefs.

In para No.8 the aspect of giving of dowry by her parents and respondents allegedly usurping the same has been discussed, which is being reproduced as under:

“8. The next relief sought by the complainant/petitioner is that she may be allowed access to her dowry articles and her other belongings lying on the first floor of House No.3010, Sector 21-D, Chandigarh and injunction against alienation, damaging and removing all these articles and return of the cash amount given by her parents to the respondent as well as compensation for loss due to damage/destruction or removal of property from the control of petitioner. Perusal of the file reveals that petitioner has failed to bring on record any evidence to support her contention regarding her dowry articles other belongings lying in the House No.3010, Sector 21-D, Chandigarh. Further, the complainant/petitioner has failed to bring on record any concrete evidence as to actually giving of dowry articles or other articles and the same being kept in her House No.3010, Sector 21-D, Chandigarh. Mere attaching of list of articles which is Ex.P-3 without bringing on record any bills or other witnesses to corroborate her version is not sufficient to grant the above mentioned reliefs claimed. When the complainant has failed to prove on record

giving of articles, same lying with the respondent or any damage to the same, the question of granting compensation for the lose/damage or injunction against alienation to the articles does not arise. Hence, these reliefs are also denied.

The purpose of enacting the Act was to provide for a remedy under the civil law to protect the women from being victims of domestic violence and to prevent the occurrence of domestic violence in the society. Section 2 of the Act defines 'an aggrieved person' as meaning 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.

Section 3 of the Act defines the domestic violence as under:

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.

Section 20 deals with the monetary reliefs providing that 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.

Thus, it comes out that proof of domestic violence should be there before any relief can be granted under the Act. But here the order passed by the learned Magistrate goes to show that no such finding is there that petitioner was subjected to domestic violence at the hands of her husband or his parents or other relatives. Rather the situation is otherwise.

The finding given is that she has failed to prove allegations made in the

complaint regarding torture, harassment, use of vulgar language or beatings etc. Learned Additional Sessions Judge, Chandigarh has also not given any such finding that petitioner was subjected to domestic violence by her husband and members of in-laws family. In both the orders, there is nothing to show that petitioner Vandana comes within the definition of an aggrieved person. It being so, she is not entitled to get any monetary relief in terms of Section 20 on account of maintenance or rent for separate accommodation.

Learned counsel for the revisionist has referred to citations 'Anil Kumar Versus Shashi Bala and others' passed in CRM-M-30 of 2011 decided on May, 2, 2017 by the High Court of Himachal Pradesh and 'B.Prakash Vs. Deepa and another' by Madurai Bench of Madras High Court in support of her contention that proof of domestic violence is a must before any monetary relief can be granted to an aggrieved wife.

Learned counsel appearing for the respondent – wife has referred to authority Narender @ Kala Versus Sunita, 2016(4) R.C.R.(Civil) 809 by a Co-ordinate Bench of this Court, wherein it has been observed that acquittal of husband and his family members in dowry demand case is no ground to deny maintenance to the wife and the child under the Act.

There cannot be any dispute with such proposition of law but here as has been discussed earlier, no finding has been given by the Courts below that wife is a victim of domestic violence or is an aggrieved person. Rather learned Magistrate has specifically observed that she has failed to prove the allegations of torture, cruelty etc. It has to be taken

note of that petitioners have been granted maintenance @ Rs.8,000/- in proceedings under Section 125 Cr.P.C. in terms of order passed by Additional Sessions Judge – cum – Judge, Special Court, Chandigarh. It has further been stated that the petitioners have been granted maintenance @ Rs.30,000/- per month while allowing application under Section 24 of HMA by a Co-ordinate Bench of this Court.

Under the circumstances, the orders passed by the Courts below are not sustainable and are bound to be set aside by acceptance of the revision petition.

The revision petition is accordingly allowed and the orders passed by the Courts below are set aside, resultantly, the petition under Section 12 of the Act stands dismissed.

Since the main criminal revision petition is allowed, the miscellaneous application, if any, stands disposed of accordingly.

25.7.2018
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No