

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

RESERVED ON : 17th APRIL, 2018
DECIDED ON : 23rd MAY, 2018

+ **CRL.REV.P. 858/2017**

CHARU CHAWLA

..... Petitioner

Through: Mr. Akhil Sibal, Sr. Advocate with Ms. Manali Singhal, Ms. Vinita Sasidharan, Ms. Jahnvi Mitra, Ms. Aditi Pathak & Mr. Deepak Singh Rawat, Advocates.

versus

R K ANAND AND ANR.

..... Respondents

Through: Mr. Uday Gupta, Advocate with Ms. Shivant Lal, Mr. Hiren Dasan, Mr. M.K. Tripathi & Mr. Chand Qureshi, Advocates for R-1.
Mr. Chetan Anand, Advocate with Mr. Vinod Chauhan, Advocate for R-2.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

CRL. M.A.No. 18756/2017 (Exemption)

Exemption allowed subject to all just exceptions.

The application stands disposed of.

CRL.REV.P. 858/2017 & CRL.M.A.No.18755/2017 (Stay)

1. Present revision petition has been preferred by the petitioner to challenge the legality and correctness of an order dated 02.11.2017 of learned Addl. Sessions Judge in Crl.A.No.52/2017 whereby order dated 24.03.2017 of the learned Metropolitan Magistrate / Mahila Court in the proceedings under Section 12 of the Protection of Women from Domestic Violence Act (in short 'D.V.Act') was set aside to the extent whereby the respondent No.1 was summoned to file response. The revision petition is contested by respondent No.1.

2. I have heard the learned counsel for the parties and have examined the file.

3. The petitioner was married to the respondent No.2 – Chetan Anand on 23.02.2008. After marriage, both of them lived together at 13, Darbanga Farms, DLF Chattarpur, New Delhi. Subsequently in January, 2014, they shifted to a rented accommodation bearing No.S-288, Panchsheel Park, New Delhi; the said rented accommodation was taken by the petitioner in the name of her company in which she was a Director.

4. The petitioner filed an application under Sections 12, 18, 20, 21, 22 and 23 of the D.V.Act against both the respondents for various acts of physical, emotional and economic abuse perpetrated by them claiming various reliefs under Sections 18 to 22 of D.V.Act.

5. On receipt of the petition, learned Metropolitan Magistrate on 24.03.2017 issued notice to respondents directing them to file their replies to the applications and an affidavit of income and expenditure of respondent No.1 therein i.e. Chetan Anand on filing of

PF/RC/Speed post and courier returnable on 26.04.2017. By the impugned order, the learned Magistrate restrained the respondents from interfering with the custody of the minor child till further orders as the custody was already with the petitioner. Regarding the other reliefs, as per clause (B) and (C) of the application under Section 23 of the D.V.Act, it observed that property in question was jointly owned by both the respondents. No ex-parte orders were granted at that stage without giving due opportunity to the opposite party i.e. the respondents.

6. Instead of putting appearance before the Trial Court pursuant to the issuance of notice by the order dated 24.03.2017, the respondent No.1 challenged it in the appeal. It was averred in the appeal that the marriage of the petitioner and respondent No.2 was solemnized on 23.02.2008 and after stay for certain duration in premises bearing No. 13, Darbanga Farms, DLF Chattarpur, New Delhi, both had permanently shifted to a rented accommodation No. S-288, Panchsheel Park, New Delhi, in January, 2014 of their own. The said premises was taken on rent by the petitioner in the name of company of which she was a Director. There was no subsisting 'domestic relationship' between the present petitioner and respondent No.1 at the time of filing of the application under Section 12 D.V.Act. It was further averred that both the present petitioner and her husband - Chetan Anand had established their own 'shared household'. The 'domestic relationship' as claimed by the present petitioner had come to an end. The respondent No.1 was not a necessary party in the

petition and prayer was made to set aside the order qua him in the exercise of appellate powers and jurisdiction.

7. The said appeal was contested by the present petitioner. By the impugned order dated 02.11.2017, the learned Appellate Court allowed the appeal and set aside the proceedings under Section 12 of the D.V.Act qua the respondent No.1.

8. Learned Senior Counsel for the petitioner urged that the order dated 24.03.2017 of the learned Metropolitan Magistrate was not an appealable order; the Appellate Court has exceeded its jurisdiction and the impugned order cannot be sustained.

9. Relying upon various authorities – ‘*Smt.Smita Singh vs. Smt.Bishnu Priya Singh & Ors.*’, 2013 CrL.L.J. 4826; ‘*Sulochana & Anr. Vs. Kuttappan & Ors.*’, 2007 CrL.L.J. 2057; ‘*Abhijit Bhikaseth Auti vs. State of Maharashtra & Anr.*’, MANU/MH/1432/2008; ‘*Smt.Sheetal Hitesh Thawkar vs. Hitesh Vijay Thawkar & Anr.*’, 2012 CrL.L.J.516; ‘*Vishal Jindal vs. Puja Jindal*’, 2014 CrL.L.J. 4697; ‘*Ranvijai Singh vs. State of U.P. & Ors.*’, MANU/UP/2377/2015, and ‘*Mohan Singh vs. Laxmi Devi*’, MANU/UC/0178/2017, learned counsel for the respondent No.1 urged that all orders of the Metropolitan Magistrate affecting the rights of the parties are appealable under Section 29 of the D.V.Act. The learned Appellate Court committed no error in setting aside the summoning order qua the respondent No.1 as the averments in the petition did not constitute any offence qua him. The admitted position is that both the present petitioner and her husband of their own had shifted to a separate rented accommodation in January, 2014 and the present respondent

No.1 was not in 'domestic relationship' with the petitioner. The allegations leveled by the petitioner in the petition under Section 12 D.V.Act are false, vague and uncertain; these are not supported by any credible evidence. The respondent No.1 has placed on record several messages exchanged between the parties showing that the relationship between the petitioner and respondent No.1 was cordial. The respondent No.1 was exclusive owner of the property No. 13, Darbanga Farms, DLF Chattarpur, New Delhi. The learned Appellate Court has given detailed reasons to conclude that the allegations in the petition did not constitute any kind of abuse upon her. No specific instance has been cited by her to constitute cruelty; mental or physical; general averments made in the petition are of no consequence. There was no material before the learned Trial Court to issue summons to respondent No.1 in the said petition.

10. On perusal of the order dated 24.03.2017, it reveals that on receipt of the application under Section 12 of D.V.Act the learned Metropolitan Magistrate had issued notice to the respondents therein to afford an opportunity of being heard before grant of any relief claimed by the petitioner. The Trial Court had not passed any interim order affecting the rights of the respondents therein. The order had not decided any issue so as to cause any prejudice to the respondents therein. It had rather deferred its consideration till the response of the respondents was received. It was purely a procedural order which did not decide or determine the rights and liabilities of the parties. Purely interlocutory orders which deal only with procedure and which do not affect the rights of the parties will certainly not fall within the sweep

of expression, 'the order', in Section 29 of the D.V.Act. The order to be appealable, has to affect or have a material reflection on the rights of the parties.

11. In the instant case, the respondent No.1 did not put appearance before the Trial Court to controvert the allegations of the petitioner in the petition. The Trial Court did not get any opportunity to consider the matter and to return her findings on the issues raised by the respondent No.1 in appeal.

12. The Appellate Court in the impugned order has discussed all the issues raised by the present petitioner in the petition. The allegations leveled by the present petitioner qua the respondent No.1 have been brushed aside observing that these were false allegations without any specific instance. The Appellate Court further observed that the allegations of joint ownership of the respondents regarding the property in question were false. Specific case of the present petitioner is that both of them were joint owners; she has placed copy of revenue records to that effect. Seemingly, the Appellate Court has taken up the matter without affording opportunity to the Trial Court to decide the issues taken up for hearing in the appeal. Order dated 24.03.2017 of learned Metropolitan Magistrate did not decide any issue for which the respondent No.1 was forced to challenge it in the appeal. The learned Appellate Court has dealt with the case on merits without the pleadings being completed before the Trial Court and recording of any findings over it. Apparently, the learned Appellate Court has exceeded the jurisdiction and has decided the matter as if it was dealing with it on the original side / as a Trial Court. Such a

procedure adopted by the learned Appellate Court cannot be sustained. In case, the learned Appellate Court was not in consonance with the order issuing the notice to the respondent No.1, instead of deciding the petition on merits, the proper remedy before it was to remand the case with certain directions to the Trial Court to proceed with the matter. Instead of that, the learned Appellate Court itself decided the issues which have not even been considered by the Trial Court.

13. Resultantly, the impugned order of the Appellate Court cannot be sustained and is set aside.

14. The respondent No.1 will be at liberty to approach the learned Metropolitan Magistrate to seek the legal remedies available to him under law.

15. Revision petition stands disposed of in the above terms. Pending application also stands disposed of.

16. The parties shall appear before the Trial Court on 1st June, 2018.

17. Observations in the order shall have no impact on merits of the case and the learned Trial Court shall proceed with the case as per law uninfluenced by the observations in the order.

(S.P.GARG)
JUDGE

MAY 23, 2018 / tr