

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

CRR-244 of 2019(O&M)
Date of Decision: 02.09.2019

Kavita

...Petitioner(s)

Versus

Jagdish

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

Present:- Mr. Ravi Malik, Advocate for
Mr. Sanjeev K. Panwar, Advocate
for the petitioner.

HARI PAL VERMA, J.

Petitioner – Kavita (daughter-in-law) has filed the present revision petition impugning the order dated 17.12.2018 passed by Additional Sessions Judge, Palwal, whereby the appeal filed by the respondent (father-in-law) against order dated 06.01.2018 passed by Judicial Magistrate Ist Class, Palwal in an application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (for short, “the Act”) was allowed and the Appellate Court, while setting aside the order dated 06.01.2018, has directed the trial Court to pass a fresh order on the application, so filed by the petitioner for interim relief.

Briefly stated, the petitioner filed an application titled as

Kavita Vervs Vishnu & others under Section 12 of the Act against her

husband and in-laws for grant of interim maintenance on the averments that marriage of the petitioner (Kavita) and Vishnu was solemnised on 17.06.2011 and a daughter Bhumika was born to them out of this wedlock. However, ever since the marriage of the petitioner, she was harassed and subjected to domestic violence by the accused. Demand of dowry in the shape of cash amount of Rs.1,51,000/- and a car was raised. In 2011, the petitioner was ousted from her matrimonial home, after giving severe beatings to her and since then, she is living at her parental house and she is not able to maintain herself and her daughter. Her husband Vishnu was working with JP Group, Noida and is also having 5 acres of agricultural land in Haryana, whereas the other respondents, as arrayed in the application, were also having income of more than Rs.20,000/- per month from the business of selling milk. However, Vishnu (husband of the petitioner) was absconding from his house in order to avoid payment of maintenance and further litigations and he has been declared as proclaimed offender.

The trial Court after hearing the parties and considering the fact that husband of the petitioner, who was arrayed as respondent no.1 in the application so filed by the petitioner for grant of interim maintenance, was reportedly absconding and has been declared as proclaimed offender, has taken recourse to Section 2(q) of the Act and directed respondent no.2 therein, who is none else but father-in-law of the petitioner, to pay maintenance @ Rs.2,000/- from the date of filing of the application vide order dated 06.01.2018.

The respondent (father-in-law) filed appeal against the order dated 06.01.2018 passed by the trial Court before Additional Sessions Judge, Palwal. The Appellate Court while considering the averments made in paragraph 6 of the application, allowed the appeal and set aside the order dated 06.01.2018 passed by the trial Court, with a further direction to pass a fresh order on the application for grant of interim relief, vide impugned order dated 17.12.2018.

Aggrieved from the order dated 17.12.2018, the petitioner has filed the present revision petition.

Counsel for the petitioner has argued that the Appellate Court has committed a grave legal error while allowing the appeal filed by the respondent (father-in-law), setting aside a well reasoned order dated 06.01.2018 passed by the trial Court. Since the respondent and his family members had made such like circumstances, the petitioner was left with no other option except to live separately from them. There are justifiable reasons for her to stay separately from them. It is the moral as well as legal obligation of the respondent to provide monetary assistance to the petitioner, being her father-in-law. The Appellate Court has not appreciated the material fact that son of the respondent got married to the petitioner and therefore, she being an 'aggrieved person', as defined under Section 2(a) of the Act, is entitled for maintenance. Section 2(q) has clearly defined the word "respondent", which means that '*respondent is any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act*'. Thus, any adult male person is covered under the

definition of 'respondent' and the father-in-law of the petitioner being 'respondent' is liable to pay the maintenance to the petitioner, who is living separately. The husband of the petitioner is absconding only to avoid his liability to pay maintenance to the petitioner and also to avoid payment of other litigation expenses and thereby, he has been declared as proclaimed offender by the Court. The entire property of her husband, which is about 5 acres of cultivable agricultural land, apart from other income from selling of milk etc., which is joint with the respondent, the respondent is bound to pay the maintenance. The respondent is otherwise an able bodied person whereas the petitioner is not able to maintain herself as well as her daughter and therefore, she is entitled for maintenance.

I have heard learned counsel for the petitioner.

The record reveals that the petitioner had filed an application under Section 12 of the Domestic Violence Act impleading her husband Vishnu as well as other family members as respondents-accused, which included the respondent Jagdish, father-in-law, Kamlesh, mother-in-law, Gopal, brother-in-law and Tula Ram, grandfather-in-law of the petitioner-complainant. She was married with Vishnu on 17.06.2011 and a daughter was born to them out of this wedlock. Learned Magistrate has fastened the liability upon the respondent (father-in-law) for the reason that husband of the petitioner had absconded and was declared as proclaimed offender by the concerned Court. The other family members have been denied any liability specifically. However, merely because the petitioner was married to Vishnu, the respondent who is father-in-law, cannot be *ipso facto* held liable to pay maintenance, unless he is in domestic relationship with the

petitioner and has shared household. So long as her husband is alive, no liability towards maintenance allowance can be fixed on the father-in-law. Reference may be made to judgments of Hon'ble the Apex Court in the cases of **S.R. Batra and another v. Smt. Taruna Batra**, 2007 (3) SCC 169 and **Vimalben Ajitbhai Patel v. Vatslabeen Ashokbhai Patel and others** 2008 (3) SCC 649. In **Vimalben Ajitbhai Patel** (*supra*), the Apex Court has held as under:-

“21. Maintenance of a marriage wife, during subsistence of marriage, is on the husband. It is a personal obligation. The obligation to maintain a daughter-in-law arises only when the husband had died. Such an obligation can also be met from the properties of which the husband is a co-sharer and not otherwise. For invoking the said provision, the husband must have a share in the property. The property in the name of the mother-in-law can neither be a subject matter of attachment nor during the life time of the husband, his personal liability to maintain his wife can be directed to be enforced against such property.”

Further, nothing has come on record that the petitioner had shared the household with the respondent, as defined under Section 2(s) of the Act. Merely because the respondent is father-in-law of the petitioner and her husband had absconded, as he has been declared as proclaimed offender, does not mean that the respondent can be held liable to pay maintenance, unless there is material to show that the respondent has shared household with the petitioner, as defined under Section 2(s) of the Act. Moreover, the Appellate Court has only remanded the case back to the trial Court, so as to pass a fresh order on the application so filed by the

petitioner for interim relief, this Court finds that there is no illegality in the order passed by the Appellate Court.

Accordingly, the present revision petition is dismissed.

September 02, 2019
AK

(HARI PAL VERMA)
JUDGE

Whether speaking / reasoned?

Yes / No

Whether reportable?

Yes / No