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

Date of decision: 22.10.2019

+ CRL.M.C. 707/2017 and CRL.M.A. 3076/2017

EDWIN MURMU Petitioner

Through: Mr. Chetanya Puri, Adv.

versus

THE STATE & ANR. Respondents

Through: Mr.Panna Lal Sharma, APP for State.
Ms. Mumtaz Ahmed with Sh. Satish
Sharma, Adv. for R-2

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T (O R A L)

1. Vide the present petition, the petitioner seeks direction thereby to set aside the impugned order dated 25.11.2016 passed by the Special Judge (PC Act), (CBI-6) Patiala House Courts, New Delhi in CA No. 8717/16 titled as ***“Edwin Murmu vs. Smt. Prem”***.

2. The marriage between the petitioner and the respondent No. 2 was solemnised on 24.12.2008 and after marriage, on 28.12.2008, the petitioner and respondent No. 2 went to Assam due to the fear of family members of the respondent No. 2 and decided to live there. However, on 05.01.2009, the

family members of the petitioner resolemnized the marriage as per their customs and rites with the wish and consent of the respondent No. 2 and after that on 06.01.2009, the respondent No. 2 stated to the petitioner that she did not like the culture and atmosphere of Assam stating that she hails from Delhi and is an open minded girl and thereafter, she forced the petitioner to shift to Delhi.

3. On 07.01.2016, the petitioner along with respondent No. 2 took a train and shifted to Delhi and started residing at the tenanted premises. However, after some time, the mother of the respondent No. 2 started interfering in the matrimonial life of the petitioner and the respondent No. 2. She used to influence the respondent No. 2 against the petitioner. The petitioner was offered a Government job at LP School as teacher at his home town Mataiguri, Assam, but the respondent No. 2 was not interested in shifting with the petitioner to join the above said job and in this regard, she started quarrelling with the petitioner and due to the above said conduct of the respondent No. 2, the petitioner did not join the said Government job.

4. Further case of the petitioner is that right from the inception of the marriage, the respondent No. 2 has been completely non-adjusting and non cooperative and has never taken any interest in the household and daily

chores.

5. The respondent No. 2 is a lady of quarrelsome nature and used to pick-up quarrel on petty issues with the petitioner. The respondent No. 2 had a disrespectful attitude towards the petitioner and his family members. She did not care to fulfil the matrimonial obligation of meeting the essential requirements of the petitioner like preparing food, cleanliness of the house, keeping clothes well maintained etc. but the petitioner did not mind the same as he thought that the respondent No. 2 would adjust with him later.

6. Learned counsel appearing on behalf of the petitioner submits that on 20.03.2010, the brother of the respondent No. 2 along with 4-5 persons, beat the petitioner mercilessly without any reason. The petitioner made a call at 100 number and the Police officials admitted the petitioner in the hospital, MLC was prepared but no action was taken by the Police against the culprits. Copy of Medical treatment record of the petitioner with true typed copy are annexed as Annexure P-2 (Colly).

7. Despite the above stated cruelties committed by the respondent No. 2 upon the petitioner, the petitioner adjusted with the respondent No. 2 with a hope that the respondent No. 2 would change herself with the passage of time but the conduct, behaviour and attitude of the respondent No. 2 became

worse against the petitioner. She used to check the mobile phone of the petitioner and in case the petitioner had made a call to his family members in Assam, she would start quarrelling with the petitioner. In the month of January 2011, the petitioner shifted to a new rented accommodation and he got a job as Security Supervisor in the Belgium Embassy and the salary of the petitioner was ₹9400/- per month but the respondent No. 2 was not happy with the salary of the petitioner and she used to taunt the petitioner regarding the same.

8. Thereafter, the respondent No.2 taking advantage of the petitioner's absence, she filed a petition under Section 12 of Protection of Women from Domestic Violence Act, 2005 (the 'DV Act') as well as false complaint before the CAW Cell. After filing the said petition as well as complaint before the CAW Cell, the respondent No. 2 used to make threatening calls to the petitioner on his mobile phone that in case the petitioner would visit Delhi, she would get the petitioner killed.

9. Thereafter, the petitioner received summons from the Ld. Trial Court and he telephonically engaged a counsel in Delhi and the counsel for the petitioner appeared before the Trial Court on 21.11.2012 and filed his memo of appearance along with exemption application due to the reason that there

is a curfew currently in Kokari Jahan, Assam, wherein the petitioner was residing and the matter was adjourned for the next date. When it came to the knowledge of the respondent No. 2 that the petitioner has started pursuing the matter, she threatened the petitioner and the petitioner, due to the threats given by the respondent No. 2 to the petitioner, could not appear before the Ld. Trial Court. The earlier counsel of the petitioner communicated to him that he will appear regularly in the Court on the petitioner's behalf and there is no need of the petitioner's appearance in the Court and believing this, the petitioner did not appear before the Ld. Trial Court and the Ld. Trial Court was pleased to pass ex-parte order/ judgment dated 20.03.2015.

10. In addition to above, the respondent No. 2 has filed a complaint before the CAW Cell and the complaint of the respondent No.2 was ultimately culminated into the FIR bearing No. 24/2015, P.S. Nanak Pura, under section 498-A/406/34 IPC against the petitioner and his family members.

11. The petitioner moved a bail application and same was allowed vide order dated 09.06.2016 passed by the learned Additional Sessions Judge, Dwarka Courts, New Delhi.

12. Being aggrieved by the impugned judgment and order dated

20.03.2015, the petitioner preferred appeal under section 29 of the DV Act against the ex-parte order dated 20.03.2015 passed by the learned MM, South District, Saket Courts, New Delhi in Domestic Violence Petition No. 91/1/12 titled as “**Smt. Prem Vs. Edwin Murmu**”, whereby the Ld. Trial Court has been pleased to grant maintenance of ₹6,000/- per month to the respondent No. 2.

13. Learned counsel further submits that the learned trial Court without considering the facts and circumstances of the case, was pleased to dismiss the application under Section 5 of the Limitation Act as well as the appeal filed by the petitioner.

14. Learned counsel further submits that in view of the circumstances mentioned above, the Appellate Court had to condone the delay and hear the case on merit, however, the said Court failed to do so.

15. Learned Court below observed in its impugned order that “*the petitioner did not sign any vakalatnama in favour of his counsel to pursue the case before the trial Court. In that situation, it is unbelievable that petitioner remained under the impression that case is being pursued regularly by his counsel. The petitioner should have been vigilant enough to keep the track of his case pending before the trial Court*”.

16. It is further observed that petitioner pursued the criminal case before the CAW Cell and got anticipatory bail on 09.06.2016 in that matter, but simultaneously, he did not pursue the case under the DV Act.

17. In view of the above, neither sufficient cause for not preferring the appeal in time has been shown to the Court below nor before this Court. Therefore, I find no illegality and perversity in the impugned order.

18. I find no merit in the present petition.

19. The same is accordingly dismissed. Pending application also stands disposed of.

(SURESH KUMAR KAIT)
JUDGE

OCTOBER 22, 2019

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