

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

CRR No.4362 of 2015.

Decided on:- January 14, 2020.

Fakru.

.....Petitioner.

Versus

Smt. Minsira and another

.....Respondents.

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

Present:- Mr. Sarfraj Hussain, Advocate
for the petitioner.

Mr. Amit Jain, Advocate
for the respondents.

HARI PAL VERMA, J.(Oral)

The petitioner-husband has filed present criminal revision impugning the judgment dated 03.11.2014 passed by learned Judicial Magistrate 1st Class, Ferozepur Jhirka, whereby, learned Magistrate while placing reliance upon ***V.D. Bhanot Versus Savita Bhanot 2012(1) RCR (Criminal) 834 (SC)***, disposed of the petition under the Protection of Women from Domestic Violence Act, 2005 (for short, the DV Act) filed by the respondents, namely, Smt. Minsira and Faisal, who are the wife and minor son of the petitioner, and granted the relief to the respondents, as mentioned in paragraph No.20 of the impugned judgment, which reads as under:

“20. Keeping in view the aforesaid circumstances, petitioner is entitled to the following relief:

(a) The respondent shall not commit any act of domestic violence as defined in section 3 of the Act against the petitioners – Minsira and Faisal. He shall restrain himself from hurling abuses and also from beating petitioner till

the domestic relationship subsists between him and Minsira. This apart, he must restrain himself from harassing petitioner with regard to any dowry demand. The Protection Order is accordingly passed as per section 18 of the Act.

- (b) *A Maintenance and Compensation Order is hereby passed in favour of the petitioner that the respondent Faku shall pay Rs.1,500/- and Rs.1,000/- per month as maintenance allowance to Smt. Minsira and Faisal respectively as maintenance allowance from date of filing as no interim maintenance was ordered to the petitioners during pendency of this petition. This apart, as Smt. Minsira has been subjected to the physical, emotional and economical abuse and violence so the respondent Faku pay compensation to the tune of Rs.15,000/- to petitioner – Minsira.*
- (c) *Accommodation/Residence Order under section 19 of the Act is hereby passed provide accommodation to the applicant Minsira by the respondent Faku in his house and is restraining the respondent from dispossessing or throwing out petitioner from her matrimonial house, if that is not possible, then to provide a sum of Rs.3,000/- per month to the petitioner towards rental charges for acquiring an accommodation of her choice.”*

Challenge has also been laid to the judgment dated 08.10.2015 passed by learned Additional Sessions Judge, Mewat, whereby the appeal filed by the petitioner-husband against the aforesaid judgment dated 03.11.2014 passed by learned Magistrate, was dismissed.

Learned counsel for the petitioner has argued that the respondents have filed a petition under the DV Act and the learned Magistrate

has wrongly allowed the said petition vide impugned judgment dated 03.11.2014. Similarly, the appeal filed by the petitioner has also been wrongly dismissed by the appellate Court. Since the respondents are living separately from the petitioner from March 2001 and the respondent No.1-wife has already been divorced by the petitioner on 26.09.2001 and she is residing separately in her parental house, the petition under the DV Act was not maintainable as the said petition was filed in the year 2010, whereas the DV Act had come into operation in the year 2006.

He has further contended that even otherwise, the respondent-wife had filed an application under Section 125 Cr.PC, which was allowed vide judgment dated 07.03.2007 passed by learned Magistrate and she is getting maintenance under that Act. The respondent had also lodged an FIR no.194 dated 08.07.2002 under Sections 498-A, 406 and 506 IPC at Police Station Punhana, wherein the petitioner had been acquitted by the trial Court vide judgment dated 08.12.2008, though the respondent-complainant had filed an appeal, wherein the petitioner was convicted, but against the said judgment of conviction, the petitioner has preferred a criminal revision, which is pending before this Court.

He has further contended that the petitioner has never harassed or demanded anything from the respondent-wife, and therefore, the allegations levelled by her are totally unwarranted. Once the respondent-wife has been divorced by the petitioner on 26.09.2001, she has no concern with the petitioner whatsoever. Moreover, when she is living separately from the petitioner, there is no question of harassing the respondents in any manner.

On the other hand, learned counsel for the respondents has relied upon the judgment passed by Hon'ble Supreme Court in ***V.D. Bhanot's case (supra)*** to contend that even if the provision of DV Act had not come into operation, but still the petitioner is amenable to the jurisdiction under the DV Act.

I have heard learned counsel for the parties.

The controversy involved in the present petition has fully been answered by Hon'ble Supreme Court in ***V.D. Bhanot's case (supra)***, wherein the Apex Court has held that the wife, who was subjected to violence prior to coming of force of DV Act and was no longer living with husband was entitled to maintain petition under the DV Act. The paragraph No.5 of the said judgment reads as under”

“5. Before the Delhi High Court, the only question which came up for determination was whether the petition under the provisions of the PWD Act, 2005, was maintainable by a woman, who was no longer residing with her husband or who was allegedly subjected to any act of domestic violence prior to the coming into force of the PWD Act on 26th October, 2006. After considering the constitutional safeguards under Article 21 of the Constitution, vis-a-vis, the provisions of Sections 31 and 33 of the PWD Act, 2005, and after examining the statement of objects and reasons for the enactment of the PWD Act, 2005, the learned Judge held that it was with the view of protecting the rights of women under Articles 14, 15 and 21 of the Constitution that the Parliament enacted the PWD Act, 2005, in order to provide for some effective protection of rights guaranteed under the Constitution to women, who are victims of any kind of violence occurring within the family and matters connected therewith and incidental thereto, and to provide an efficient and expeditious

civil remedy to them. The learned Judge accordingly held that a petition under the provisions of the PWD Act, 2005, is maintainable even if the acts of domestic violence had been committed prior to the coming into force of the said Act, notwithstanding the fact that in the past she had lived together with her husband in a shared household, but was no more living with him, at the time when the Act came into force. The learned Judge, accordingly, set aside the order passed by the Additional Sessions Judge and directed him to consider the appeal filed by the Respondent wife on merits.”

Similarly, in ***Juveria Abdul Majid Patni Versus Atif Iqbal Mansoori and another 2014(4) RCR (Criminal) 480***, Hon’ble Supreme Court, while interpreting the provisions of Section 12 of the DV Act, has held that even the subsequent divorce between the parties would 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.

Even otherwise, the scope of revisional jurisdiction is vested with limited powers. There is a categorical finding recorded by the Courts below that the divorce has not been proved. Therefore, even if it is presumed that the petitioner has taken divorce from the respondent No.1, in view of the law laid down by Hon’ble Supreme Court in ***V.D. Bhanot’s case (supra)***, still the petitioner is amenable to the jurisdiction of DV Act. Thus, there being a settled law that even if the domestic violence met by the complainant before coming into force the DV Act, still she can maintain the petition under the

DV Act. In the present case, the petitioner has also not been able to prove that in what manner, impugned judgments passed by the Courts below suffer from illegality, irregularity or perversity which may warrant interference of this Court by invoking its revisional jurisdiction.

Accordingly, the impugned judgment dated 03.11.2014 passed by learned Judicial Magistrate 1st Class, Ferozepur Jhirka as well as judgment dated 08.10.2015 passed by learned Additional Sessions Judge, Mewat are affirmed and the present revision petition, being devoid of any merit, is dismissed.

January 14, 2020
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No