

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

CRR No.1059 of 2021 (O&M)

Date of Decision.01.10.2021

(Heard through VC)

Rohit Chawla

...Petitioner

Vs

Swati

...Respondent

CORAM:HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Ajay Pal Singh Rehan, Advocate
for the petitioner.

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JAISHREE THAKUR J.

The petitioner herein is aggrieved against the order dated 22.07.2019 passed by the Judicial Magistrate 1st Class, Fatehabad whereby interim maintenance has been allowed to the respondent herein on an application filed under Sections 12, 14, 17, 18, 19, 20, 22 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter called as the DV Act) and the petitioner has been directed to pay a sum of ₹25,000/- per month from the date of filing of petition, which order has been upheld in an appeal preferred before the Additional Sessions Judge, Fatehabad.

In brief, the facts as mentioned are that the respondent, who is married to Rohit Chawla i.e. the petitioner herein on 04.12.2011, filed an application under the aforesaid Sections of the DV Act seeking interim maintenance. It was claimed that sufficient dowry had been given in the marriage on the demand of the petitioner, however, the petitioner and his family members were not happy with the dowry articles given and made a demand of car in the shape of dowry. The parents of the complainant had given an amount of ₹4 lakhs to the petitioner to purchase a car, but there was a demand for bigger car. As the respondent was unable to fulfil the demands of

dowry, she was thrown out of her matrimonial home, which resulted in a petition being preferred under the DV Act. The said application was contested on a plea that the complainant was earlier married to one Anshuman and it was her second marriage that was performed with the petitioner herein. It was submitted that without obtaining a valid divorce, second marriage would be null and void. In this regard, a petition under Section 11 of the Hindu Marriage Act had already been preferred to declare the marriage as null and void, which is still pending consideration. It is further submitted that as the marriage was not a legal one, the complainant-respondent would not be entitled to maintenance, which has been allowed by the JMIC and stands affirmed in appeal preferred before the Additional Sessions Judge, Fatehabad.

The Judicial Magistrate 1st Class, Fatehabad vide impugned order allowed the interim maintenance by taking into account the statement of income of the petitioner for the month of June, 2018 to show that he was earning Rs.75,237/-, while also placing reliance on a judgment rendered in ***Deoki Panjhiyara Vs. Shashi Bhushan Narayan Azad 2013 (2) RCR (Civil) 400*** to the effect that the husband cannot deny the claim of maintenance on the ground that wife was previously married and the second marriage was void. In appeal filed before the Additional Sessions Judge, Fatehabad, similar grounds were agitated while also contending that there was a delay in filing of the complaint. However, the Appellate Court dismissed the appeal filed by the petitioner herein, which has led to the filing of the instant revision petition.

Learned counsel appearing on behalf of the petitioner raises an argument that there is a delay in filing of the complaint as the complainant had been residing in her matrimonial home since the year 2014, as has been claimed by the complainant herself, but she had sought relief under the DV Act in August, 2017 i.e. beyond the period of one year from the alleged date of

incident of domestic violence. He relied upon the judgment rendered by the Hon'ble Supreme Court in ***Inderjit Singh Grewal Vs. State of Punjab and another 2011 (4) RCR (Criminal)***. It is also argued that a fraud had been played upon the petitioner herein as the complainant was not legally divorced and free to perform a marriage with the petitioner and therefore, as the marriage performed between the petitioner and the complainant was not legal, any petition filed under the DV Act and for maintenance would not be maintainable.

I have heard learned counsel for the petitioner and find no merit in any of the arguments raised by him. As far as the argument raised that the petition filed under the DV Act is barred by limitation, the same is not sustainable in view of the subsequent judgments rendered by the Hon'ble Supreme Court in ***Krishna Bhattacharjee Vs. Sarathi Choudhury and another (2016) 2 SCC 705***. This Court in the judgment rendered in ***Vikas and others Vs. Usha Rani and another*** in Crl. Revision No.3084 of 2016 decided on 17.04.2018 had an occasion to deal with the judgments rendered in ***Inderjit Singh Grewal*** (supra) and ***Krishna Bhattacharjee*** (supra) and came to hold that there is no limitation prescribed under the DV Act to institute claim seeking relief under Sections 17 to 22 of the DV Act. The Delhi High Court in a judgment rendered in ***Anthony Jose Vs. State of NCT of Delhi and others 2018 SCC Online Del 12956*** has held that providing maintenance is a continuous cause of action and even if the wife did not claim maintenance for herself or her child, the same would not debar her from seeking maintenance under Section 12 of the DV Act.

The second argument on which great stress has been laid that the complainant is not a legally wedded wife, as on the date of marriage she was not divorced from her husband Anshuman, again has no merit. It is interesting

to note that the DV Act was enacted to protect women from domestic violence occurring within family. The statement of the objections and reasons noticed that the phenomena of domestic violence is widely prevalent, which remains unaddressed. The law as existed gave protection to a woman, who was subjected to cruelty by her husband or his relatives making it an offence under Section 498-A IPC. However, this Section by itself did not address the issue of domestic violence in its entirety. It is in that background that Act of 2005 came into existence to provide protection to those women who are or have been in a relationship with the abuser where both the parties have lived together in a 'shared household' and are related by consanguinity, marriage or through a relationship in the nature of marriage or adoption or are family members living together as a joint family. Section 2(a) defines as to who would be an "*aggrieved person*" under the Act while defining "*domestic relationship*" under Section 2(f), "*respondent*" under Section 2(q) and "*shared household*" has been defined under Section 2(s). The definitions which are relevant for the purpose of adjudicating the controversy are reproduced for ready reference:

*"2(a) "**aggrieved person**" means 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;*

*2(f) "**domestic relationship**" means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family;*

*2(q) "**respondent**" means 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; Provided that an aggrieved wife or female living in a relationship in the nature of a marriage may also file a complaint against a relative of the husband or the male partner;*

2(s) "**shared household**" means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household."

Under the provisions of this Act, the right to claim protection against a person on account of domestic violence (which would include injuries, which endangers the health, safety, life, limb or well-being, mental or physical, verbal, emotional and economic abuse) is not limited to a wife only. The definition of an 'aggrieved person' may be read in this context wherein an aggrieved person has been defined to mean *any women, 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*. Going further, the term 'domestic relationship' too has been defined, which means *a relationship between two persons, who live or have, at any point of time, lived together in a shared household when they are related by consanguinity, marriage or through a relationship in the nature of marriage etc.*

There is no dispute that the petitioner was in a relationship as he married the complainant. The question whether the marriage would be void or not is a matter of trial. Even if it is so, there is no dispute to the fact that till the time the complainant was residing with the petitioner, she was in a "domestic relationship" with him in a "shared household." Both the trial court and the appellate court have taken these factors into account while allowing interim maintenance to the complainant by keeping the salary statement of the petitioner in view. The courts below while granting interim maintenance to the tune of ₹25,000/- per month have also qualified that the maintenance is subject

to set off/adjustments of interim maintenance received by the respondent-complainant in the application under Section 24 of the Hindu Marriage Act.

In view of the aforementioned facts and circumstances, no ground is made out to interfere with the orders passed by the courts below and the same are upheld. The crl. revision petition stands dismissed.

October 1, 2021
Pankaj*

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No