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

BEFORE

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

+ **CRIMINAL REVISION PETITION NO.1243 OF 2019 and**
CRL.M.As.41342/2019, 41344/2019, 16955/2020, 17869/2020,
13348/2021, 16672/2021, 16673/2021, 16674/2021 & 16675/2021

Between:-

KIRAN KUMAR ANAND
S/O LATE SH. KISHAN LAL ANAND
R/O H. NO. 15B-I8B
KHUKHRAIN APARTMENTS
SECTOR-13, ROHINI
NEW DELHI-110085 **..... PETITIONER**

(Through: Mr. Mayank Sawhney & Ms. Kanika Sawhney,
Advocates).

AND

SMT. AAKANKSHA ANAND
W/O SH. VINEET ANAND
R/O 83, FIRST FLOOR
SAINIK VIHAR, PITAM PURA
NEW DELHI 110034 **..... RESPONDENT NO.1**

VINEET ANAND
S/O SH. KIRAN KUMAR ANAND
R/O B-6, 131/132
GROUND FLOOR, SECTOR-7
ROHINI, DELHI-110085 **..... RESPONDENT NO.2**

SMT. BHAWNA ANAND
W/O MR. KIRAN ANAND **..... RESPONDENT NO. 3**

**MS. KRITIKA ANAND
D/O MR. KIRAN ANAND**

..... RESPONDENT NO.4

**BOTH THE RESPONDENT NO.3 & 4
R/O H. NO.I5B-18B
KHUKHRAIN APARTMENTS
SECTOR-13, ROHINI
NEW DELHI-110085**

**STATE (GOVT. OF NCT OF DELHI)
NEW DELHI**

..... RESPONDENT NO.5

*(Through: Mr. Mohit Mathur, Senior Advocate alongwith Mr.
B.K. Wadhwa & Ms. Anu Narula, Advocates for
respondent Nos.1 & 4)*

% Pronounced on : 12.10.2022

J U D G M E N T

PURUSHAINDRA KUMAR KAURAV, J.

1. This revision petition under Section 397 read with Section 401 and 482 of the Code of Criminal Procedure, 1973 (hereinafter referred as Cr.P.C.) is directed against the impugned judgment dated 29.08.2019 passed by the Additional Sessions Judge-03 North West, Rohini Courts, New Delhi, in Criminal Appeal No.190/2018, whereby, the appeal under Section 29 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred as 'DV Act') against order dated 29.11.2018 passed by the learned MM-02, (Mahila Court) North West, Rohini Courts, New Delhi, has been allowed while modifying the order dated 29.11.2018.

2. The brief facts of the case are that respondent Nos.1 & 4 are wife and sister of respondent No.2 respectively. The respondent No.3 is the

wife of the petitioner. The petitioner is father-in-law of respondent No. 1. The marriage of respondent No.1 and respondent No.2 was solemnized on 25.01.2013. Out of their wedlock, a baby girl *Saanvika* was born on 28.04.2014. On account of certain differences between the parties, on 26.07.2017, the respondent No.1 filed a complaint in CAW Cell (Crime Against Women) North West District, Delhi. In the month of August, 2017, she filed an application under Section 12 of the DV Act before the learned court of Metropolitan Magistrate, Rohini Courts, Delhi. The petitioner and the other respondent in the said petition filed their reply. Vide order dated 29.11.2018, the learned MM directed for a payment of interim maintenance of Rs.50,000/- per month to respondent No.1 and her daughter. The respondent No.1 preferred statutory appeal under Section 29 of the DV Act before the court of Additional Sessions Judge and *vide* impugned order dated 29.08.2019, the learned Appellate Court enhanced the amount of Rs.50,000/- to Rs.1,25,000/- and it has been further directed that the aforesaid sum would be payable by the respondent No. 2 (husband) and the petitioner being *Karta* of Hindu Undivided Family (HUF). It is to be noted at this stage that against the order granting interim maintenance @ Rs.50,000/- per month, the respondent No.2/husband also filed appeal before the court of Additional Sessions Judge which was registered as Criminal Appeal No.10/2019 and *vide* impugned judgment the appeal preferred by respondent No.2 (husband) has been dismissed. The respondent No.2-husband filed a separate revision before this court, which is pending for hearing.

3. Shri Mayank Sawhney, learned counsel appearing on behalf of the petitioner (father-in-law) submits that in the instant petition, the impugned order is illegal and improper. The same is contrary to the

scope of appeal under Section 29 of DV Act, inasmuch-as, the Appellate Court has exceeded its power in directing the petitioner to make the payment of Rs.1,25,000/- being *Karta* of HUF. According to him, the Appellate Court could not have passed such a direction, as the same was not the prayer made by the respondent-wife either before the court of Magistrate or before the Appellate Court. According to him, firstly the learned MM in its judgment dated 29.11.2018 gravely erred in recording finding of domestic violence without there being any basis. It is submitted that respondents No.1 & 2 are not part of HUF and HUF was not the party before the trial court and before the Appellate Court. The learned Appellate Court has grossly erred in assuming the income of HUF. The amount of Rs.21,00,000/- which was extended towards loan from HUF, has been wrongly construed as the amount towards maintenance. The petitioner has already filed a suit for recovery against respondents No.1 & 2 for a sum of Rs.21,00,000/- which is subjudice before the court learned Additional District Judge, Rohini Courts, Delhi.

4. Shri Mohit Mathur, learned Senior counsel assisted by Shri B.K. Wadhwa, appearing on behalf of respondents No.1 & 4 (wife and daughter) opposed the prayer. He submits that the impugned order in appeal is strictly in accordance with law and the same does not call for any interference. According to learned Senior Counsel, this court in exercise of its revisional jurisdiction, that too against an order of granting interim maintenance, has limited power to exercise. The factum of marriage between the parties, birth of child and the custody of the child are admitted. The respondent-wife is a home maker without any source of income. The child is about 8 years of age, studying in *APEEJAY School*. The petitioner himself had admitted that he was paying

Rs.50,000/- per month to the respondent-wife after the birth of the child as pocket money. There are 22 commercial properties and the rental income of Rs.7,00,000/- is being earned. The parties are admittedly residing in a five bed room house in a posh colony and have four luxury cars including *Toyota Corolla*, *Hyundai*, *Swift* & *Maruti Esteem*. The Appellate Court has considered the case in right perspective. The same does not call for any interference. He placed reliance on various decisions in the cases of *State v. Manimaran*¹, *State of Haryana v. Rajmal*², *State of Kerala v. Puttumana Illath Jathavedan Namboodiri*³, *Bharat Hegde v. Smt. Saroj Hegde*⁴, *Sanjeev Sangwan v. Smt. Sangeeta Sangwan*⁵, *Manmohan Kohli v. Natasha Kohli*⁶, *Vinod Duleria Mehta v. Kanak Vinod Mehta*⁷, *Rishi kumar v. Suman*⁸ & *Priti Satija v. Rajkumari and Anr.*⁹

5. I have head learned counsel for the parties and have perused the record.

6. One of the objectives of enactment of DV Act is to provide for a remedy under the civil law to protect the women from being victims of domestic violence and to prevent the occurrence of domestic violence in the society. Domestic Violence Act has been enacted keeping in view the rights guaranteed under Articles 14, 15 and 21 of the Constitution of India. Before enactment of DV Act, a woman who is subjected to cruelty by her husband or her relatives only had a remedy for lodging a

¹ (2019) 13 SCC 670

² (2011) 14 SCC 326

³ (1999) 2 SCC 452

⁴ (2007) SCC OnLine Del 622

⁵ (2007) SCC OnLine Del 1057

⁶ MANU/DE/4193/2013

⁷ (1989) SCC OnLine Bom 112

⁸ (2008) SCC OnLine Del 38

⁹ (2014) SSC OnLine Del 188

complaint for offence under Section 498-A of IPC. Chapter-4 of DV Act deals with procedure for obtaining order of reliefs. As per Section 12 of the DV Act, besides other reliefs, an aggrieved person or a protection officer or any other person on behalf of the aggrieved person can claim relief for issuance of an order for payment of compensation or damages without prejudice to the rights of such person to institute a suit for compensation or damages for the injuries caused by the acts of domestic violence committed by the respondent. As per Section 20 of the DV Act, the Magistrate is empowered, while disposing of an application under sub-section (1) of Section 12, to direct the respondent to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of the domestic violence and such relief may include, but is not limited to:-

(a) the loss of earnings;

(b) the medical expenses;

(c) the loss caused due to the destruction, damage or removal of any property from the control of the aggrieved person; and

(d) the maintenance for the aggrieved person as well as her children, if any, including an order under or in addition to an order of maintenance under section 125 of the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force.

7. It is provided under sub-section (2) of Section 20 that the monetary relief granted under Section 20 shall be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved person is accustomed. Sub-section 4 of Section 20 requires the Magistrate to send a copy of the order for monetary relief made under sub-section (1) to the parties to the application and to the in-charge of the police station within

the local limits of whose jurisdiction the respondent resides. Sub-section (5) of Section 20 requires the respondent to pay the monetary relief granted to the aggrieved person within a period specified in the order under sub-section (1). Sub-section (6) of Section 20 requires that upon the failure on the part of the respondent to make payment in terms of the order under sub-section (1), the Magistrate may direct the employer or a debtor of the respondent, to directly pay to the aggrieved person or to deposit with the court a portion of the wages or salaries or debt due to or accrued to the credit of the respondent, which amount may be adjusted towards the monetary relief payable by the respondent.

8. As per definition clause (a) of Section 2, the respondent No.1 is admittedly an aggrieved person. As per definition of respondent prescribed under clause (q) of Section 2 of DV Act the respondent No.2 is the respondent in Section 12 petition before the Magistrate. The respondent No.1 has also arrayed the petitioner, respondent No.2, respondent No.3 and respondent No.4 as a party in her petition under Section 12 of the DV Act.

9. The respondent No.1 in her application under Section 12 of DV Act has prayed for various reliefs/directions including directions for monetary relief under Section 20 directing the respondents therein to pay monetary relief of rupees not less than 3,00,000/- per month in her favour and in favour of her minor daughter, for food, cloths, medication, other basic necessities, conveyance, household expenses, house electricity charges, water charges, miscellaneous expenses, litigation expenses etc. In her prayer clause, she prayed that the respondents in Section 12 petition be restrained from causing any interference/obstruction in the

free access, entrance and occupation of respondent No.1 to her matrimonial home and to issue appropriate directions to the local police to provide proper assistance and security in that regard. Beside other reliefs, she specifically prayed for directions to the respondents to pay *ad-interim ex-parte* amount of Rs.3,00,000/- per month for maintenance etc.

10. The learned Magistrate *vide* order dated 29.11.2018 directed for interim maintenance of a total amount of Rs.50,000/- per month towards the respondent No.1 for maintenance of herself and for her daughter. The present petitioner was one of the respondents in Section 12 of the DV Act application. The respondent No.1 filed appeal under Section 29 of the DV Act against the order passed by the learned MM for enhancement of the amount whereas the respondent No.2 filed an appeal for setting aside the order passed by the learned MM. The Appellate Court dismissed the appeal preferred by the respondent No.2 and the respondent No.2 has filed a separate revision, which is pending for adjudication, therefore, in the instant revision the learned counsel appearing for the petitioner has confined his submissions only to the extent of directing the present petitioner (father-in-law) to be liable for payment of enhanced maintenance being *Karta* of HUF. Since the quantum of interim maintenance and other aspects are to be adjudicated in a petition filed by the husband of respondent No.1, therefore, this court is not adjudicating those aspects to avoid any prejudice to the parties. So far as the submissions made by the petitioner with respect to holding him responsible being *Karta* of HUF is concerned, the same requires consideration.

11. The learned Additional Sessions Judge in paragraph No.29 of its order has noted that husband of respondent No.1 himself had filed on record a ledger of *Kiran Anand & Sons* HUF. The ledger reflected entry of Rs.21,00,000/- in the name of respondent No.1 from the said HUF. No record of the HUF was placed before the Appellate Court. The existence of HUF was noted. The petitioner and the respondent No.2 did not disclose as to who are the coparcener and its members and what was the annual income of HUF, and what are the source of income. No details of the properties held by HUF were brought on record. The Appellate Court, therefore, concluded that the respondent No.2-husband is concealing his real income and, therefore, adverse inference was drawn. It has been also noted that the name of HUF itself suggested that respondent No.2/husband and the petitioner being father are the coparceners. It is under these circumstances that the Appellate Court has concluded that the respondent No.1/*Aakansha*-wife and her daughter automatically became members of the HUF. Under such circumstances, the maintenance amount was directed to be recovered from the respondent No.2 and the petitioner being *Karta* of HUF.

12. Thus, the sole basis on which the liability has been fastened on the petitioner (father-in-law) is that he is the *Karta* of the HUF but this is a case of award of interim maintenance and in the complaint, the respondent No.1 has not made any averments regarding the HUF nor she has claimed the monetary relief from the funds of HUF. Only on the basis of certain documents filed by the husband, the ASJ has presumed the existence of the HUF and the respondent No.1 and her daughter being coparceners. Hence, in absence of specific averments in the complaint regarding the existence of HUF and the complainants being members of

HUF, the learned ASJ has exceeded in its power by passing the impugned order in so far as it relates to the payment of interim maintenance by the petitioner.

13. The High Court of Punjab & Haryana in the matter of **Jagdev Singh v. Pramjit Kaur and Others**¹⁰ CRR No. 2937/2010 dated 12.09.2013 had an occasion to consider the challenge at the instance of father-in-law to the direction given to him by the court not to dispossess the daughter-in-law therein. The learned Magistrate in that case restrained the husband and the father-in-law from dispossessing the daughter-in-law from shared household except in due course of law. The argument was made that whosoever is the male head of family is liable to honour the relief granted by the Magistrate in terms of the wide scope of various provisions of the DV Act. The aforesaid argument was rejected by the High Court. The order of maintenance was modified and was made applicable/enforceable only against the husband at the first instance granting liberty to the daughter-in-law to prove by adducing evidence/documents that the house in question was a joint Hindu family property or ancestral property in which the husband had right. Depending upon the aforesaid question the directions for payment of arrears etc., were directed to be given against the father-in-law.

14. The Hon'ble Supreme Court in the matter of **Ajay Kumar v. Lata @ Sharuti & Ors.**¹¹ CRL.A. 617/2019 dated 08.04.2019 was considering the validity of interim order of maintenance against brother-in-law of the original applicant. In this case, **Lata @ Sharuti** filed a petition under

¹⁰ 2013 SCC OnLine P&H 18915

¹¹ (2019) 15 SCC 352

Section 12 of DV Act stating therein that after her marriage she alongwith her husband resided at a house which constitutes ancestral Hindu Joint Family Property. She also stated that she alongwith her deceased husband were residing on the ground floor of the residential accommodation and her brother-in-law was jointly carrying out business of *kirana* store with her deceased husband and each of them had an income of about Rs.30,000 per month. After death of her husband she was not permitted to reside at her matrimonial home. The learned trial judge granted monthly maintenance in the amount of Rs.4,000/- to the complainant-wife and Rs.2,000/- to her minor child. The order was unsuccessfully challenged before the ASJ and before the High Court. The matter was thereafter carried to the Hon'ble Supreme Court by brother-in-law of original complainant. The Hon'ble Supreme Court in that case had considered the specific averments made in the complaint with respect to carrying out joint business of *kirana* store. It was specifically stated therein that the house in question was ancestral Joint Hindu Family property. After considering the specific averments the Hon'ble Supreme Court held that the complaint prima-facie indicated that the house where the complainant and her spouse resided, belong to a joint family. It is under those circumstances it was found that the order of interim maintenance was rightly issued against the brother-in-law of the original complainant.

15. In the instant case, a perusal of the original complaint under Section 12 of DV Act or even appeal preferred by the respondent before the Appellate Court, nowhere, states any fact with respect to Hindu Undivided Family and its property. In the absence of any material as to who are the coparceners of the HUF which are the properties belong to

HUF and what it is the source of those property or of the assets to HUF, the Appellate Court has exceeded in its jurisdiction to direct the order of interim maintenance to be enforceable against the petitioner being *Karta* of HUF. It is a settled law that the court cannot grant relief beyond the pleadings and prayer made therein. The prayer before the Appellate Court reads as under:-

“A. Modify and recall the order dated 29/11/ 2018 passed by the court of Ms. Aakanksha Vyas, Ld. MM (Mahila Court), North West District, Rohini Court in the .complaint case no.11302/2017, titled as “Aakanksha Anand Vs. Vineet Anand & Ors”, in application U/s 23 of the D.V. Act, filed by the appellant, thereby directing the respondent No. 1/Respondents to;

i) Pay the appellant/aggrieved person Rs. 3,00,000/- (Rs.Three Lacs only) per month towards the expenses of maintenance, food, cloths, medication, education, electricity charges, household expenses, rent and other miscellaneous expenses, conveyance etc. for herself and her minor daughter;

ii) Pass any other orders which this Hon'ble court may deem fit and proper in the interest of justice and equity.”

16. In entire pleadings there is no whisper about the concept of HUF and its assets etc. Even the application under Section 12 of the DV Act does not disclose any particular with respect to HUF. The prayer made before the MM in Section 12 petition is reproduced as under:-

“Restraining the respondents from causing any interference/obstruction in the free access, entrance and occupation of petitioner to her matrimonial home i.e. 15-B and 18-B, situated at Khukrain Apartments, Sector-13, Rohini, Delhi and appropriate directions to the local police to provide proper assistance and security in this regard;

- i. *Directing the respondents to remove themselves from the shared household accommodation mentioned herein above.*
- ii. *Directing the respondents to pay ad-interim ex-parte amount of Rs.3,00,000/- (Three Lacs) per month for the maintenance, rental expenses, household expenses and day to day and requirements of the aggrieved person and her minor daughter;*
- iii. *Directing the respondents not to create any more trouble/harassment and problems in the life of the petitioner.*
- iv. *Pass any other order which this Hon'ble Court may deem fit and proper may also kindly be passed in favour of the petitioner and against the respondents”.*

17. In none of the prayers either before the MM or before the Appellate Court the respondent No.1 has prayed for holding the petitioner liable for payment of maintenance being *Karta* of HUF.

18. Therefore, the learned ASJ has exceeded in its power by passing the impugned order in so far as it relates to the payment of interim maintenance by the petitioner. Accordingly, the petition is allowed and impugned order dated 29.08.2019 passed by the Additional Sessions Judge-03 North West, Rohini Courts, New Delhi, in Criminal Appeal No.190/2018, is modified to the extent that award of interim maintenance would be enforceable against respondent No.2-husband in the first instance. However in case respondent No. 1 during the course of trial of main application under Section 12 of DV Act is able to prove by adducing evidence the existence of HUF and liability of HUF to pay maintenance, respondent No.1 would be able to enforce liability to pay arrears of maintenance even against the petitioner as *Karta* of HUF.

19. Needless to state that any observation made hereinabove would not prejudice the rights and contentions of the parties and it is made clear that the arguments and contentions have been recorded and adjudicated only for the purpose of decision of the instant revision.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

OCTOBER 12, 2022

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