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

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Reserved on: 19.07.2022

Pronounced on: 26.08.2022

+ **CRL.REV.P. 650/2018**

KIRAN MITTAL

..... Petitioner

Through: Ms. Roohi Bansal and
Mr. Kiran Mittal, Advocates

versus

KANIKA MITTAL

..... Respondent

Through: Mr. Rajeev Aggarwal,
Advocate

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. Vide the instant petition, the petitioner has challenged the judgment dated 10.07.2018 ('Impugned Judgment') passed by learned ASJ (FTC), North West, Rohini, Delhi and order dated 20.02.2017 passed by learned MM, Mahila Court, North West, Rohini, Delhi in CC No. 40/4/16 filed under Section 12 of the Domestic Violence Act read with Section 23 of the Protection of Women from Domestic Violence Act, whereby summons were issued against the present petitioner.



2. The operative portion of the summoning order passed by the learned MM observed as under:

“...DIR received. Perused. Heard. There are specific allegations against all the respondents in the DIR dated 19.08.2016. Steps have not taken by the petitioner to get notice issued to respondent no. 3. One more opportunity granted to the petitioner. Issue notice to the respondent no. 2, 3 and 4 as well on filing PF through SHO PS concerned for the next date of hearing...”

3. Being aggrieved by the said order dated 20.02.2017, the petitioner challenged the said order passed by the learned MM before the court of sessions.

4. Vide order dated 10.07.2018, learned ASJ had upheld the order of the learned MM and had observed as under:-

“...8. Perusal of Gas Connection Receipt dated 08.03.2013 reveals that one gas connection was issued in the name of appellant at the address 210, First Floor, Harsh Vihar, Pitampura, Delhi. Even in gas delivery receipt dated 09.02.2017, the address of the appellant is mentioned as 210, First Floor, Harsh Vihar, Pitampura, Delhi. These documents reveal that the appellant applied for one LPG connection for the kitchen situated on the first floor of the said property on 08.03.2013 which was allowed and continued till 09.02.2017. These documents have been filed by the appellant herself and are contrary to the submissions made by the appellant that she has been using a separate kitchen at the second floor of the said property. Hence, the submissions made by the counsel for the appellant are not sustainable in law.

5. Aggrieved by these orders present petition was filed.

6. Brief facts leading to the filing of the present petition are as under:-



- a. The petitioner was married to Mr. Gaurav Mittal on 03.12.2003 and two daughters were born out of the wedlock. Together, they reside at 210, Harsh Vihar, 2nd Floor, Pitam Pura, Delhi – 110034. The petitioner is the sister-in-law of the respondent.
- b. It is the case of the petitioner that the respondent deliberately and willfully deserted her husband on 23.02.2016 and she has been misusing the process of law by filing fabricated applications under section 12 of the Domestic Violence Act as well as section 23 of the Protection of Women from Domestic Violence Act ('DV Act') with oblique and ulterior motives.

7. The counsel for the petitioner argued that learned MM as well as learned ASJ had committed error in not appreciating that in the rejoinder filed by the respondent dated 30.06.2016, the respondent specifically stated that “...*the respondent No. 1’s brother (husband of the petitioner) and the respondent No. 4 (petitioner) shifted to the second floor only after November, 2014 due to their quarrelsome nature...*” which proves that the petitioner and her husband were residing in a separate residential unit and thus the question of committing domestic violence on the respondent does not arise. It is also submitted that there are three different gas connections for each of the three floors in the house in which the parties reside, thereby proving that a separate kitchen is being run on each floor. It is further submitted that the averment made in the complaint and the Domestic



Incident Report (DIR) as well as other material on record does not disclose any *prima facie* case of domestic violence against the petitioner, another fact not taken into consideration by the learned Appellate Court.

8. The counsel for the respondent on the other hand submitted that this Court cannot re-appreciate evidence once the same has already been appreciated by the Trial Court and the Appellate Court. Reliance is also placed on two judgments of this court, ***Pramod Kumar @ Rahul & Anr. Vs. State (Crl. Rev. P. 913/2018)*** and ***Prahald Singh vs. The State & Anr. (Crl. Rev. P. 882/2018)***.

9. I note that the learned ASJ, in order passed on 10.07.2018, has placed reliance on the fact that the gas connection receipt dated 08.03.2013, relied upon by the petitioner, which reveals that one gas connection was issued in the name of the petitioner at the address 210, First Floor, Harsh Vihar, Pitampura, Delhi. In the gas delivery receipt dated 09.02.2017, the address of the appellant is also mentioned as 210, First Floor, Harsh Vihar, Pitampura, Delhi. The aforesaid documents reveal that the petitioner applied for one LPG connection for the kitchen situated on the first floor of the aforementioned property and the same continued till 09.02.2017. Bearing this in mind, the learned ASJ was pleased to hold that the submission of the petitioner that she resided in a separate household cannot be accepted as the same is contrary to what is seen from the gas receipt shared by the petitioner herself. I do not find any infirmity at this stage on placing reliance on the fact while the case is still at the stage of summoning.



10. So far as the submissions of the respondent regarding re-appreciation of evidence by the High Court is concerned, I am of the opinion that the present case does not require re-appreciation of evidence by this Court since learned ASJ and the learned MM have applied their mind to the material on record, since the case is still at the stage of issuance of summons and evidence is yet to be led in the trial court.

11. The orders which were impugned before this Court of the learned MM as well as learned ASJ referred to the gas receipts shared by the petitioner. It only shows application of mind and appreciation of material on record to reach a conclusion as to whether there is enough material to summon the accused persons. The learned MM and learned Appellate Court were following the mandate of law and were not required to look into probable defence of accused. They were to only make up their mind on the basis of material on record and not appreciate evidence.

12. While it is not imperative for the Magistrate to give a detailed order at the stage of issuing summons and the Court must only see if a *prima facie* case is made out against the accused persons, the order must show that the Magistrate has applied his mind to the facts of the case before summoning the respondent.

13. In the present case, it is pointed out by the learned MM in the summoning order that the DIR contains specific allegations against each of the respondents. It shows that the learned MM has gone through the material and applied mind to reach at a conclusion that there was enough material to summon all respondents.

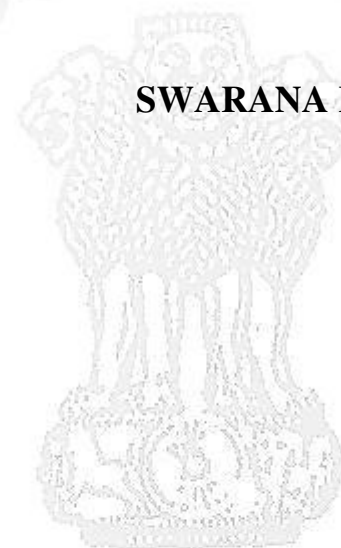


14. This court finds that the rationale behind the decision of the Trial Court and the order of the Court of the learned ASJ which is a detailed order, to issue summons is neither perverse nor illegal, warranting intervention of this Court. The court is, therefore, of the opinion that there is no substance in this petition and the impugned order does not warrant interference by this Court.

15. The *petition* along with pending application stands disposed of in the above terms.

SWARANA KANTA SHARMA, J.

AUGUST 26, 2022/ns



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