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

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Reserved on: 27.07.2023
Pronounced on: 12.10.2023

+ **CRL.M.C.2018/2020 & CRL.M.A.14429/2020**

YASHPAL

..... Petitioner

Through: Mr. Ranbir Singh, Mr. Neeraj Kumar, Mr. Harshvardhan, Mr. Vinay Bhasker & Mr. Harsh Gupta, Advocates

versus

MUKESH & ORS.

.....Respondents

Through: Mr. Jitender Solanki, Advocate

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. The instant petition has been filed on behalf of the petitioner under Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') seeking setting aside of order dated 06.01.2020 passed by learned Additional Sessions Judge/Special Judge (NDPS), Dwarka Courts, New Delhi ('learned ASJ') in Criminal Appeal No. 411/2019, and for setting aside order dated 03.04.2019 passed by learned Metropolitan Magistrate, Mahila Court, Dwarka, New Delhi ('learned Magistrate') in CC No. 4989228/2016 titled as 'Mukesh &



Ors v. Yashpal & Anr.’, filed under Section 12 of the Protection of Women From Domestic Violence Act, 2005 (‘DV Act’).

2. Brief facts of the present case are that marriage of petitioner and respondent no. 1 was solemnized on 15.02.1997 in Delhi. As per respondent no. 1, the petitioner and his family members had started taunting and beating respondent no. 1 for bringing insufficient dowry. Thereafter, the relations between the parties had turned sour and ultimately, the respondent no. 1 had got an FIR bearing no. 37/2001 registered at Police Station Jaffarpur Kalan against the petitioner and his father under Sections 498A/406 of IPC. Vide order dated 06.01.2014, the accused persons were acquitted in the said case, appeal against which was also dismissed in the year 2017 and the revision petition against it is pending before this Court. The respondent no. 1 had also filed a complaint case bearing no. 526/2002 under Section 494 of IPC against the petitioner on the allegations that he had got married to one lady ‘X’, but the petitioner had been acquitted *vide* order dated 07.09.2010 by the Court of Judicial Magistrate, First Class, Sonipat, Haryana. Further, during the pendency of aforesaid cases, the respondent no. 1 had filed the present complaint dated 05.06.2014 under Section 12 of DV Act before the learned Magistrate. The learned Magistrate had passed the impugned order dated 03.04.2019 whereby directions were given to SHO, P.S. Jaffarpur Kalan to visit the house of petitioner alongwith complainant/respondent no. 1, and to file a report whether any other lady is living in the house and whether she has children with



petitioner. Thereafter, on 06.01.2020, learned ASJ had dismissed the criminal appeal filed by petitioner herein *vide* impugned order dated 06.01.2020 and had upheld the order of learned Magistrate.

3. Aggrieved by the orders passed by learned Magistrate and learned ASJ, the present petition has been filed by the petitioner.

4. Learned counsel for petitioner states that the learned ASJ had failed to consider that the petitioner herein was not heard by the learned Magistrate before passing the order and thus, it was violative of the principles of natural justice. It is also stated that the impugned order was passed only on the verbal submission of respondent no. 1. It is also argued by learned counsel for petitioner that respondent no.1 had earlier filed a case under Section 494 of IPC against petitioner and the petitioner had been acquitted *vide judgment* dated 07.09.2010 by the Court of Judicial Magistrate 1st Class, Sonipat, Haryana and the same has attained finality. It is also stated that petitioner and his father had also got acquitted in the other FIR registered at the behest of respondent no. 1 under Sections 498A/406 of IPC. It is stated that the learned Magistrate could not have ordered the SHO concerned to visit the address of the petitioner to enquire about the issue which has already been decided by the competent court. Therefore, it is prayed that the orders passed by learned Magistrate and learned ASJ be set aside.

5. Learned counsel for respondent, on the other hand, submits that the respondent no.1 is the legally wedded wife of petitioner, and the present complaint under Section 12 of DV Act was filed by the



respondents against petitioner whereby petitioner and his father were summoned. It is stated that as per Domestic Incident Report dated 25.09.2014, respondent no. 1 had revealed that petitioner has been living separately from her since 06.09.2000 and has refused to let respondent no. 1 live in the shared household and that he had married again with two children born out of the said second marriage. It is stated that during the cross-examination of petitioner, he had been shown a sale deed dated 12.05.2010 in which the purchaser of the property was one 'X', wife of Yashpal i.e. petitioner herein, and thereafter, the concerned Registrar had also been summoned with the records of the case. It is argued that while ordering the re-call of witness i.e. Registrar for further examination, the learned Magistrate had also directed the SHO concerned to visit and check the house of petitioner as to whether he had been living with lady 'X' alongwith two children since the sale deed of the year 2010 reflected the said lady as petitioner's wife and the petitioner father i.e. accused no. 2 before the Trial Court was a witness to the said sale deed. It is stated that under DV Act, the Magistrate has ample powers to decide an application under Section 12 including powers to devise its own procedure, as per Section 28 of Act. It is also argued that the previous case under Section 494 of IPC has no relation with the present case. Therefore, it is prayed that present petition be dismissed.

6. This Court has heard arguments addressed by both the parties and has gone through the material placed on record.



7. This Court has also gone through the application filed under Section 12 of DV Act wherein complainant/respondent no. 1 has levelled allegations of cruelty and demand of dowry against the petitioner and his family members and has also asked for relief of being provided with alternative accommodation or being allowed to reside in the shared household amongst other reliefs regarding her share in the property at Village Kawalli, Sonapat, Haryana and she had also asked for maintenance for herself and the children. In the Domestic Incident Report dated 25.09.2014, the respondent no. 1 had had revealed before the Protection Officer concerned that her husband i.e. petitioner herein had got married to another women i.e. his second wife 'X', was living with him and he was only providing Rs.5,000/- per month to respondent no. 1 as maintenance.

8. The complainant/respondent no. 1 herein had tendered her evidence by way of affidavit on 25.02.2018 and on the same day, she was cross examined by the counsel for accused persons i.e. petitioner and his father. Thereafter, the petitioner had tendered his evidence on affidavit on 18.07.2018 and his cross-examination was deferred. The petitioner i.e. DW-1 was cross examined on 05.11.2018 and during the said examination, learned counsel for complainant had shown a sale deed dated 12.05.2010 to the petitioner, however, the petitioner had denied having any knowledge about the same. As per order sheet, the cross-examination of petitioner had been deferred at the request of complainant as she wanted to summon the concerned Registrar to produce the record of registered sale deed dated 12.05.2010 which



had been denied by DW-1. Thereafter, on 26.02.2019, the petitioner/DW-1 was re-called for further cross-examination wherein he denied having knowledge of any sale deed executed by his father in favour of lady 'X'. On the same day, the statement of Joint Sub-Registrar, Sonipat, Haryana was also recorded who had been summoned with the record of sale dated 12.05.2010 executed by Jagjit Singh, Jogender Singh and Lal Chand and Dilawar in favour of lady 'X', stated to be wife of Yashpal i.e. petitioner, resident of village Kanwali, Tehsil Kharkhoa, Sonipat, Haryana. The said witness had deposed that the sale deed had been signed by the petitioner herein who was the husband of purchaser i.e. lady 'X' and the sale deed was also having photograph of petitioner as per rules. Thereafter, the petitioner herein had moved an application for recalling of witness i.e. Joint Sub-Registrar on the ground that he had stated during his deposition that sale deed had been signed by petitioner, however, the signature of the petitioner had appeared nowhere on the sale deed. This application had come up for hearing on 03.04.2019 when the impugned order was passed by the learned Magistrate, which reads under:

“...Respondent has filed an application for recalling of Naseeb Singh, Joint Sub Registrar for clarification about signature of respondent no. 1 on the sale deed Ex. C-1

Copy of application is supplied.

On inquiry, the respondent no. 1 states that sale deed is bearing photographs of his father as witness and signature of his father as witness but it does not bear his signature or thumb impression on any page of sale deed.



As the respondent no. 1 admits that the respondent no. 2 has signed as witness on the sale deed Ex. CW-1, the respondent no. 2 is directed to appear in person on NDOH to explain about the purchaser in the sale deed.

In the meantime, notice be issued to Naseeb Singh, Joint Sub-Registrar on filing of PF and copy of application for 22.04.2019. Summon be given dasti to respondent no. 1 to be served upon Naseeb Singh.

In the meantime, notice be issued to SHO PS J.P. Kalan to go to the address of the respondent and to file report whether any other lady is living in the house of the respondent no.1 with him and she is having children with respondent no. 1. The SHO is directed to ensure that the official takes the complainant with him before visiting the address of the respondent no.1...”

9. Thereafter, the appeal against the aforesaid order was dismissed by the learned ASJ *vide* order dated 06.01.2020 with the following observations:

“6. ...The whole exercise by Ld. Trial Court was to see whether case of Domestic Violence is made out and if the contents of application are proved by wife /complainant then in a way case of Domestic Violence will be made out and the Ld. Trial Court has exercised its discretion correctly. It is observed that the appellant has denied his relationship with said Rekha before this court and he is unable to produce her but respondent /wife herein is pressing for inquiry for the said fact. This court has issued the notice to said Rekha who is stated to be residing with appellant but she did not appear. Today one application has been filed by respondent No. 1 /wife thereby submitting the report of notice issued to said Rekha wherein it has been mentioned that they had visited the premises and found said lady at main gate and she refused to sign the copy of summons.

7. This court does not find any illegality and infirmity in the order passed by this court as said directions are necessary to decide the question of relationship, if any between appellant and said Rekha. If appellant is not having any alleged relationship with said Rekha then he is supposed to cooperate with court and should not have any fear in his mind. So there



is no scope of any interference in the orders passed by Ld. Trial Court.

8. Accordingly, in view of the above discussion, the present appeal stands dismissed being without any merits. There is no illegality and infirmity in the impugned order...”

10. In these set of facts and circumstances, this Court notes that on 03.04.2019, the learned Magistrate, while allowing the application for recalling of Joint Sub-Registrar, had directed petitioner’s father i.e. respondent no. 2 before learned Magistrate to remain present in person on the next date of hearing since the petitioner had informed the Magistrate that it was his father who had signed the sale deed dated 12.05.2010 and his photo was reflected on the sale deed, and the said deed did not bear any signature or thumb impression of the petitioner. It was at this stage and while passing this order, that the learned Magistrate had deemed it fit to issue notice to the SHO, P.S. Jaffarpur Kalan to go to the address of petitioner and find out as to whether he was living with any other lady ‘X’ and as to whether she was having children with the petitioner. The SHO was also directed to file a report and ensure that the complainant was also taken along with them to the house of petitioner. Thereafter, on 07.04.2019, the inquiry officer had visited the house of petitioner but no lady or children were found. However, upon inquiring from the father of petitioner and from the neighbors and sarpanch of the village, it was revealed that a lady ‘X’ used to reside at the house of petitioner alongwith two children who used to study in school ‘P’.



11. On 18.04.2019, an application had been filed by the complainant before the learned Magistrate seeking directions to the SHO to investigate about the parentage and address of two children since during the visit to the house of petitioner, some books and copies of two school going children and belongings of one lady had been found in the petitioner's house. Accordingly, on 20.04.2019, the learned Magistrate had issued notice to the school authorities to bring records of admission, fee payment, etc. of the two children who were allegedly living in the house of petitioner.

12. This Court also notes the fact that when the records from the school 'P' had been summoned, which have been annexed with the present petition and are available in the Trial Court Record, it was revealed that the two children, were alleged to be born out of the relationship of petitioner and lady 'X', the said records contained the name of petitioner as the father of children and the name of lady 'X' as their mother. Vide order dated 22.04.2019, the learned Magistrate had also informed the petitioner and his counsel that such records had been summoned by the Court by way of exercising powers conferred upon it under Section 165 of Indian Evidence Act i.e. '*Judge's power to put questions or order production*' since the record of the school was relevant to decide whether the petitioner was living with another lady and having children from his relationship

13. This Court notes that when the order dated 03.04.2019 was passed by the learned Magistrate, the same had been passed in the presence of petitioner herein and his counsel, who had moved an



application for recalling of witness. It is also not in dispute that the issue regarding petitioner living with a lady named 'X' had been a bone of contention between the parties and in the Domestic Incident Report dated 25.09.2014 itself, the complainant had mentioned that the petitioner was living with some other lady after marrying her. Thereafter, during the cross-examination of petitioner, a sale deed of the year 2010 had come on record in which the witness of the sale was the father of petitioner i.e. respondent no. 2 before learned Magistrate and the purchaser of the property was the alleged lady 'X' who was stated to be the wife of present petitioner Yashpal in the sale deed. Therefore, there is merit in the observations of the learned ASJ that the issue as to whether the respondent was living with another lady 'X' and was having children from the said relationship, despite the subsistence of his first valid marriage, was a relevant issue for the adjudication of present complaint under Section 12 of DV Act.

14. It is also relevant to note that complainant/respondent no. 1 had sought grant of residence orders including allowing her to reside in the shared household and thus, the factum of petitioner living with some other lady, alongwith two children born out of such relationship, at his house i.e. the the shared household would also affect the right of respondent no. 1 to reside in shared household, which as per Section 17 of DV Act, is one of the most crucial rights of an aggrieved woman.

15. This Court is also of the opinion that the case which was filed by the respondent no. 1 against petitioner under Section 494 of IPC



was for the commission of offence of bigamy i.e. marrying another woman during the subsistence of first marriage and the petitioner had been acquitted in the said case due to absence of evidence to prove that any marriage ceremony had actually taken place between the petitioner and lady 'X'. However, the same does not become a ground to hold that the petitioner could not have lived with any other woman without solemnizing marriage and could have not fathered children born out of the said relationship despite his marriage with first wife i.e. respondent no. 1 being in existence.

16. It is also relevant to note that the petitioner herein had always refuted the allegations that he had married another woman or was living with another lady, and had always stated that he was married to complainant only and the allegations of him being in extra-marital relationship were completely false. However, the sale deed (Ex. C-1) placed on record before the learned Magistrate had revealed the lady named 'X' to be the wife of petitioner which had thus, necessitated the learned Magistrate to pass the directions to reach to the truth of the matter. Needless to say, the factum of petitioner living with another woman and having children from the said relationship during the subsistence of his first marriage with respondent no. 1 would be of much relevance for deciding the complaint under Section 12 of DV Act filed by the complainant/ responded no. 1 herein.

17. As regards the contention that the Magistrate could have not ordered the SHO concerned to do any such enquiry, this Court notes that Section 28 of DV Act provides as under:



“28. Procedure.—(1) Save as otherwise provided in this Act, all proceedings under sections 12,18, 19, 20, 21, 22 and 23 and offences under section 31 shall be governed by the provisions of the Code of Criminal Procedure, 1973 (2 of 1974).

(2) **Nothing in sub-section (1) shall prevent the court from laying down its own procedure for disposal of an application under section 12 or under sub-section (2) of section 23.”**

(emphasis supplied)

18. The aforesaid provision makes it clear that for deciding an application under Section 12 of DV Act, the Court in addition to the procedure prescribed under Cr.P.C. can devise its own procedure. The said provision, thus, confers ample powers upon the Magistrate to take appropriate measures and issue appropriate directions relevant for the purpose of deciding an application under Section 12 of DV Act, which had been done in the present case since the question of alleged relationship of petitioner with another lady during the existence of marriage with the complainant and factum of children having been born out of such relation, was essential to be examined to reach a just and fair decision in the present case.

19. Thus, in the given facts and circumstances of the case, this Court is of the opinion that the order dated 03.04.2019 does not suffer from any illegality or impropriety. There are also no reasons to set aside the order dated 06.01.2020 passed by learned ASJ *vide* which the appeal against the order passed by learned Magistrate was dismissed. Moreover, the Courts within the given statements have to decide cases to ensure that the intent of the legislature is not defeated. Section 28 of D.V. Act has been taken recourse to rightly to do



complete justice. It does not in any manner prejudice the petitioner, as in case he has not committed any wrong, he has nothing to fear for.

20. Therefore, in view of the following observations, the present petition stands dismissed along with the pending applications if any.

21. It is however clarified that nothing expressed hereinabove shall tantamount to an expression of opinion on the merits of the case.

22. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

OCTOBER 12, 2023/zp