



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 3717 OF 2022

Rohit Ravindra Nikam and Ors.

... Petitioners.

Versus

State of Maharashtra and Anr.

... Respondents.

Ms. Sarita Yadav, for the Petitioners.

Ms. Shilpa Gajare, APP for the Respondent-State.

Mr. Pravin G. Pilay, for the Respondent No.2.

Coram : Sharmila U. Deshmukh, J.

Date : March 05, 2024.

P. C. :

1. By this Petition, the challenge is to the judgment dated 4th July, 2022 passed by the Appellate Court in Criminal Appeal No.296 of 2022 filed under Section 29 of the Protection of Women from Domestic Violence Act, 2005 (*for short, "DV Act"*), dismissing the Appeal and confirming the order of the Metropolitan Magistrate passed under Section 23 of the DV Act in CC No.50/DV/2021.

2. The facts of the case are that the Respondent wife filed an Application under Section 12 of the DV Act seeking protection order under Section 18 of the DV Act, residence order under Section 19 of the DV Act, monetary relief under Section 20 of the DV Act and

compensation under Section 22 of the DV Act.

3. By an Application under Section 23 of the DV Act, interim relief was sought in terms of the main application. The Metropolitan Magistrate by order dated 13th May, 2022, allowed the Application and granted interim maintenance of Rs.30,000/- from the date of the Application, restrained the Petitioners from dispossessing the Respondent-wife in any manner from the matrimonial house at Flat No.204, Arlington-C, Raheja Reflection, Takhur Village, Kandivali (East) Mumbai and from alienating, disposing and transferring the said premises. The order of the Metropolitan Magistrate was challenged by the Petitioner before the Sessions Court which Appeal came to be rejected.

4. Heard Ms. Sarita Yadav, learned Counsel for the Petitioners, Ms.Shilpa Gajare, learned APP for the Respondent-State and Mr.Pravin G. Pilay, learned Counsel for the Respondent No.2.

5. Ms.Yadav, learned counsel for the Petitioners would submit that in the absence of any relief sought under Section 17 of the DV Act in the application, Clause Nos.5 and 6 of the order of the Metropolitan Magistrate restraining the Petitioners from dispossessing the Respondents from the matrimonial house could not have been granted. She would submit that the Respondent is not residing in the

matrimonial house and as such, no relief could have been granted in respect of the flat which was not belonging to the petitioner-husband. Assailing the quantum of maintenance granted, she submits that the Petitioner was drawing a monthly salary about Rs.75,000/- including incentives paid per quarter and his monthly expenses are in the sum of Rs.1,03,016/- which included the payment of maintenance to his mother as per the order dated 7th October, 2021 passed by the Family Court, Bandra as well as the EMIs for the loans etc. She would further submit that the Respondent is well educated and is capable of securing her own employment for sustenance. She would further submit that the Petitioner's father is bedridden and additional expenses is required to be incurred. She would submit that an application seeking modification has been filed under Section 25 of the DV Act before the Metropolitan Magistrate. Learned Counsel for the Petitioner has tendered the following decisions:

- (i) ***Rajnish vs. Neha [MANU/SC/0833/2020].***
- (ii) Decision of Apex Court passed in Criminal Appeal No.879 of 2009 (arising out of SLP (Crl.) No.7503 of 2008) in ***Bhushan Kumar Meena vs. Mansi Meen.***
- (iii) Decision of this Court dated 23rd November, 2022 passed in ***Aboli alias Yugandhara vs. Tejpal*** in Writ Petition No.2668/2021(Aurangabad Bench).

- (iv) Decision of Delhi High Court in ***Sanjay Bhardwaj & Ors. vs. The State and Anr.*** in CrI.M.C.No.491 of 2009 decided on 27th August, 2010.

6. *Per contra*, Mr. Pilay, learned counsel appearing for the Respondent would submit that there is nothing on record to show that the Respondent was employed. He submits that considering the bank statements of the Petitioner there are certain regular monthly cash deposits and other deposits in addition to the salary from ITC and as such the average monthly income of the Petitioner comes to around Rs.1,19,159/-. He tenders a chart prepared from the bank statements which shows the monthly credits on an average of Rs.1,19,159/-.

7. Considered the submissions and perused the record.

8. For the purpose of grant of any relief under the DV Act, *prima facie* case of domestic violence is a *sine qua non*. The Metropolitan Magistrate has arrived at a *prima facie* finding that the Respondent was subject to physical, verbal, mental, sexual and emotional abuse. This *prima facie* finding has been arrived at by considering the pleadings in the Application and the documents produced to substantiate the pleadings such as NC's dated 12th October, 2018 and 11th October, 2018, 26th August, 2019 and the FIR's registered under

the various Sections of the Indian Penal Code, 1860. The trial Court also considered that the alleged whatsapp chats of the Respondent wife were annexed as exhibits to the written statement which were mere conversations and based on the same, allegations of unchastity were levelled. The Metropolitan Magistrate has thus held that the Respondent was entitled to protection orders under Section 18 of the DV Act.

9. Considering the NC's as well as the FIR's which has already come on record and the pleadings in the written statement which cast aspersions on the character of the respondent-wife, *prima facie* case of economic as well as verbal and emotional abuse is made out. Although an attempt has been sought to submit that those FIRs were subsequent to the filing of the complaint and could not be considered what can be inferred is that even after the application under Section 12 was filed, the petitioner-husband continued to subject the wife to domestic violence which compelled her to file FIRs. It also needs to be noted that there was NC complaints filed in the year 2018-2019 i.e. before the filing of the Application under Section 12 of the DV Act. It is well known that in matrimonial disputes, the filing of police complaint is a matter of last resort and the parties do not at the first instance rush to the police stations for filing complaints. As such even

if there were no police complaints, the Court is expected to come to a *prima facie* finding as to the existence of domestic violence on the basis of the material on record. No infirmity is demonstrable from the *prima facie* findings of the Courts on the existence of domestic violence.

10. The next submission advanced is that the parties were residing separately and is not entitled to any right in the Flat at Raheja Reflection. The pleadings in the application indicate that the Respondent wife is residing in a rented accommodation. The issue is no longer *res integra* and has been answered by the Apex Court in the case of ***Prabha Tyagi vs Kamlesh Dvi (2022) 8 SCC 90***. In view of Section 17 of the DV Act, the Respondent has a right to reside in the shared household although she may be residing separately at the time of filing of the application. The pleadings also indicate that after the marriage the parties were residing in Flat No.204, Arlington-C, Raheja Reflection, Takhur Village, Kandivali (East) Mumbai and the premises constitute shared household within the meaning of Section 2(s) of DV Act.

11. To assail the prohibitory order of dispossessing the Respondent from Flat at Raheja Reflection, it is submitted that as there was no prayer under Section 17 of DV Act, the interim order restraining the

Petitioner from dispossessing the Respondent from the matrimonial house could not be granted. Section 12 of DV Act provides that the application shall be in such form and contain such particulars as may be prescribed or nearly as possible thereto. Rule 6 of the Protection of Women from Domestic Violence Rules, 2006 framed under the DV Act provides for the application to be in Form-II or nearly as possible thereto and enable the aggrieved person to seek assistance of Protection Officer in preparing the application. On a holistic reading of the provisions of DV Act and Rules it is evident that strict rules of pleading are not applicable to the DV application. If the Trial Court finds upon consideration of the pleadings that the aggrieved person is entitled to a relief under the DV Act which it is empowered to grant and has not been sought, the provisions does not place any embargo on the Trial Court to grant such a relief. The whole purpose of the DV Act is to protect the rights of women guaranteed under the Constitution of India. Whilst doing so, the technical objections on pleadings cannot create an obstacle in grant of relief. Hence, I am not inclined to consider the submission that in the absence of seeking relief under Section 17 of DV Act, no relief could have been granted.

12. Coming now to the issue of maintenance, the Metropolitan Magistrate has considered that the Respondent had no source of

income and there was no provision for maintenance made by the Petitioner. The Metropolitan Magistrate considered the monthly salary of the Petitioner which was about Rs.52,000/- as per his own statement and has also taken into consideration that his monthly expenses are shown of Rs.1,03,016/- and on basis of material on record granted monthly maintenance of Rs.30,000/-.

13. As far as the income of the Petitioner-husband is concerned, the statement of monthly income which has been tendered by the learned counsel for the Respondent and is also found part of the record of the trial Court shows an average monthly income of Rs.1,19,159/- which is based on the credits in the bank account. Learned Counsel for the Petitioner is unable to offer any explanation for the regular deposits made in the bank account of the Petitioner. The additional income would also justify the monthly expenses of the Petitioner shown at Rs.1,03,016/-. As it is the case of the Petitioner that he has to maintain his parents there is no inflow of funds from his parents and it is not shown as to how the monthly expenses which far exceed his monthly income are met. The irresistible conclusion therefore is that apart from the monthly salary the Petitioner is having an additional source of income which is suppressed by the Petitioner. Interesting to note that in the monthly expenses the maintenance granted to the mother

by the Family Court, Bandra of Rs.30,000/- is shown. It does not appear that the grant of maintenance to the mother was challenged by the Petitioner however, the Petitioner has promptly challenged the maintenance of Rs.30,000/- which was granted to the respondent-wife. This despite the fact that the Petitioner-husband's father was a pensioner and is in receipt of pension of almost of Rs.20,000/-. The additional expenses on account of Petitioner's father's ailment is a subsequent event and is subject matter of the application for modification and hence I have refrained from making any observations in that regard. The fact remains that the Respondent is without any source of income and is entitled to grant of maintenance.

14. At the stage of grant of interim maintenance, there is an element of guess work involved and unless it is demonstrated from the material on record that the monthly maintenance granted is excessive, no interference is warranted. The evidence is yet to be led and the Metropolitan Magistrate as well as the Appellate Court has rightly considered the material on record and granted maintenance of Rs.30,000/- and has also rightly passed the residence orders. That apart, the Petitioner has filed an application under Section 25 of DV Act, which is pending adjudication and the additional expenses which amounts to a change in circumstances can be considered in

the said application.

15. There is no quarrel with the proposition of law laid down in the decisions relied upon by learned Counsel for Petitioner. However there is no infirmity in the impugned judgment demonstrated as against the enunciation of law laid down in the said decisions. The decisions do not assist the case of the Petitioner. Having regard to the discussion above, there is no merit in the Petition. Petition stands dismissed.

[Sharmila U. Deshmukh, J.]