IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No. 101 of 2022
Date of Decision: 24.07.2024

Satpal **.....Petitioner**

Versus

Sharda Devi **.....Respondent**

Coram
Hon'ble Mr. Justice Sandeep Sharma, Judge.
Whether approved for reporting?

For the petitioner: Mr. Rajiv Sirkeck, Advocate.

For the Respondent: Mr. Y.P. Sood, Advocate, for the respondent.

Sandeep Sharma, J. *(Oral)*

Instant criminal revision petition filed under Section 397 of Criminal Procedure Code, lays challenge to judgment/order dated 07.09.2021 passed by learned Additional Sessions Judge(CBI), Shimla, District Shimla, H.P., in Criminal Revision No. 17-S/10 of 2019 titled Sharda Devi Vs. Sat Pal, affirming/modifying the order dated 31.01.2019 passed by learned Additional Chief Judicial Magistrate, Theog, District Shimla, H.P., whereby afore Court, while allowing application under Section 12 of Protection of Women from Domestic Violence Act (in short '**Act**') having been filed by the respondent saddled petitioner with liability to pay maintenance to the tune of Rs. 1,000/- to the respondent from the date of passing of order.

2. Precisely, the facts of the case, as emerge from the record are that respondent claiming herself to be legally wedded wife of the petitioner filed an application under Section 12 of the Act, alleging therein that her marriage was solemnized with the petitioner on 07.12.2013 as per Hindu rites and customs and out of their wedlock, one female child was born. She

alleged that soon after her marriage, her husband as well as her parents-in-law started harassing her for bringing less dowry. She alleged that on 24.10.2015 her father-in-law ousted her from the matrimonial house and as such, she was compelled to leave her matrimonial house. She alleged that since she has no source of independent income, she is required to be awarded monthly maintenance as well as protection under Section 18 of the Act in terms of Sections 12 & 18 of the Act. She specifically alleged in the application that monthly income of her husband i.e. petitioner is more than Rs. 15,000-20,000/- per month.

3. While refuting the aforesaid claim put-forth by the respondent, petitioner stated before the learned court below that at no point of time respondent was ousted from her matrimonial house, rather, she, of her own volition and without there being any plausible reason, left her matrimonial house and as such, she is not entitled to maintenance. While specifically refuting the factum with regard to demand of dowry, if any, made by the petitioner as well as other family members, petitioner stated in the reply that his income is not Rs. 15,000-20,000/- per month, rather his income is Rs. 5,000/- per month from all sources. Learned Court below on the basis of pleadings as well as evidence adduced on record held respondent entitled to maintenance @ Rs.1,000/- per month from the date of passing of order. Besides above, learned Court below also passed order under Section 18 of the Act, thereby prohibiting petitioner and other family members from committing any act of domestic violence.

4. Being aggrieved and dissatisfied with quantum of maintenance awarded by learned court below, respondent preferred an appeal in the

court of learned Additional Sessions Judge(CBI), Shimla, District Shimla, H.P., which ultimately came to be decided on 07.09.2021. Vide aforesaid order dated 07.09.2021, learned Additional Sessions Judge (CBI), Shimla, District Shimla, H.P. enhanced the maintenance from Rs. 1,000/- per month to Rs. 2500/- per month. In the aforesaid background, petitioner has approached this court in the instant proceedings, praying therein to set aside the aforesaid order passed by learned Additional Sessions Judge (CBI), Shimla, District Shimla, H.P., inasmuch as order of enhancement of maintenance from Rs. 1,000/- to Rs. 2500/- came to be passed.

5. Precisely, the grouse of the petitioner, as has been highlighted in the petition and further canvassed by Mr. Rajiv Sirkeck, learned counsel for the petitioner, is that learned Court below, while awarding maintenance, failed to take note of the fact that respondent of her own volition had left her matrimonial house and monthly income of the petitioner is not more than Rs. 5,000/-. Mr. Sirkeck, states that total income of the petitioner is not more than Rs. 5,000/- and in aforesaid sum of Rs. 5,000/-, he apart from, providing maintenance to his wife-respondent, is also responsible for taking care of his parents. He states that on account of non-payment of arrears of maintenance, he has already undergone simple imprisonment for a period of one month.

6. To the contrary, Mr. Y.P. Sood, learned counsel for the respondent, while supporting the impugned order dated 07.09.2021 passed by learned Additional Sessions Judge (CBI), Shimla, District Shimla, H.P., states that there is overwhelming evidence adduced on record suggestive of the fact that monthly income of the petitioner is more than Rs. 15,000-

20,000/- per month and as such, learned Court below rightly enhanced the amount of maintenance from Rs. 1,000/- to Rs. 2500/-. He states that apart from maintaining herself, respondent is also responsible for maintaining her minor daughter, who is in growing age.

7. Having heard learned counsel for the parties and perused material available on record vis-a-vis reasoning assigned in the impugned order dated 07.09.2021 passed by learned Additional Sessions Judge(CBI), Shimla, District Shimla, H.P., this court finds no illegality or infirmity and as such, no interference is called for. It is not in dispute that respondent is legally wedded wife of the petitioner. Though petitioner claimed that respondent of her own volition started living separately, but such plea of his does not appears to be correct for the reason that there is overwhelming evidence available on record suggestive of the fact that respondent was maltreated repeatedly by the petitioner and his family member. Factum with regard to maltreatment stands established on record on account of placing of material on record by the respondent suggestive of the fact that at one point of time parties were counselled by Gram Panchayat concerned and police, but yet petitioner and his family members failed to mend their ways. Since respondent was not being treated properly, she had otherwise no option, but to leave her matrimonial house. Similarly, there is nothing on record to suggest that respondent has any source of income and as such, she necessarily requires some amount to sustain/maintain herself. Being husband of the respondent, petitioner is otherwise under obligation to maintain her wife as well as her minor child. Though, Mr. Sirkeck, attempted to argue that monthly income of the petitioner is not more than

Rs. 5,000/-, but bare perusal of pleadings as well as other evidence adduced on record clearly suggests that monthly income of the petitioner is more than Rs. 15,000-20,000/- and at no point of time, evidence, if any, ever came to be led on record by the petitioner to demonstrate that his income from all sources is not more than Rs. 5,000/-. Once income of the petitioner stands proved to the tune of Rs. 15,000-20,000/-, coupled with the fact that he being husband of the respondent, is under obligation to maintain his wife, no illegality can be said to have been committed by the learned Additional Sessions Judge(CBI), Shimla, District Shimla, H.P., while enhancing the amount of maintenance from Rs. 1,000/- per month to Rs. 2500/- per month. This court cannot lose sight of the fact that as of today one LPG cylinder costs about Rs. 1,000/-. Moreover, by no stretch of imagination, an individual can be expected to sustain/maintain himself/herself in a meager amount of Rs. 2500/- per month, especially on account of high rate of inflation.

8. Consequently, in view of above discussion made hereinabove, this court finds no illegality or infirmity in the impugned order dated 07.09.2021 passed by learned Additional Sessions Judge(CBI), Shimla, District Shimla, H.P., as such, the same is upheld. Present petition fails and is dismissed accordingly. Pending application, if any, stands disposed of.

(Sandeep Sharma)
Judge

July 24, 2024
(sunil)