

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

137

CRM-M-2542 of 2024
Date of Decision:18.01.2024

Rajbir

....Petitioner

Versus

Smt. Kela Devi

.....Respondent

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Jainainder Saini, Advocate,
for the petitioner.

SUDEEPTI SHARMA, J. (Oral)

1. The present petition has been filed under Section 482 of the Code of Criminal Procedure for quashing of the judgment dated 10.01.2022 (Annexure P-3) passed by the learned Chief Judicial Magistrate, Bhiwani, wherein the petition under Section 12 of the Protection of Women from Domestic Violence Act, 2005 filed by the respondent was allowed and further for quashing of judgment dated 04.08.2023 (Annexure P-5) passed by the learned Additional Sessions Judge, Bhiwani, vide which the appeal filed by the petitioner against the judgment dated 10.01.2022 (Annexure P-3) has been dismissed.

2. Learned counsel for the petitioner contends that the respondent is not the wife of the petitioner but is wife of his elder brother Sumer Singh and therefore, the learned Courts below have erred in directing the petitioner

to pay a sum of Rs.4000/- per month as maintenance to the respondent from the date of order without considering the fact that the respondent is not legally wedded wife of the petitioner.

3. I have heard learned counsel for the petitioner and perused the impugned judgments and conclude as under:-

i) The brief facts of the case are that the respondent was married with Sumer Singh, elder brother of the petitioner and out of their wedlock two sons were born. After sometime, her husband gave beatings to her and turned her out from the matrimonial house. A Panchayat was convened where her husband Sumer Singh flatly refused to maintain any matrimonial relations with Kela Devi i.e. the respondent. Both the parties decided to live separately after taking mutual divorce in Panchayat. After sometime, her father-in-law came to her house and asked her to marry the petitioner. She accepted the proposal and thereafter marriage of respondent was solemnized with the petitioner in the year 1984 and out of their wedlock, one daughter namely Rekha was born.

ii) In October 2009, the petitioner solemnized second marriage with one Muskan. When the respondent raised objection to the said marriage, she was shunted out alongwith her daughter from the matrimonial home. Thereafter, two petitions under Section 125 of the Code of Criminal Procedure were filed by the respondent wherein matter was

compromised. Then the respondent filed a complaint under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (for short “the Act of 2005”) which was decided in her favour by observing that the domestic relationship of parties to be husband and wife is itself proved on record and refusal to accept the same on the part of respondent No.1 (petitioner herein) itself falls within the ambit of cruelty. It has further been observed by the learned CJM, Bhiwani while passing the judgment dated 10.01.2022 (Annexure P-3) that admittedly respondent No.1 (petitioner herein) was convicted for committing rape upon the respondent which further amounts to sexual abuse and respondent No.1 (petitioner herein) did not give any amount of maintenance to the petitioner (respondent herein) and the same falls within the ambit of economic abuse. After observing that it is a legal duty of respondent No.1 (petitioner herein) to maintain the petitioner (respondent herein), learned Court below allowed the complaint filed by the respondent by directing the petitioner to pay a sum of Rs.4000/- per month to the respondent for her maintenance from the date of passing of the order.

(iii) Both the parties have preferred appeals against the judgment dated 10.01.2022 (Annexure P-3) and the appeal filed by the respondent herein was partly allowed whereas

appeal filed by the petitioner was dismissed vide order dated 04.08.2023 (Annexure P-5).

(iv) The relevant portion of the judgment dated 04.08.2023 (Annexure P-5) passed by the learned Addl. Sessions Judge, Bhiwani is reproduced as under:-

“14. Though, earlier marriage of Kela Devi is still subsist, therefore, it cannot be said that she is legally wedded wife of Rajbir. But in order to attract provisions of DV Act, legally wedded wife is not sine qua non. Only exists domestic relationship must be existed between them. Term domestic relationship has defined under Section 2(f) of D.V. Act which is as under:-

(f) “domestic relationship” means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family;

15. On the basis of Ex. P1 i.e. copy of bail application, which was filed by Rajbir in FIR No. 2 dated 04.01.2018 under Sections 376B/457/506 IPC, wherein he has admitted that Kela Devi is his wife coupled with oral evidence of Kela Devi, it is evident that Kela Devi resided with Rajbir for several years as his wife. So, it is evident that Kela Devi and Rajbir were having domestic relationship. In the petition under Section DV Act, petitioner has pleaded that she was subjected to torture and she was shunted out from her matrimonial home by respondent Rajbir and he refused to maintain her so that conduct of respondent itself proves cruelty.

16. Ld. CJM, Bhiwani has passed impugned order, after

considering all oral as well as documentary evidence by the parties, and awarded monthly maintenance of Rs.4000/- to Kela Devi which is reasonable and not at higher side. So, keeping in view my above mentioned discussion, impugned order regarding awarding of monthly maintenance to petitioner does not require any interference.

17. *Kela Devi herself has admitted that she is residing with her son in a well furnished house so she is not entitled for separate relief of residence. No document regarding income of respondent Rajbir, as claimed by petitioner Kela Devi in the DV Act, has placed on file. It is also evident that respondent is having other liabilities i.e. to maintain his wife and daughter, in that circumstance monthly maintenance of Rs.4000/- is just and reasonable.*

18. *In **Rajnish vs. Neha and another in Criminal Appeal No. 730 of 2020 decided on 04.11.2020** Hon'ble Apex Court has held that maintenance in all cases will be awarded from the date of filing the application.*

19. *So impugned order of learned Magistrate to award maintenance to petitioner from the date of order is against the law laid by Hon'ble Apex Court. Thus, keeping in view my above mentioned discussion, impugned order requires interference of this Court that maintenance will be awarded from the date of filing of application instead from the date of order.*

20. *Resultantly, impugned order is modified and the criminal appeal at SR. No.1 bearing CIS No.CRA/22/2022 of appellant-husband Rajbir is devoid of merits and same is dismissed whereas criminal appeal at Sr. No.2 bearing CIS No. CRA/23/2022 of appellant-wife Kela Devi is partly allowed and she is entitled for maintenance of Rs.4000/- per month from the date of filing of application instead of from*

the date of order. Trial court record, be returned with a copy of this judgment while appeal filed be consigned to records after due compliance.”

4. A perusal of the impugned order shows that it has been passed after taking into consideration the facts and documents on record. Further, it is an admitted fact that the petitioner was in domestic relationship with the respondent as defined under Section 2(f) of the Act of 2005. Since the petitioner was in domestic relationship with the respondent and that is admitted and proved and out of their relationship one daughter namely Rekha is also born, therefore it is legal and moral duty of the petitioner to maintain the respondent and the impugned order dated 04.08.2023 passed by the learned Addl. Sessions Judge, Bhiwani, is well reasoned. Further, the amount directed to be paid by the petitioner to the respondent to the tune of Rs.4000/- per month is also reasonable. Therefore, I do not find any merit in the present petition, the same is hereby dismissed.

5. Pending applications, if any, also stand disposed of.

(SUDEEPTI SHARMA)
JUDGE

January 18, 2024
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Whether speaking	:	Yes/No
Whether reportable	:	Yes/No