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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-4590-2024
Date of decision: 19.09.2024

Sudhir

...Petitioner

Versus

Pinki Sharma and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Shiv Kumar Rana, Advocate for the petitioner
(Through Video Conferencing)

VIKAS BAHL, J. (ORAL)

1. This is a revision petition filed under Article 227 of the Constitution of India for setting aside the judgment dated 05.09.2022 passed by the Court of Additional Sessions Judge, Bhiwani while deciding Criminal Appeal No.6 of 2017 which was instituted on 19.01.2017 titled as “Smt. Pinki Sharma Vs. Sudhir and others”.
2. Brief facts of the present case are that respondent No.1 had filed a complaint under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter to be referred as “the 2005 Act”) against the present petitioner-her husband and other persons and in the said complaint, as is apparent from para 2 of the order dated 21.12.2016 (Annexure P-1) passed by the Judicial Magistrate Ist Class, Bhiwani, it was stated that respondent No.1 was married to the present petitioner on 21.06.2010 and her parents had given sufficient dowry in the marriage and after the marriage, respondent No.1 started



to reside with the petitioner and his family members and thus, she had domestic relationship with them. It was further alleged that the petitioner and his family members raised demands for dowry from the complainant-respondent No.1 including demands of motorcycle, gold earrings, cash of Rs.2 lacs, a gold ring etc. and the father of respondent No.1-complainant was compelled to give a Hero Honda motorcycle and Rs.2 lacs to the petitioner and his family but they were not satisfied with the same and on 19.12.2010, respondent No.1 was ousted from the matrimonial home and thereafter with the intervention of respected individuals, the petitioner and his family members eventually agreed to take respondent No.1 back but again on 20.06.2013 and also on 03.07.2013, respondent No.1 was beaten up and even the petitioner attempted to pour kerosene oil over her with the intention to kill her. It was alleged in the said complaint that the present petitioner was a Teacher by profession and was earning Rs.15,000/- per month and was also owning 10 acres of land and was earning more than Rs.5 lacs per annum and accordingly, a prayer for maintenance was also made. In the reply filed by petitioner, as is apparent from para No.3 of the order dated 21.12.2016, it was stated by the petitioner that respondent No.1 was a quarrelsome lady and denied all the allegations levelled against him.

3. The Judicial Magistrate Ist Class, Bhiwani, vide the order dated 21.12.2016 (Annexure P-1), had dismissed the said complaint. Aggrieved against the said order, respondent No.1 had filed an appeal and the Additional Sessions Judge, Bhiwani, vide the impugned order dated 05.09.2022 had allowed the said appeal and observed that respondent No.1 would be entitled to the compensation of an amount of Rs.20,000/- and also a sum of Rs.3000/- per month for accommodation and had also observed that she would also be



entitled to the maintenance to the tune of Rs.5000/- per month from the date of filing of the petition and the amount received by the respondent No.1 under Section 125 Cr.P.C. would be adjusted towards the same. While allowing the said appeal, it was observed by the Additional Sessions Judge, Bhiwani that the marital status between the parties was not disputed and the observation made by the Judicial Magistrate Ist Class, Bhiwani, that the respondent No.1 failed to prove her allegations, was illegal inasmuch as respondent No.1 had appeared as CW1 and she had reiterated the stand as taken in the complaint under Section 12 of the 2005 Act and evidence of the said CW1 was duly corroborated by the report of the Protection Officer which was duly submitted to the Magistrate but the Magistrate did not take into consideration the said report at the time of passing of the final judgment. It was further observed that the petitioner in his cross-examination had admitted that he had already filed a divorce petition before the Family Court and even if respondent No.1 wanted to reside with the petitioner then also he was not willing to allow her to reside with him although it was further admitted by him that he had filed a petition under Section 9 of the Hindu Marriage Act, 1955. After taking into consideration the judgment passed by the Hon'ble Supreme Court in the case of **Sunita Kachwaha and others Vs. Anil Kachwaha** passed in **Criminal Appeal No.2310 of 2014 decided on 28.10.2014** in which, the Hon'ble Supreme Court had observed that merely because the wife was qualified is not sufficient to hold that she is in a position to maintain herself, the Additional Sessions Judge, Bhiwani had granted the said maintenance as observed hereinbefore. It was further observed in the said order that the petitioner was an able bodied person and thus, he was liable to take care of his wife and that proceedings under the 2005 Act were independent of the proceedings under Section 125 Cr.P.C.. It is the said order which is



sought to be challenged in the present revision petition after a period of two years.

4. On a pointed query raised by this Court, learned counsel for the petitioner has submitted that the petitioner has not been paying an amount of Rs.3000/- per month for accommodation as was ordered vide order dated 05.09.2022 passed by the Additional Sessions Judge, Bhiwani, in spite of the fact that there was no stay operating in favour of the petitioner.

5. Learned counsel for the petitioner has argued that the order dated 21.12.2016 (Annexure P-1) passed by the Judicial Magistrate Ist Class, Bhiwani, was in accordance with law and the said order deserves to be upheld. It is submitted that respondent No.1 is already drawing a maintenance of Rs.5000/- per month in pursuance of orders passed in petition under Section 125 Cr.P.C. and thus, she is not entitled to any additional amount in the said regard. It is stated that the petitioner had earlier filed a Criminal Miscellaneous petition which was dismissed as withdrawn on 29.05.2024 and has fairly stated that there was no stay in the same. It is argued that the order dated 05.09.2022 passed by the Additional Sessions Judge, Bhiwani be set aside and the order dated 21.12.2016 passed by the Judicial Magistrate Ist Class, Bhiwani be upheld.

6. This Court has heard the arguments raised on behalf of the petitioner and has perused the paper book and finds that the arguments raised by the learned counsel for the petitioner are meritless and deserve to be rejected.

7. At the outset, it would be relevant to mention that in para 14 of the present revision petition, it has been mentioned that no such or similar revision petition has earlier been filed by the petitioner in this Court or before the



Hon'ble Supreme Court of India but however during the course of arguments, it is sought to be argued that a criminal miscellaneous petition challenging the impugned order was filed which was withdrawn on 29.05.2024. Neither any reference of the same has been made in the present revision petition nor any such order has been placed on record. At any rate, as has been stated by learned counsel for the petitioner, there was no stay operating against the petitioner and thus, non-compliance of the order dated 05.09.2022 for a period of two years shows the mala fide conduct of the petitioner. The argument on the aspect of an amount of Rs.5000/- per month as maintenance having already been ordered under Section 125 Cr.P.C. and thus, the present application is not maintainable is not valid. As is apparent from para 14 of the impugned order dated 05.09.2022 it had been observed that the maintenance which respondent No.1 had received under Section 125 Cr.P.C. is to be adjusted with respect to maintenance awarded under the 2005 Act and thus, it cannot be said that the petitioner is required to pay double the maintenance. Moreover, it had been observed in the said para that the proceedings under the 2005 Act are independent proceedings and respondent No.1 has a right to file a case under the said Act and merely because respondent No.1 has claimed maintenance under Section 125 Cr.P.C., she cannot be restrained from pursuing her right under the 2005 Act. No law has been cited on behalf of the petitioner in order to show that in case of the proceedings initiated under Section 125 Cr.P.C., respondent No.1 is barred from pursuing her rights under the 2005 Act, more so when on the aspect of maintenance, the First Appellate Court had ordered that the amount received under Section 125 Cr.P.C. would be adjusted in the amount awarded under the 2005 Act. As far as the payment of Rs.3000/- per month for accommodation is concerned, the said order has also been rightly



passed inasmuch as in para 11 of the impugned order, it had been noticed by the First Appellate Court that the petitioner in his cross-examination had admitted that he had already filed a divorce petition before the Family Court and he was not willing to allow respondent No.1 to reside with him and thus, it is the duty of the petitioner to provide for an accommodation for the respondent No.1 or in the alternate to pay for the rented accommodation. The factual basis as contained in para 11 of the order is not shown to be perverse. Even an amount of Rs.3000/- per month ordered for the purpose of accommodation cannot be stated to be excessive in the present time. The compensation of an amount of Rs.20,000/- had also been correctly granted to respondent No.1 as it had been found that the pleadings in the complaint regarding domestic violence have been reaffirmed by respondent No.1 by appearing as CW1 and also stood corroborated by the report of the Protection Officer and which finding has not been shown to be perverse.

8. Keeping in view the abovesaid facts and circumstances, the impugned order dated 05.09.2022 is legal and deserves to be upheld and the present revision petition being meritless, deserves to be dismissed and is accordingly, dismissed.

19.09.2024*Pawan***(VIKAS BAHL)
JUDGE****Whether speaking/reasoned:- Yes/No****Whether reportable:- Yes/No**