

**IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH****141****CRM-M-57730-2024(O&M)****Date of order: 25.11.2024****Hemant Passi & Others****.....Petitioner(s)****Vs.****Upasana Passi****.....Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Kuldip Sanwal, Advocate
for the petitioners.

Nidhi Gupta, J.

Present petition under Section 482 Cr.P.C./528 BNSS, 2023 is filed seeking quashing of order dated 12.10.2021 (Annexure P4) passed by learned Additional Sessions Judge, Jalandhar, in an appeal under Section 29 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as "the DV Act") against an order dated 19.01.2021 (Annexure P2) passed by the Court of learned Judicial Magistrate, 1st Class, Jalandhar in an application under Section 23 of the above-mentioned Act.

2. Learned counsel for the petitioners inter alia submits that the petitioner No.1 is the husband, petitioner No.2 is the mother-in-law and petitioner No.3 is the father-in-law of the respondent. The respondent had filed a petition against the petitioners under Section 12 of the DV Act. In the said proceedings, vide order dated 19.01.2021 (Annexure P2), the respondent had been granted interim maintenance of Rs.7,500/- per month. The said order was challenged by the respondent before the learned Additional Sessions Judge vide appeal dated July 2021 (Annexure

P3). Vide impugned order dated 12.10.2021 (Annexure P4), the interim maintenance of Rs.7,500/- per month granted to the respondent has been enhanced to Rs.45000/- per month. Learned counsel contends that the respondent is not entitled to maintenance as she had left the matrimonial home willingly and of her own volition, without sufficient cause and without any instigation on the part of the petitioners. It is further submitted that the respondent is running a successful business. However, this fact has not been taken into account while passing the impugned order. It is submitted that as the provisions of Sections 498-A and 406 IPC are being increasingly misused, similarly there is possibility of the provisions of DV Act being misused in the present case. It is further submitted that the respondent is not entitled to any rent as she is living in her parental home. In fact, in all the legal proceedings between the parties, the Memo of Parties reflects the residential address of the respondent as that of her parents. Furthermore, the lower Court did not maintain any balance between the income of the petitioner and his liabilities. Learned Court below failed to appreciate the fact that the petitioner no.1 has the additional responsibility of his aged parents i.e. petitioners No.2 and 3 herein, who are approximately 87 and 94 years old respectively. It is submitted that as such, interim maintenance of this much quantum is highly excessive. Furthermore, the petitioner is regularly paying the maintenance to the respondent. It is accordingly prayed that the impugned order be set aside.

3. No other argument is made on behalf of the petitioners.

4. I have heard learned counsel for the petitioners and perused the case file in great detail.

5. Perusal of record of the case shows that the petitioner No.1 was married to the respondent on 05.12.1997. Two children were born out of this wedlock who have been in the care and custody of the respondent. The said two children are stated to have attained the age of majority now. Due to matrimonial discord, the parties are living separately since 12.06.2020. The present petition under Section 12 of the DV Act was filed by the respondent on 23.06.2020; in which vide order dated 19.01.2021 (Annexure P2), the respondent and the minor children were granted total interim maintenance of Rs.7,500/- per month from the date of application i.e. Rs.2,000/- per month to the respondent/wife and Rs.1,500/- each per month to the minor children along with Rs.2,500/- per month for rent. The said order was challenged by the respondent by way of appeal before the learned Sessions Court (Annexure P3). Vide impugned order dated 12.10.2021, the maintenance of Rs.7,500/- granted to the respondent and the minor children has been enhanced to Rs.3,5000/- per month, along with the rental allowance of ₹10,000/- per month.

6. While passing the impugned order, the learned Sessions Court has taken into consideration the fact that it had been alleged by the respondent that the petitioner No.1 had beaten her and her sons and threatened to kill them. As such, the learned Sessions Court concluded that the respondent had left the matrimonial home with sufficient cause. It was also noticed by the learned Sessions Court that it was the moral duty and

obligation of the petitioner no.1 to maintain the respondent and the minor children. It was noted that as per the respondent, the petitioner No.1 owns properties, vehicle showrooms, plots, and is living in a kothi measuring more than 20 marlas. It was also alleged by the respondent that the petitioner No.1 is earning Rs.12 lakh per month. Thus, he is a man of means.

7. Learned Sessions Court recorded that though these facts had been denied by petitioner No.1 in his reply, however he had failed to mention his income. The petitioner No.1 had produced his Income Tax Returns in respect of a firm by the name and style of Asian Motors only whereas, it had been alleged by the respondent that the petitioner No.1 was also running a business under the name and style of M/s Hindson Auto Agency, Hoshiarpur Road, Pathankot. It was accordingly gleaned by the learned Court below that the petitioner No.1 is running the business of Asian Motors as well as Hindson Auto Agency. Thus, as per the preliminary evidence on record he is earning handsomely. Admittedly, petitioner No.1 is healthy and able-bodied. However, while granting the maintenance, the learned Magistrate had not considered these facts standard of living of the petitioners or the needs of the children or the fact that the respondent has to maintain three persons i.e. herself and the two children. From the documents brought on record by the respondent, the learned Sessions Court concluded that *"...it is prima facie there that the life which the respondent is leading and amenities he is enjoying, the same standard of*

life must be given to the wife and children also...". Accordingly following directions were given:-

"20. So keeping in view all the circumstances, it is held that the order passed by the learned lower court directing the respondent to pay ₹2,000/- per month to the applicant is too low and less. The rising prices in these days required money for maintenance. More so, the standard of living is also to be maintained which the respondent is enjoying. So in such circumstances and keeping in view the fact that the children are college going and ₹3,000/- for them is also too low. Thus, considering the rising prices in these days, the fees to be paid for the studies of the children and for the maintenance of the three, the interim maintenance is enhanced and ₹35,000/- per month is awarded as maintenance to the appellant for herself and for the maintenance of her children, from the date of application.

21. As per the order passed by the learned lower court, she has been awarded ₹2500/- per month as rent. The appellant has categorically stated in the petition relied upon by the respondent that the respondent is aggressive and used to beat her and her children and is threatening to kill her and her children. Due to these threats, she left the matrimonial house. She has demanded the accommodation in the shared household, but as per the allegations of the appellant regarding the threats, she can get the house on rent at Pathankot in order to facilitate the children to proceed their study well and she is awarded the rental charges ₹10,000/- per month from the date of application. If she wants to live in Jalandhar, then she has to take the accommodation within this amount...".

8. It is by now a settled trend that in matters such as the present one, the husband tries to depict his income on the lower side, whereas the wife attempts to show an exaggerated income of the husband. The truth lies somewhere in between. Without accepting, however, for the sake of argument, even if the assertion of the petitioner is taken to be correct, he cannot escape his moral and legal obligation to maintain the respondent and his children. The Hon’ble Supreme Court in “**Shamima Farooqui v. Shahid Khan**” (SC) : Law Finder Doc Id # 661024, has categorically held as follows:—

“B. Criminal Procedure Code, 1973 Section 125 Grant of maintenance to wife - Plea of husband that he was not doing job and had no means to pay cannot be accepted - These are only bald excuses - Held :-

(i) If the husband is healthy, able bodied and is in a position to support himself, he is under the legal obligation to support his wife.

(ii) It is the obligation of the husband to maintain his wife - He cannot be permitted to plead that he is unable to maintain the wife due to financial constraints as long as he is capable of earning.”

9. Thus, keeping in view the above noted, factual and legal position, the present petition is **dismissed**.

10 Pending application(s) if any shall also stand(s) disposed of.

25.11.2024
Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No