

**IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH****108****CRR-2386-2024(O&M)****Date of order: 29.11.2024****Nirmala****.....Petitioner(s)****Vs.****Ramphal Punia****.....Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. U.K. Agnihotri, Advocate
for the petitioner.

Dr. Pankaj Nanhera, Advocate
for the respondent.

Nidhi Gupta, J.

Prayer in the present petition is for setting aside the order dated 08.11.2024 passed by the learned Additional Sessions Judge-cum-Judge, Special Court of Heinous Crime against Women, Hisar, whereby the appeal filed by the respondent has been partly allowed and the well-reasoned order dated 20.08.2019 passed by the learned Additional Chief Judicial Magistrate, Hisar in a proceeding emanating from Section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as "the DV Act"), has been partly set aside.

2. Learned counsel for the petitioner/complainant inter alia submits that the petitioner is residing in the matrimonial home/shared household. The petitioner had filed an application under Section 12 of the DV Act (Annexure P1). During the pendency of this application, the respondent/father-in-law of the petitioner had submitted an application

dated 18.06.2019 (Annexure P4) to permanently disconnect the electricity connection in the house wherein the petitioner has been residing. On 29.07.2019, the petitioner filed an application under the DV Act before the learned ACJM Hisar (Annexure P5) for either restoration of old electricity connection bearing a/c No.SSID-1197 in the name of Ramphal Poonia/respondent herein or to direct the concerned officer of DHBVNL to install the new meter in the name of the petitioner. Vide order dated 20.08.2019 (Annexure P7), the learned Additional Chief Judicial Magistrate, Hisar a) had granted interim maintenance of Rs.4,000/- per month to the petitioner; b) had also directed the Dakshin Haryana Bijli Vitran Nigam (hereinafter referred to as "DHBVN") to issue new electricity connection in the name of the petitioner in the shared household in question; and c) and restrained the respondent therein to dispossess the petitioner from the house in question. The respondent/father-in-law had challenged the said order before the learned Sessions Court; in which the appeal of the respondent was partly allowed vide impugned order dated 08.11.2024, relevant part of which is as under:-

"18. In these circumstances, the impugned order dated 20.8.2019 qua application dated 29.07.2019 directing the DHBVN to either restore the earlier electricity connection (in the name of Ramphal respondent No.2) or to issue fresh connection to the petitioner and to restrain the respondents appellant from dispossessing the petitioner from the house in question absolutely is not sustainable in the eyes of law and is hereby set aside. Resultantly, the appeal stands partly allowed and the application dated 29.07.2019 stands partly dismissed to the extent of directing the DHBVN to either restore the

previous electricity connection or to issue new electricity connection in the name of petitioner.

19 However, the respondents are restrained from dispossessing the petitioner from the house in question otherwise than in due course of law.”

3. Hence, the present petition.

4. Learned counsel for the petitioner contends that the impugned order deserves to be set aside as the learned Sessions Court has failed to appreciate the fact that the petitioner is the legally wedded wife of the son of the respondent. The husband of the petitioner is serving in Aadhar Hospital in Hisar and getting salary of more than Rs.1 lakh per month. Even the respondent/father-in-law is a retired Class-I officer. The petitioner having been thrown out of matrimonial home in 2016, the panchayats were convened of relatives and respectable and as settled in panchayats the petitioner was taken back to matrimonial house by respondents. The petitioner was given separate residence in the said matrimonial house at 1st floor whereas the ground floor portion is in still possession of respondent-in laws. The petitioner is still residing in said matrimonial house along with her daughter, yet the electricity connection of the petitioner has been disconnected. It is contended that the electricity connection is a basic necessity and the same could therefore not have been disconnected. It is accordingly prayed that the impugned order be set aside.

5. Dr. Pankaj Nanhera, Advocate puts in appearance on behalf of the respondent and files Vakalatnama, which is taken on record.

Ld. Counsel opposes the prayer made on behalf of the petitioner and

submits that petitioner is no longer legally wedded wife of the son of the respondent.

6. No other argument is made on behalf of the parties.

7. I have heard learned counsel for the parties and perused the case file in great detail.

8. Perusal of record of the case shows that the petitioner was married to the son of the respondent namely Naresh Kumar Punia on 27.11.2014. Two children were born out of their wedlock, who were initially in the care and custody of the respondent side. However, during pendency of the present litigation, the daughter has started residing with the petitioner.

9. The present petition under Section 12 of the DV Act was filed by the petitioner on 28.08.2018/31.08.2018 (Annexure P1), with the allegations that the petitioner was subjected to great physical, mental and emotional cruelty amounting to domestic violence on account of demands of the respondent and his family for dowry, cash and kind. They had given merciless beatings to the petitioner and turned her out of the matrimonial home. A number of times even Panchayats were convened. It has further been averred that on 28.07.2018, the respondent and his family had tried to kill the petitioner but on her raising alarm and on information being given by some person the police came at the spot and the petitioner was rescued. It has also been alleged that the respondent and other accused had forcefully taken away the children from the petitioner. The petitioner has even registered FIR against the respondent and other accused. It is

further alleged that the accused persons intended to kill the petitioner and had been pressurizing her to vacate the matrimonial home where she is presently residing.

10. It was also pointed out by the petitioner before the learned Magistrate that the electricity connection of the portion of the matrimonial house where the petitioner was residing, had been disconnected. As such, the petitioner filed application dated 29.07.2019 (Annexure P5) with the prayer that *“Application for either restoration of old electricity connection bearing a/c No. SSID-1197 in the of Ramphal Poonia at name Satrod Khurd, Hisar OR to direct the concerned officer of DHBVNL to install the new meter in the name of applicant.”*.

11. After issuance of notice, the accused persons, being the respondent/father-in-law, his son, and mother-in-law of the petitioner had put in appearance before the learned Chief Judicial Magistrate and filed reply. The said petition (Annexure P1) was disposed of by the learned Chief Judicial Magistrate vide order dated 20.08.2019 (Annexure P7) with the direction that: -

“14. In the instant case, a perusal of the record of Municipal Corporation shows that as per record in the Municipality, the house is shown to be owned by the respondent no.1. The release deed has been executed by the respondent no.1 in favour of the respondent no.2 during the pendency of present case which shows malafide on part of the respondents that the same has been executed in order to defeat the right of the applicant in present case. No documentary proof has been produced on record by the respondent no.2 to prove that he is

owner of the house in dispute. In view of matter, it stands prima facie established that house in question falls within the definition of shared household as defined under Section 2(s) of the Act, the applicant being legally wedded wife of respondent no.1 has right to reside therein and that she cannot be disposed from the shared household by the respondents except in accordance with the procedure established by law.

15. As regards the electricity connection, in view of above discussion, it stands prima facie established that the applicant is lawful occupier of the house in question. As per Section 43 of Electricity Act an occupier can also apply for electricity connection in his name, the relevant portion of Section 43 of Electricity Act, 2003 is read as "Every distribution licensee, shall, on an application by the owner or occupier of any premises, give supply of electricity to such premises, within one month after receipt of application requiring such supply."

XXX

18. Considering the facts, these days electricity is the basic necessity of life and no person can survive without electricity and discussion made above, DHBVN be directed to issue new, connection in the name of the applicant in the house in question within 15 days of passing of this order provided that the applicant complete the necessary formalities of Nigam as required under the rules." (Emphasis is mine)

12. The aforesaid order was challenged by the respondent before the learned Sessions Court; which has been allowed vide impugned order dated 08.11.2024. Perusal of the impugned order reveals that the following findings were recorded therein: -

"11.The factum of marriage of the parties is not dispute. It is also not in dispute that two children were born from the

wedlock. Certain changes have occurred since the filing of petition i.e. the daughter of the petitioner and the respondent No.1 is now residing with the petitioner. Previously, it was admitted by the petitioner that both her children were residing with the respondents. The respondents have claimed that the petitioner had forcibly taken away the daughter alongwith her. It is also significant to note that the petitioner and the respondent No.1 are no more husband and wife. A decree of divorce has been passed dissolving their marriage vide judgment and decree dated 13.12.2022.

12. A perusal of the copy of judgment dated 13.12.2022 reveals that the petitioner Smt. Nirmala had left the matrimonial house on 22.03.2016 and had not returned till the filing of the petition. The Court observed that Nirmala had deserted her husband Naresh without any reasonable cause for a period of more than two years. The petitioner (Nirmala) failed to prove on record the harassment on account of dowry demands or other physical, mental or psychological atrocities as the ground for desertion.

13. The important factor which requires to be taken care of is that although the house in question was the shared household of the petitioner and she was entitled to reside in the same, still, her right to reside in the share household cannot trump the rights of the respondents also to reside in the said house in question. Residence of the petitioner in the matrimonial house has resulted in practical ouster of the respondents from the house in question. It is prima facie proved on record that the petitioner entered the house in question forcibly after breaking open the locks of the house in question on 06.08.2018. It has not been disputed that on 06.08.2018 bail proceedings of respondent No.3 were pending in the Court at Hisar. In absence of respondents, the petitioner entered the house in question,

after breaking the locks. Entire proceedings were recorded in CCTV cameras installed in the house.

14. A perusal of the petition reveals that she had not disclosed as to how she entered the house in question on 06.08.2018. She had got registered FIR No. 741 under Sections 323 and 506 read with Section 34 IPC against the respondents wherein, respondents No.1 and 2 were arrested and were released on 01.08.20218. The petitioner also got registered FIR No. 269 dated 16.05.2019 under Section 354-B, P.S. Sadar Hisar against the respondent No.2 and others alleging that on 16.05.2019 her father-in-law entered the house in question and tried to outrage her modesty. The FIR was admittedly later on, cancelled by the police with a finding that the allegations were false. In such circumstances the act and the conduct of the petitioner is such that co-existence of the respondents in the same house is not possible. Law provides a right to a wife to reside in the shared household but not at the cost of similar rights of other family members to reside in the same house. The petitioner may be entitled to the relief of maintenance and alternative residence, if found eligible at the conclusion of the proceedings, but at this stage, it is the respondents who are aggrieved with the act and conduct of the petitioner and not the other way round.

15. At this juncture, it is also significant to note that the petitioner is trying to use her daughter as a shield to present disconnection of electricity connection. The petitioner cannot be permitted to take advantage of her own wrong by seeking sympathy for her daughter.

16. The ownership of the house is not in question, at this stage. The material question is with regards the electricity connection. Admittedly, earlier the electricity connection was issued in the name of Ramphal and he had got the same disconnected by

moving an application in this regard to the concerned authorities of DHBVN. Granting permission to the petitioner for continuing with the old electricity connection or issuing fresh electricity connection in her name would tantamount to perpetuate her illegal and forcible entry in the house in question.

17. Learned Trial Court has absolutely restrained the respondents from dispossessing the petitioner from the house in question. Such a blanket order, is not justified in the facts and circumstances of the case. The status of the parties has been altered since the filing of the petition. The petitioner and respondent No.1 are no longer husband and wife as their marriage has been dissolved. The respondents cannot be restrained from availing their legal remedies to take possession of the house in question.

18. In these circumstances, the impugned order dated 20.8.2019 qua application dated 29.07.2019 directing the DHBVN to either restore the earlier electricity connection (in the name of Ramphal respondent No.2) or to issue fresh connection to the petitioner and to restrain the respondents/appellant from dispossessing the petitioner from the house in question absolutely is not sustainable in the eyes of law and is hereby set aside, Resultantly, the appeal stands partly allowed and the application dated 29.07.2019 stands partly dismissed to the extent of directing the DHBVN to either restore the previous electricity connection or to issue new electricity connection in the name of petitioner.

19. However, the respondents are restrained from dispossessing the petitioner from the house in question otherwise than in due course of law.

20. Trial Court record be sent back along with a copy of this judgment. File be consigned to the record room after due compliance.” (Emphasis added)

13. Ld. Counsel for the petitioner is unable to deny the above said facts and findings as recorded in the impugned order. Besides that, I find the impugned order to be just, fair, and reasonable, in the facts and circumstances of the case. It is also relevant to note that the judgment and decree of divorce dated 13.12.2022 is not attached with the present petition. Accordingly, I find no ground is made out to interfere in the impugned order.

14. In view of the above, present petition is **dismissed**.

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

29.11.2024
Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No