

(2015) 04 AHC CK 0244
In the Allahabad High Court
Case No : Criminal Revision No. 1418 of 2015

Chhangur Ram Nishad

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 27-04-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125

Protection of Women From Domestic Violence Act, 2005 — Section 12, 17, 17(1), 2, 3

Citation : (2015) 90 ALLCC 494 : (2016) 1 DMC 513

Hon'ble Judges : Naheed Ara Moonis, J

Bench : Single Bench

Advocate : Arvind Upadhyay, for the Appellant; Santosh Kumar Singh "Paliwal", Advocates for the Respondent

Judgement

Naheed Ara Moonis, J—Heard learned Counsel for the revisionist as well as Sri Santosh Kumar Singh "Paliwal", learned Counsel appearing on behalf of the opposite party No. 2 and the learned A.G.A. and also perused the material placed on record. Instant criminal revision has been filed by the revisionist against the order dated 7.4.2015 passed in Criminal Appeal No. 62 of 2014 (Chhangur Ram Nishad v. State of U.P. and another) as well as order dated 19.7.2014 passed by learned Judicial Magistrate, Court No. 22, Azamgarh in Misc. Case No. 727 of 2014 (Smt. Bindu Devi v. Chhangur Ram Nishad and others), under section 12 of Protection of Women From Domestic Violence Act, 2005 (hereinafter referred as an Act).

2. The submission of the learned Counsel for the revisionist is that the revisionist is the father-in-law of the opposite party No. 2, who had moved an application under section 12 of the Act against the revisionist. The husband of opposite party No. 2 expired on 27.7.2008 and since then the opposite party No. 2 is residing at her parental house. The opposite party No. 2 had also moved an application under section 125 of the Code of Criminal Procedure for claiming maintenance allowance. Hence the institution of case under section 12 of the Act is malicious

intent to grab the property of the revisionist over which the opposite party No. 2 has no right or title legally and factually both. But the Court below in a mechanical manner without considering the entire facts and circumstances of the case granted interim maintenance of Rs. 3000/- per month to the opposite party No. 2 and her three children and further directed that the opposite party No. 2 shall also reside along with her father-in-law and the in-laws will not cause any hindrance in her peaceful living in the house. The revisionist was also refrained from causing any mental or physical cruelty which comes within the purview of Domestic Violence Act. The revisionist aggrieved with the aforesaid order dated 9.7.2014 passed by the learned Magistrate preferred the appeal before the District Judge. The District Judge has affirmed the finding recorded by the Trial Court by order dated 7.4.2015. The order passed by the two Courts below are absolutely unjust, illegal and against the provision of law as well as against the dictum of the Apex Court in S.R. Batra and Another Vs. Smt. Taruna Batra, (2007) 3 CTC 219 : (2007) 1 DMC 1 : (2007) 146 PLR 425 : (2006) 13 SCALE 652 : (2007) 3 SCC 169 : (2006) 10 SCR 1206 Supp : (2007) 1 UJ 7 : (2007) AIRSCW 1088 : (2006) 8 Supreme 1002 , wherein the Apex Court has made observation with regard to the shared house which is being quoted here as under:

"As regards section 17(1) of the Act, in our opinion the wife is only entitled to claim a right to residence in a shared household, and a shared household" would only mean the house belonging to or taken on rent by the husband, or the house which belongs to the joint family of which the husband is a member. The property in question in the present case neither belongs to Amit Batra nor was it taken on rent by him nor is it a joint family property of which the husband Amit Batra is a member. It is the exclusive property of appellant No. 2, mother of Amit Batra. Hence it cannot be called a "shared household".

3. Therefore, the orders passed by the two Courts below to allow the opposite party No. 2 (daughter-in-law) to live along with the revisionist is against the dictum of the Apex Court as she is not entitled to live along with her father-in-law which do not come within the purview of shared household.

4. Learned Counsel for the complainant has contended that the orders passed by the two Courts below do not call for any interference by this Court as all the aspects of the case have been considered. The Court below has passed the order directing the revisionist to pay interim maintenance of Rs. 3000/- to the opposite party No. 2 and her three children as well as to allow her to live along with her father-in-law as her husband expired in the year 2008. The revisionist has failed to comply with the aforesaid order passed by the learned Magistrate. Neither a single penny has been given to the opposite party No. 2 nor she is being allowed to live in the house after her husband's death which is not only clear violation of two orders but also against the provision of law. The learned appellate Court has also committed no mistake in affirming the order passed by the learned Magistrate while directing the revisionist to comply with the order passed by the learned Magistrate.

5. Now the revision has been preferred by the revisionist against the concurrent finding given by the two Courts below. There is no illegality or perversity in the orders impugned. The opposite party No. 2 is entitled to live in the house of her father-in-law as it is not the case of the revisionist that the house in question is his own property whereas his deceased son and daughter-in-law and all were living jointly under the same roof.

6. I have considered the rival submissions of the learned Counsel for the revisionist as well as learned Counsel for the opposite party No. 2 and also gone through the material placed on record.

7. From perusal of the record it transpires that opposite party No. 2 is the widow of revisionist's son who expired in the year 2008. Thereafter she was ousted from her matrimonial house and she was living along with her parents along with her three children.

8. Indisputably the opposite party No. 2 is legally wedded wife of the son of the revisionist. The Trial Court has recorded finding that opposite party No. 2 is unable to maintain herself and her three children. The opposite party No. 2 did not get any financial assistance either from the revisionist or anyone else. The revisionist was responsible for the delay in deciding the application. The aim of the Domestic Violence Act 1995 is to reduce and prevent violence in domestic relationships by recognising that domestic violence in all its forms is unacceptable behavior, and by making sure there is effective legal protection for victims of domestic violence. The Courts must be guided by this aim whenever they are exercising a power under the Act to protect the recurrence of domestic violence in the society especially within the family by her husband or his relatives. The Act empowers the Magistrate to pass protection order in favour of aggrieved person. An aggrieved person is defined in section 2:

(a) "aggrieved person" means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent;

(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;

(s) "shared household" means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household.

9. The aggrieved person the daughter-in-law, the opposite party No. 2 is entitled to use, enjoy and access to the shared household. The prohibition or putting any kind of restriction comes within the definition of domestic violence as provided under section 3 of the Act. Section 17 also provides aggrieved women in a domestic relationship shall have the right to reside in the shared household, whether or not she has any right, title or beneficial interest in the same and the aggrieved person shall not be evicted or excluded from the shared household or any part of it by the respondent save in accordance with the procedure established by law.

10. Therefore, the case cited by the learned Counsel for the revisionist is not applicable under the facts and circumstances of the present case.

11. In view of the above conspectus the impugned orders do not call for any interference. Accordingly, this revision has no merit and is hereby dismissed. The Court below is directed to proceed against the revisionist in respect of execution of the order passed by the two Courts below.