

(2016) 02 DEL CK 0211
In the Delhi High Court
Case No : Crl. Rev. P. 300/2015

Richa Arya

APPELLANT

Vs

State of NCT of Delhi and Others

RESPONDENT

Date of Decision : 09-02-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 107, Section 125, Section 151
Hindu Marriage Act, 1955 — Section 24
Penal Code, 1860 (IPC) — Section 34, Section 406, Section 498A
Protection of Women From Domestic Violence Act, 2

Citation : (2016) 3 ADDelhi 359 : (2016) 161 AIC 540 : (2016) ALLMRCri 233 :
(2016) 2 CivCC 546 : (2016) 2 CriCC 396 : (2016) 4 Crimes 518 : (2016) 227
DLT 593 : (2016) 2 HLR 180 : (2016) 2 JCC 1450 : (2016) 3 RCRCivil 492 :
(2016) 2 RCRCriminal 409

Hon'ble Judges : Ashutosh Kumar, J.

Bench : Single Bench

Advocate : Aishwarya Rao, Advocate, for the Appellant; M.P. Singh, APP and
Mousam Ghani, SI, for the Respondent

Final Decision : Allowed

Judgement

Ashutosh Kumar, J.—Crl.M.A No. 17968/2015

Exemption allowed subject to all just exceptions.

Application is disposed of.

CRL.REV.P. 300/2015

1. Richa Arya has questioned the legality of the order dated 15.10.2014 passed by the learned Metropolitan Magistrate (Mahila Court-02) East, whereby the prayer made on her behalf for monetary relief, as an interim measure, under section 23 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as the "Act") was rejected primarily on the ground that she had been granted maintenance pendente lite of Rs. 5000/- per month under

section 24 of the Hindu Marriage Act, 1955 in a proceeding for divorce instituted by her husband (respondent no.2) and therefore she was not entitled to the grant of additional maintenance; as also against the appellate judgment and order dated 24.01.2015 passed by the Additional Sessions Judge-03 East, Karkardooma Courts, Shahdara, Delhi in Crl. Appeal no. 120/2014, whereby the order passed by the learned Metropolitan Magistrate, referred to above, was affirmed and upheld.

2. In order to appreciate the contention of the petitioner, it would be necessary to set out the facts leading to invocation of the provisions of the Act by the petitioner.

3. The petitioner was married to respondent no.2 on 10.02.2010 and within a short span of about 3 months, she was subjected to an additional demand of 8-10 Lakhs as dowry and was harassed for non- payment of the same. In the fourth month of the matrimonial relationship of the petitioner with the respondent no.2, she was beaten up and ousted from her matrimonial home. When she attempted to enter the matrimonial household on 21.08.2010, she was put to a shameful incident when half of her body remained inside the gate of the house and the half remained outside: the gates were deliberately closed by the in-laws while the petitioner was entering the house. The aforesaid incident was published in print and visual media.

4. Forced by such act of cruelty by the abusers including respondent no.2, a complaint was lodged on 26.08.2010 with CAW cell. Relevant would it be to state that the petitioner gave birth to a child namely Krisha @ Mishty on 24.11.2010. So shameless were the matrimonial relatives of the petitioner that she was even roughed up in the CAW cell and the police, per force, had to draw up a Kalandra under section 107/151 Cr.P.C. This was followed by registration of FIR bearing no. 87/2011 instituted under Sections 498A/406/34 IPC in PS Mayur Vihar against respondent no.2 and his other family members. As part of clever strategy, the respondent no.2 filed a petition for divorce in the Family Court at Ghaziabad, U.P. IN the aforesaid petition for divorce, the petitioner preferred an application under section 24 of the Hindu Marriage Act, 1955 for maintenance pendente lite and was granted maintenance at rate of Rs. 5000/- p.m.

5. The petitioner also filed an application under section 12 of the Act before the learned Magistrate, Karkardooma Courts, for protection, residence, monetary reliefs, custody of child and compensation. She simultaneously moved an application under section 23 of the Act for interim relief.

6. In the aforesaid application, the petitioner asserted that respondent no.2 was a man of substance and was earning at least Rs. 1,20,000/- p.m. from different sources, whereas she did not have any independent source of income and was unable to maintain herself as well as her daughter.

7. The respondent no.2, though, admitted the factum of marriage and birth of the child out of the said wedlock but denied all instances of domestic violence

alleged by the petitioner and her assertion of respondent no.2 earning Rs. 1,20,000/- p.m. from various sources. On the contrary, it was averred on behalf of respondent no.2 that the petitioner was a post-graduate/MCA and working in an MNC in Gurgaon, Haryana, which fetched approximately Rs. 15,000/- p.m. to her. It was further contended that the petitioner was already getting Rs. 5000/- p.m as maintenance under orders of the Family Court, Ghaziabad, passed under Section 24 of the Hindu Marriage Act, 1955.

8. The petitioner as well as the respondent no.2 filed their affidavits of income and assets before the learned Metropolitan Magistrate with their respective claims.

9. However, the learned Metropolitan Magistrate adopted the shortest route holding that in view of contradictory stand with respect to the financial strength made by the parties, the Court was only required, at that stage, to take a prima facie view of the matter for granting interim relief under the Act. The learned Metropolitan Magistrate, on consideration of the fact that the petitioner had been awarded maintenance by a Family Court in a divorce proceeding, held that she was not entitled to any additional maintenance.

10. In Crl. Appeal 120/2004, where the aforesaid order was put to challenge, it was held that since interim maintenance is only awarded to prevent vagrancy and starvation and that the petitioner was already getting Rs. 5000 p.m. so there was no requirement of giving any additional maintenance amount. The order of the learned Metropolitan Magistrate was, therefore, upheld and affirmed.

11. Ms. Aishwarya Rao, Advocate who was requested by this Court to help the petitioner, submitted that the affidavit of income and assets given by the respondent no.2 concealed his actual income; both the Courts below were wrong in holding that if maintenance pendente lite was awarded by the family court, no interim maintenance could be granted under the Act; there were other prayers in the petition filed under section 12 of the Act which were completely ignored and that the interim maintenance application was disposed of in three years when the prescribed period of time for disposing such application is one year. It was further argued that both the courts did not consider the aspect of maintenance of the minor daughter.

12. The respondent no.2, on the other hand, submitted that the petitioner herself was well qualified having a degree of MCA/PG and had been working in an MNC in Gurgaon and was earning Rs. 50,000/- p.m. It was further contended that the petitioner had other sources of income as well. He has been residing in a rented accommodation since 25.06.2010 on a monthly rental of Rs. 3,000/-. The personal belongings of the petitioner are also said to have been returned by the respondent no.2. It was lastly submitted that the petitioner could not claim maintenance from different forums.

13. The object behind enacting the Act is to provide civil law remedies, which hitherto, had not been provided, for elimination of all kinds of discrimination/

abuse against women. The Act, thus, provides for the rights of women to secure housing, to obtain protection orders against any form of domestic violence, monetary reliefs (interim and permanent), custody of children and compensation.

14. It would be necessary and desirable to refer the relevant provision of the Domestic Violence Act, 2005.

15. The definition of an "aggrieved person" is provided under Section 2(a) of the Domestic Violence Act, 2005, which is as follows:

"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."

16. On perusal of the foregoing, it is amply evident that in addition to a woman who is in a domestic relationship, any woman who has been, in a domestic relationship with the respondent, if alleges to have been subjected to act of domestic violence by the respondent, would come within the meaning of "aggrieved person".

17. The definition of a "domestic relationship" reads as follows:

"2. (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;"

18. In view thereof an aggrieved person, who at any point of time has lived together with husband in a shared household, is also covered by the meaning of "domestic relationship".

19. Chapter IV of the Domestic Violence Act, 2005 deals with "procedure for obtaining the orders of reliefs".

20. Section 12 relates to the application to Magistrate, which reads as follows:

"12. Application to Magistrate."(1) An aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person may present an application to the Magistrate seeking one or more reliefs under this Act:

Provided that before passing any order on such application, the Magistrate shall take into consideration any domestic incident report received by him from the Protection Officer or the service provider.

(2) The relief sought for under sub-section (1) may include a relief for issuance of an order for payment of compensation or damages without prejudice to the right of such person to institute a suit for compensation or damages for the injuries caused by the acts of domestic violence committed by the respondent:

Provided that where a decree for any amount as compensation or damages has

been passed by any court in favour of the aggrieved person, the amount, if any, paid or payable in pursuance of the order made by the Magistrate under this Act shall be set off against the amount payable under such decree and the decree shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), or any other law for the time being in force, be executable for the balance amount, if any, left after such set off.

(3) Every application under sub-section (1) shall be in such form and contain such particulars as may be prescribed or as nearly as possible thereto.

(4) The Magistrate shall fix the first date of hearing, which shall not ordinarily be beyond three days from the date of receipt of the application by the court.

(5) The Magistrate shall endeavour to dispose of every application made under sub-section (1) within a period of sixty days from the date of its first hearing."

21. The Act empowers the Magistrate to grant relief to protect the right to reside in the shared household (section 17), to pass protection orders (section 18) to prevent the commission of any act of domestic violence, pass residence orders (Section 19) to prevent the aggrieved person from being deprived of her right to reside in the shared household, award monetary reliefs (Section 20), pass orders awarding temporary custody of children (Section 21), pass compensation orders (Section 22), and pass interim and ex parte orders (Section 22) under the aforementioned sections.

"20. Monetary reliefs.-(1) While disposing of an application under sub-section (1) of Section 12, the Magistrate may direct the respondent to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of the domestic violence and such relief may include, but is not limited to-

(a) the loss of earnings;

(b) the medical expenses;

(c) the loss caused due to the destruction, damage or removal of any property from the control of the aggrieved person; and

(d) the maintenance for the aggrieved person as well as her children, if any, including an order under or in addition to an order of maintenance under Section 125 of the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force.

(2) The monetary relief granted under this section shall be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved person is accustomed.

(3) The Magistrate shall have the power to order an appropriate lump sum payment or monthly payments of maintenance, as the nature and circumstances of the case may require.

(4) The Magistrate shall send a copy of the order for monetary relief made under sub-section (1) to the parties to the application and to the in-charge of the police station within the local limits of whose jurisdiction the respondent resides.

(5) The respondent shall pay the monetary relief granted to the aggrieved person within the period specified in the order under sub-section (1).

(6) Upon the failure on the part of the respondent to make payment in terms of the order under sub-section (1), the Magistrate may direct the employer or a debtor of the respondent, to directly pay to the aggrieved person or to deposit with the court a portion of the wages or salaries or debt due to or accrued to the credit of the respondent, which amount may be adjusted towards the monetary relief payable by the respondent."

22. In *Juveria Abdul Majid Khan Patni vs. Atif Iqbal Mansoori and Anr.*, (2014) 10 SCC 736, the Supreme Court, whilst dealing with a case where the appellant had sought a similar relief under sections 18 to 23 of the Act, observed as follows:

"The monetary relief as stipulated under Section 20 is different from maintenance, which can be in addition to an order of maintenance under Section 125 Cr.P.C or any other law. Such monetary relief can be granted to meet the expenses incurred and losses suffered by the aggrieved person and child of the aggrieved person as a result of the domestic violence, which is not dependent on the question whether the aggrieved person, on the date of filing of the application under Section 12 is in a domestic relationship with the respondent."

23. Sections 22, 23 & 25 of the Act provide as hereunder:-

22. Compensation orders. In addition to other reliefs as may be granted under this Act, the Magistrate may on an application being made by the aggrieved person, pass an order directing the respondent to pay compensation and damages for the injuries, including mental torture and emotional distress, caused by the acts of domestic violence committed by that respondent.

23. Power to grant interim and ex parte orders."(1) In any proceeding before him under this Act, the Magistrate may pass such interim order as he deems just and proper.

(2) If the Magistrate is satisfied that an application prima facie discloses that the respondent is committing, or has committed an act of domestic violence or that there is a likelihood that the respondent may commit an act of domestic violence, he may grant an ex parte order on the basis of the affidavit in such form, as may be prescribed, of the aggrieved person under Section 18, Section 19, Section 20, Section 21 or, as the case may be, Section 22 against the respondent."

24. It is not necessary that relief available under Sections 18, 19, 20, 21 and 22 can only be sought for in a proceeding under the Domestic Violence Act, 2005.

Any relief available under the aforesaid provisions may also be sought for in any legal proceeding even before a civil court and Family Court, apart from the criminal court, affecting the aggrieved person whether such proceeding was initiated before or after the commencement of the Domestic Violence Act.

25. This is apparent from Section 26 of the Domestic Violence Act, 2005 as quoted hereunder:

"26. Relief in other suits and legal proceedings."(1) Any relief available under Sections 18, 19, 20, 21 and 22 may also be sought in any legal proceeding, before a civil court, Family Court or a criminal court, affecting the aggrieved person and the respondent whether such proceeding was initiated before or after the commencement of this Act.

(2) Any relief referred to in sub-section (1) may be sought for in addition to and along with any other relief that the aggrieved person may seek in such suit or legal proceeding before a civil or criminal court.

(3) In case any relief has been obtained by the aggrieved person in any proceedings other than a proceeding under this Act, she shall be bound to inform the Magistrate of the grant of such relief."

26. From a conspectus of the aforesaid provisions, it would appear that both the courts below did not appreciate the ambit and scope of the powers of the court under the Act. The orders passed by both the Courts, therefore, are off balance and skewed as the reliefs claimed by the petitioner have not at all been adverted to. The interim relief if any, could have been granted by the court for all such reliefs prayed by the petitioner.

27. The learned Metropolitan Magistrate, though, was right in expressing that the evidence adduced on behalf of the parties would be required to be gone into in detail for passing a final order, nonetheless, the learned Metropolitan Magistrate could not have abandoned the task of forming an opinion about grant of interim relief.

28. From a perusal of the orders impugned, I am of the view that both the Courts below did not take into account that a relief under Section 12 of the Act is in addition to any other relief which could be granted by any court of law to the petitioner in any forum. Both the courts have avoided giving interim relief only on the premise that the petitioner was being paid maintenance pendente lite under the orders of the competent court in divorce proceedings. I am also constrained to observe that it took the learned Metropolitan Magistrate three years to decide the interim application.

29. The orders therefore do not stand the scrutiny of law and are therefore set aside.

30. The case is remanded to the learned Metropolitan Magistrate, in seisin of the matter, who shall first decide the prayer of interim relief in terms of what has

been stated above within a period of 3 months from the date of passing of the order or communication/production of a copy thereof and would dispose of the main proceedings as expeditiously as possible.

31. With the aforesaid observations and directions the petition is allowed.

Crl. M.A.17967/2015

32. In view of the petition having been allowed, this application has become infructuous.

33. This application is disposed of accordingly.