

(2012) 10 DEL CK 0105

In the Delhi High Court

Case No : Criminal M.C. No. 2748 of 2010 and Criminal Revision Petition No. 148 of 2008

Ridhima Juneja

APPELLANT

Vs

Deven Juneja and Others
 Deven Juneja Vs State NCT
of Delhi and Another

RESPONDENT

Date of Decision : 30-10-2012

Acts Referred:

Constitution of India, 1950 — Article 227

Criminal Procedure Code, 1973 (CrPC) — Section 397, 401, 482

Protection of Women From Domestic Violence Act, 2005 — Section 12, 19, 19(1), 2(1), 2(a)

Citation : (2012) 9 AD 613 : (2013) 1 Crimes 263 : (2012) 4 JCC 2848

Hon'ble Judges : P.K. Bhasin, J

Bench : Single Bench

Advocate : Geeta Luthra, with Mr. Rohit Bhardwaj, in Criminal M.C. No. 2748/2010 and Ms. Prerna Mehta, in Criminal Rev. P. No. 148/08, for the Appellant; Geeta Luthra with Mr. Rohit Bhardwaj, for R-2 in CrI. Rev. P. 148/08, Ms. Prerna Mehta, for R-1 in CrI. M.C. No. 2748/10 and Mr. Samrat Nigam, for R-2 and 3 in CrI. M.C. No. 2748/10, for the Respondent

Judgement

P.K. Bhasin, J.—Both these petitions arose out of a complaint case u/s 12 of the Protection of Women from Domestic Violence Act, 2005 (in short "the Act of 2005) though were filed against different orders of the trial Court and the appellate Court. Since both the petitions were heard together and common submissions were advanced at the Bar by the counsel for the parties the same are being disposed of together by this common order. The facts, in brief, leading to the filing of these petitions may be noticed at the outset. The petitioner in CrI/ M.C. No. 2748/10 (reference to whom shall now onwards be made as "the petitioner-wife") and respondent no. 1 in that petition and who is the petitioner in CrI. Rev.P. No. 148/098 (who shall hereinafter be referred to as "the respondent-husband") were married on 31st January, 2004. They celebrated their honeymoon in Australia, New Zealand and Thailand and on 2nd November,

2005 they were blessed with a son. However, the sweetness of their married life did not last long and within short time relations between them became bitter and so bitter that the petitioner-wife had to file a criminal complaint in Court in the year 2007 u/s 12 of the Act of 2005 against her husband and his parents and two sisters in which she had levelled allegations of physical and mental torture to her by her in-laws. Many reliefs were claimed in the complaint by the petitioner-wife including a right on residence in the property in Ashok Vihar which she claimed to be her matrimonial home and maintenance of Rs. 1,50,000/- p.m. on the ground that he himself had been claiming that he was paying that much money to her as pocket money. In the complaint some interim reliefs including that of payment of Rs. 50,000/- as interim maintenance during the pendency of the complaint were also claimed by the petitioner-wife.

2. The respondent-husband only appears to have contested the complaint and in his reply he refuted the allegations that he and his family members had been harassing the petitioner and demanding car etc. from her parents. He claimed, while not refuting the claim of his wife that he belonged to an affluent business family having many properties and businesses, that he himself was employed with his uncle and his annual income was around two lacs of rupees only and that he had been paying to his wife a sum of Rs. 15,000/- p.m.

3. The learned Metropolitan Magistrate relying only upon the pleadings and the affidavits filed by the parties and the report of the Protection Officer disposed of the complaint finally vide order dated 5th September, 2007 and held respondent-husband only guilty of causing domestic violence to the petitioner-wife and certain directions were given to him including a direction for payment of compensation of Rs. 50,000/- to her u/s 20 of the Act of 2005 for the acts of domestic violence committed by him and a sum of Rs. 5000/- p.m. only as maintenance for the mother and son from the date of the complaint since the husband had offered to stay with her. However, no relief was given against his parents and two sisters. The relevant parts of that order are reproduced below:-

18. After hearing the parties and going through the contents of the same it is clear that she is covered under Domestic Violence Act being the aggrieved party as defined in definition U/s 2(a) of the Act and she is also in domestic relationship with respondents which is covered as per the definition of domestic relationship u/s 2(1) of the Act and further the allegations leveled are also covered u/s 3 of the Act whereby domestic violence has been defined. But it has to be seen as to what relief can be given to her and to what extent. She has claimed protection order against all the respondents but respondent no. 4 and 5 are sister in laws of petitioner and no specific allegations could be alleged against them. Hence, no order is required against them and complaint is dismissed qua them. Respondents no. 2 and 3 are father in law and mother in law and it has to be seen as to whether they have any role or say in the relationship of complainant and respondent no. 1. During the course of the argument the father-in-law has clearly stated that he does not want to remain with her..... and

respondent no. 1 can take rented accommodation as the house belongs to him. The matter is squarely covered by S.R. Batra and Another Vs. Smt. Taruna Batra, whereby the Hon'ble Supreme Court has defined the term share house hold and in the present case the judgment is fully applicable to the facts of the case as the house belongs to father-in-law and mother-in-law and they have disowned their son..... At this stage this averment is sufficient on their behalf and they cannot be forced to join the complainant in the same house. If the house would have been on rent or joint Hindu family property or in the name of husband then the position would have been different. Hence in these circumstances the residence order U/s 19 cannot be passed qua some house and no order can be passed against respondent no. 2 and 3 in this respect. But section 19(1) covers the case of appellant and respondent no. 1 is also ready to take her to the rented accommodation. Hence respondent no. 1 is directed to give heritable residential alternative accommodation of the same level as she was enjoying in the matrimonial house and he will pay the rent of the same and will live with her. Secondly dowry articles will also be taken to the rented accommodation and custody of articles will be given to her..

Respondent no. 1 is willing to live with her as husband and wife and no protection order is required in these circumstances as day to day observation will not be possible from the court.

19. The cumulative effect of Sections 20 and 22 of Act is that she can be compensated for the suffering already made along with her son and some amount can be given to her. In the facts and circumstances of the case, and seeing the earning of the respondent no. 1 I make out from the file it will be appropriate if the respondent no. 1 is directed to bear the responsibility of household expenses of every month including rent in rented accommodation and he is directed to pay Rs. 2,500/- p.m. to the complainant and Rs. 2,500/- p.m. to his son as maintenance..... and the respondent no. 1 is further directed to pay a compensation of Rs. 50,000/- to the complainant qua the liability u/s 20 and 22 of the Act.

4. This order of the Magistrate to the extent it rejected petitioner's claim of residence in Ashok Vihar house and granted a meagre amount as maintenance was challenged by her in appeal before the Sessions Court. Respondent-husband also filed an appeal challenging the award of compensation of Rs. 50,000/- to the petitioner-wife for committing acts of domestic violence. The appeal filed by respondent-husband (being Cr.A. No. 56/2007) was dismissed by the appellate Court vide judgment dated 13th February, 2008 and the appeal filed by the petitioner-wife (being Cr.A. No. 61/2007) for claiming maintenance amount of Rs. 1,50,000/- p.m. and the right to live in a part of the property in Ashok Vihar was also dismissed by a separate order passed on the same date but with a liberty to her to agitate the claim of maintenance and rent before the trial Court first since in the order dated 5th September, 2007 the same had not been dealt with as the respondent-husband had agreed to live separately with his wife in a rented

accommodation but subsequently had refused to stay with her and to provide her the rented house.

5. The respondent-husband then approached this Court for challenging the trial court's order dated 5th September, 2007 and also the dismissal of his appeal by filing a revision petition u/s 397 read with Section 401 of the Code of Criminal Procedure, 1973 (being CrI. Revn. P. No. 148/2008) while the petitioner-wife approached the trial Court for deciding her claim of maintenance @ Rs. 1,50,000/- p.m. in view of the liberty given to her by the appellate Court in its judgment dated 13th February, 2008.

6. The trial Court then passed a fresh order on 24th September, 2008 directing the respondent-husband to pay a sum of Rs. 22,000/- p.m. on account of rent for a residential house to his wife and a sum of Rs. 12,000/- for the maintenance of his wife and a sum of Rs. 8000/- p.m. for the minor son. These amounts were ordered to be in addition to the amount of maintenance amounts which had earlier been awarded to them vide order dated 5th September, 2007.

7. Once again the petitioner-wife as well as respondent-husband filed appeals against the said order of the trial Court. The petitioner-wife claimed enhancement in the maintenance amount while the respondent-husband prayed in his appeal for setting aside the trial Court's order. The learned Additional Sessions Judge vide his common judgment dated 27th January, 2010 dismissed the appeal of the petitioner-wife and allowed the appeal of respondent-husband and after setting aside the trial Court's order dated 24th September, 2008 as also its original order dated 5th September, 2007 remanded back the matter to the trial Court for a fresh decision on the point of petitioner's claim of maintenance and rent after recording evidence of both the sides in support of their respective pleas since the petitioner-wife's claims in that regard were decided without any evidence having been adduced from either side.

8. The petitioner-wife felt aggrieved by the appellate Court's decision remanding back the matter to the trial Court and thus she filed the petition under Article 227 of the Constitution of India read with Section 482 Cr. P.C. praying for the setting aside of the appellate Court's judgment and for grant of monthly maintenance of two lacs of rupees and also a direction to respondent-husband to return her stridhan articles as was directed by the trial Court also in its original order dated 5th September, 2007. However, this Court had vide order dated 26th August, 2010 issued limited notice of petitioner-wife's petition to her husband and in-laws in respect of the question of grant of interim maintenance to her.

9. Ms. Gita Luthra, learned senior counsel for the petitioner-wife had submitted that she had no objection if the trial Court is permitted to decide afresh all the claims made by the petitioner-wife in her complaint but reasonable interim maintenance should be awarded to her for which relief she had already made a prayer in her complaint itself. It was contended that sufficient time has already been spent in various rounds of litigation between the parties and the appellate

Court has ordered fresh trial which will also take sufficient time to conclude and the petitioner was not getting any maintenance amount now from her husband for herself and the minor son whom she was bringing up, therefore, this Court should award interim maintenance to be paid to her by respondent-husband for which purpose only this Court had issued notice of this petition to the respondents.

10. On the other hand, Ms. Prerna Mehta, learned counsel for the respondent-husband submitted that the amount of Rs. 10,000/- p.m., which the appellate Court in his appeal had ordered him to pay to his wife as a condition of stay of the operation of the order dated 24th September, 2008 of the trial Court can be fixed as interim maintenance amount for the petitioner-wife and the minor child and all other claims of the petitioner-wife can be allowed to be decided afresh by the trial Court on the basis of evidence to be adduced by the parties.

11. It may be noticed here that during the course of arguments learned senior counsel for the petitioner-wife had submitted that in case other side is agreeable the amount fixed by the trial Court in its order dated 24th September, 2008 could be treated as interim maintenance amount though she was claiming two lacs of rupees. However, learned counsel for the respondent-husband did not agree to that and maintained that only Rs. 10,000/- p.m. could be fixed as the interim maintenance. Since there could not be any agreement between the parties on the figure of interim maintenance it was then left to be decided by the Court. Thus, the question which this Court is now to decide is the quantum of interim maintenance which the respondent-husband be directed to pay for his wife and their minor son till the Magistrate takes a fresh decision on the various claims of the petitioner-wife made in her complaint.

12. The respondent-husband has been claiming that his annual income from salary was about two lacs. The petitioner-wife, on the other hand, is relying upon her husband's own admissions in writing that he had been paying a sum of Rs. 1,50,000/- p.m. to her as pocket money. It was not disputed by the learned counsel for the respondent-husband that he had written a letter dated 22nd June, 2007 to the CAW Cell of Delhi police alleging that his wife was harassing him and his family members and another letter dated 16th July, 2007 to the Member Secretary, Delhi Legal Services Authority in which also he had alleged that he and his family members were being harassed by his wife despite the fact they were treating her very nicely and affectionately. He had requested the said Authority to make efforts to bring about some settlement between him and his wife. In both those letters he had also claimed that he was paying a sum of Rs. 1,50,000/- to his wife as pocket allowance for her personal expenses. Copies of those letters are available in the files of both these petitions. It is also not in dispute that the respondent-husband had taken his wife for honeymoon to Australia, New Zealand and Thailand and on the occasion of their first wedding anniversary they had gone to South Africa.

13. The honeymoon trip, according to the respondent-husband, was financed by

his wealthy father while the trip to South Africa was financed by himself as admitted by him in his written statement filed before the trial Court, copy of which has been filed by him in his revision petition. As far as the letters written by him to CAW Cell of Delhi Police and the Delhi Legal Services Authority for bringing about some settlement of the disputes with his wife containing his claim that he had been paying pocket allowance of Rs. 1,50,000/- p.m. are concerned his stand now being taken in these petitions is that it was because of a typing error that the figure of Rs. 1,50,000/- came to be mentioned in those letters in place of Rs. 15,000/- which amount only he had been paying to his wife as per his own financial status. As per the petitioner-wife he is leading a lavish and luxurious life. He drives BMW car. The counsel for the respondent-husband did not dispute these facts but her submission was that he had been enjoying a lavish life not with his own money but his wealthy parents had been giving him money being the only son but ever since disputes arose between him and his wife they had not only disowned him but he had been turned out also of their house in Ashok Vihar which the petitioner-wife was claiming to be her matrimonial and shared household and now he was at the mercy of one of his friends for residence. Ms. Gita Luthra, learned senior counsel for the petitioner-wife submitted that all that was utterly false and she also showed me some photos available on record showing that after disowning the petitioner-wife her husband has been flirting with other girls on the beaches of Goa which fun he cannot afford to have unless he has tons of money. She also submitted that the respondent-husband was also owning immovable properties and having a big share holding too and that it was falsely being claimed by him that his lavish lifestyle was being funded by his wealthy parents or that he has now been disowned by them. It was contended that these kinds of pleas are invariably taken these days by parents whenever matrimonial disputes arise between their sons and daughters-in-law to avoid grant of financial benefits to daughters-in-law by the Courts.

14. After having given my due consideration to the rival submissions made at the Bar and considering the documents available on record which admittedly were written by the respondent-husband claiming that he had been paying a sum of Rs. 1,50,000/- every month to his wife as pocket money as also the fact that he admittedly has been living a very lavish and extravagant life and alongwith his wife had been visiting many countries because of which his wife too must have become used to that kind of life style this Court is of the view, which of course is only a prima facie view, that the respondent-husband's plea that he is only a son of wealthy parents but himself is a poor man earning only two lacs per annum and is surviving with the help of his friends as he has been disowned by his parents cannot be accepted to be correct particularly when his parents have not come forward to say that because of the bickering between their son and daughter-in-law they have disowned him. So, the respondent-wife deserves to be compensated reasonably and the amount of Rs. 10,000/- p.m. offered on his behalf can by no stretch of imagination be considered to be reasonable amount

of interim maintenance these days.

15. Considering all the facts and circumstances and particularly the fact that respondent-husband himself had been claiming that he had been paying a sum of Rs. 1,50,000/- p.m. to his wife as pocket allowance and prima facie his stand now being taken that that claim was a typing mistake appears to be an afterthought since that mistake could be committed once and not twice and that too after a gap of a month, this Court is of the view that a sum of Rs. 1,50,000/- p.m. should be directed to be paid by the respondent-husband to the petitioner-wife for herself as well as for their minor son from the date of filing the complaint u/s 12 of the Act of 2005 till the same is again disposed of by the trial Court. It is ordered accordingly. The arrears after adjusting the money which the respondent-husband had already paid shall be cleared within two weeks. These two petitions stand disposed of accordingly. The trial Court shall now decide all the claims of the petitioner-wife made in her complaint afresh. It is however clarified that this Court has passed this order only on a prima facie view of the material available on record and no observation made in this Court shall be kept in mind by the trial Court while finally deciding the complaint. In case the respondent fails to make the payment the trial Court shall not consider his defence and shall also be at liberty to get it recovered in accordance with law.