

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : DOMESTIC VIOLENCE ACT, 2005

Date of Judgment:11.02.2014.

CRL.REV.P. 637/2013

SMT RANJANA GUPTA

..... Petitioner

Through Mr.Kuldeep Kumar, Adv.

versus

RAJNESH GUPTA & ORS

..... Respondents

Through Ms.Fizani Hussain, APP.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.(Oral)

1 The petitioner is aggrieved by the impugned order dated 29.07.2013 endorsing the finding of the learned MM dated 28.03.2012 vide which the order passed on the complaint case (CC No.174/2003) under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as 'PWDVA') had been disposed of without granting any relief to the petitioner. Relevant would it be to extract that part of the order passed by the learned MM. It reads as under:-

“9. Relief.

As far as relief is concerned, complainant has sought firstly protection order u/s 18 PW DV Act. Complainant has been residing separately since 05.10.2004. There are no complaints in the intervening period or even prior to that for commission of acts of domestic violence by the respondent. Accordingly, no relief u/s 18 PW DV Act is made out.

Secondly complainant has prayed for relief u/s 19 & 20 PW DV Act. Admittedly, respondent is residing in the house of his parents and has no separate accommodation. Similarly, the complainant is residing with her parents and is financially independent. Admittedly salary of complainant is approximately Rs. 40,000/- per month. Similarly respondent is earning a salary of approximately Rs. 39-40 thousand per month. I feel that financially both the parties are equally placed. Therefore, I am not inclined to pass any

maintenance order. Residence order is also declined for the reason that complainant being a Government servant is also entitled to HRA which should be equivalent to HRA earned by the respondent and therefore the said relief is also declined.

Now coming to Section 22 PW DV Act. Complainant has not placed on record any proof that she has suffered any injury due to harassment caused by the respondent, therefore, I am not inclined to pass any compensation order and the same is declined.

Petition is accordingly disposed off.”

2 This order was assailed before the Sessions Judge. The Sessions Judge as noted supra has endorsed this finding passed by the trial Court.

3 Learned counsel for the petitioner is aggrieved by this fact finding. His submission is that the order has been passed by both the two courts below cursorily on surmises and conjectures without applying the settled legal proposition; submission being that the mother-in-law of the petitioner namely Urmil Gupta had been deleted from the complaint case on an application filed by her without any formal order; this was on the pretext that a female does not qualify as a respondent under the ‘PWDVA’; submission being that this was based on a wrong proposition of law as the Hon’ble Apex Court in 2011 (2) SCALE 94 Sou Sandhya Manoj Wankhade Vs. Manoj Bhimrao Wankhade & Ors. had in this context noted that the Legislature did not intend to exclude a female relative of the husband or male partner from the ambit of a complaint that can be made under the provisions of ‘PWDVA’. Submission being that in this case the allegations of the petitioner were specific that the mother-in-law of the petitioner namely Urmil Gupta had kept her jewellery articles and the same had not been returned. Attention has been drawn to internal page 4 of the order of the learned MM; submission being that a specific allegation had been made by the petitioner that her entire jewellery articles were with her mother-in-law.

4 The Court had further noted that the test of cross-examination has been passed by the petitioner; it thus stood proved that the jewellery articles were with the mother-in-law but the same had not been returned and the two courts below not directing the mother-in-law to return the jewellery articles of the petitioner to her in terms of Section 19 (8) of the ‘PWDVA’ has committed an illegality.

5 The trial Court record had been requisitioned. The same has been perused. Before adverting to these arguments propounded by the learned counsel for the petitioner, it would be relevant to state that this Court is sitting in revisional jurisdiction and unless and until, there is patent illegality or perversity pointed out that this Court can interfere in the fact finding; the scope of interference in revisional jurisdiction is limited as the fact finding returned by the two competent courts cannot be easily interfered with.

6 Learned MM in para 8 had framed an issued which reads as under:-
“Whether prima facie case of domestic violence is made out?”

7 The evidence led by the complainant and the respondent has been discussed. It had noted that there was an allegation made by the complainant that her jewellery is with the mother-in-law although the mother-in-law is not a party to the present complaint. The Court had thereafter gone on to hold that the complainant has been able to prove the allegations of cruelty and harassment meted out by the respondent to the complainant and has proved the same; it has noted that she had resided in the house for about 8-9 months and thereafter she was living separately. It had also noted that separate proceedings under Section 498-A and 406 of the IPC are pending against the respondent and his family members. The fact findings returned by the learned MM nowhere recorded a positive fact that the complainant had been able to prove that her jewellery articles were lying with the mother-in-law. The Sessions Judge noted these facts in the correct perspective and held that the petitioner had taken a vacillating stand as far as her jewellery is concerned and although in her complaint, she had stated that she had handed over her gold jewellery on advice of her husband to him but in her cross-examination she denied that the gold jewellery articles were being retained by the respondent. The respondent in his evidence had categorically stated that the gold articles had been taken back by the complainant when she had left her matrimonial home.

8 The findings returned by the Sessions Judge read here as under:-
“7. List of respondents was not filed along with application under Section 12 of PWDV Act. It is only in Domestic Investigation Report (DIR) filed by the Protection Officer, names of four respondents i.e. Rajnesh Gupta/husband (R-1), Satish Chand Gupta/father-in-law (R-2), Urmil Gupta/mother-in-law(R-3) and Anju Gupta/sister-in-law (R-4) were mentioned. An application on behalf of respondents to drop the proceedings against respondent no. 2 to respondent no. 5 was filed. Learned Counsel for

appellant submits that names of Smt. Urmil Gupta/mother-in-law (R-3) and Smt. Anju Gupta/sister-in-law (R-4) had been deleted from the arrays of the parties, although both of them had filed reply before the Trial Court. He submits that Learned Trial Court has not given any reasons in the impugned order as to how Urmil Gupta (R-3) and Anju Gupta (R-4) were dropped and no order was passed by Learned Trial Court on the application filed on behalf of respondent no. 2 to respondent no. 5 for dropping the proceedings against them.

8. It is submitted that in her affidavit in evidence dated 30.11.2010, appellant/complainant has stated that she was tortured and manhandled by her husband/R-1, his parents, sister in law and brother in law, right from the day one of her marriage. She deposed that on 16.01.2004, her husband had advised her to hand over her gold ornaments which were received from her parents side and from her in-law side and the said ornaments are still in possession of her mother-in-law. It is stated that she was mentally tortured at all the regular intervals. On 17.01.2004, her husband, her parents and sister-in-law abused her for not bringing car and AC. It is stated that in March 2004, her husband and mother-in-law abused appellant and told her to leave her job. In September 2004, her husband and in-laws started increasing pressure on her to leave her matrimonial home and to bring AC, car and Rs. 5,00,000/- . She was threatened that if their demands were not fulfilled, her husband and parents-in-law would kill her by burning while preparing food. It is stated that respondents with common intention used to threaten her to kill and assault. Appellant/complainant further stated that she handed over gold jewellery on the advise of her husband (R-1). In cross examination, appellant/complainant denied that no gold or dowry articles were retained by respondents or that she had taken back all her gold and many costly articles at the time of leaving of her matrimonial home. She denied the suggestion that remaining dowry articles were returned after registration of a case under Section 498-A/406/34 IPC. On the other hand, in his affidavit husband/R-1 deposed that appellant/complainant had deserted her matrimonial home without any reason on 5.10.2004. She left her matrimonial home in a pre-planned manner and she had taken away all her gold and silver jewellery. In cross examination, he reiterated that gold articles mentioned in the list, were taken back by appellant/complainant when she left her matrimonial home.

9. On perusal of evidence adduced by the parties, Learned Trial Court found that complainant was a victim of domestic violence and a prima-facie case of domestic violence was made out against husband/R-1. It was found that there were no specific allegations against father-in-law/R-2 and no case of domestic violence was made out against Ajay Gupta/R-5 (nandoi).

Similarly no case is made out against Smt. Urmil Gupta (R-3) and Smt. Anju Gupta (R-4). Learned trial Court further noted that appellant/complainant was residing separately since 05.10.2004 and there were no complaints during the intervening period or even prior to that for commission of domestic violence by the respondents. I was found that husband/R-1 was residing in the house of his parents and had no separate accommodation. Similarly, appellant/complainant was residing with her parents and was financially independent. Trial Court found that both the parties were financially equally placed, therefore, no maintenance order was passed. Residence order was also declined for the reason that appellant/complainant was a Government servant, who was also entitled to House Rent Allowance (HRA). Learned Trial Court found that appellant/complainant had not placed on record any proof that she suffered injury due to alleged harassment caused by the respondents. In view of the aforesaid reasons, no relief was granted to appellant/complainant.”

9 These fact findings in no manner call for any interference. The scope of misuse of proposition of law as noted in the judgment of Sou Sandhya Manoj Wankhade (supra) would not arise as there was no fact finding that the jewellery articles/istridhan were lying with the mother-in-law. Moreover, on a specific query put to the learned counsel for the petitioner about the proceedings under Sections 498-A/406 of the IPC, there has been no denial. It is but obvious that these sections would also encompass the same relief.

10 This petition is an abuse of the process of the Court. Dismissed with costs of Rs.5,000/-.

Sd/-
INDERMEET KAUR, J

FEBRUARY 11, 2014