

MANU/RH/0337/2011

IN THE HIGH COURT OF RAJASTHAN (JAIPUR BENCH)

S.B. Cr. Revision Petition No. 131/2011

Decided On: 05.05.2011

Appellants: **Sukrit Verma and Anr.**

Vs.

Respondent: **State of Raj. and Anr.**

Hon'ble Judges:

R.S. Chauhan, J.

Subject: Criminal

Subject: Family

Catch Words

Mentioned IN

Acts/Rules/Orders:

Domestic Violence Act, 2005 - Sections 3, 9(6), 12(1), 20, 20(1), 20(2), 20(3), 20(5), 20(6), 29 and 37(2); Evidence Act - Section 114; Hindu Marriage Act - Section 24; Indian Penal Code - Section 498A; Criminal Procedure Code (CrPC), 1973 - Section 125 and 125(3); Constitution of India - Articles 14 and 15

Cases Referred:

Sanjay Bhardwaj and Ors. v. State and Anr. Cr.M.C. No. 491/2009

Disposition:

Petition dismissed

JUDGMENT

R.S. Chauhan, J.

1. Aggrieved by the judgment dated 29-6-2010, passed by Additional Chief Judicial Magistrate No. 12, Jaipur City, Jaipur, and by the judgment dated 19-1-2011, passed by Additional Sessions Judge (Fast Track) No. 3, Jaipur City, Jaipur, the Petitioner has approached this Court. By the former judgment, the learned Magistrate had directed the Petitioner to pay a monetary relief of \$ 2000 per month, or an equivalent amount in Indian Currency, to the Respondent from the date of presentation of the application i.e. 9-1-2007, and to pay \$ 2500, or an equivalent amount thereof, for the expenses of the proceedings under the Domestic Violence Act, 2005 ('the Act' for short); by the latter judgment, the learned Judge has upheld the judgment dated 29-6-2010, and has dismissed the appeal filed by the Petitioner.

2. The brief facts of the case are that on 25-1-2002 the Petitioner No. 1 Sukrit Verma, and the Respondent No. 2, Rupal Khullar, were married, at New Delhi, according to the Hindu customs and rites. They left for United States of America ('USA' for short) on 6-6-2002. They continued to live there till January, 2006. According to the husband, the Respondent wife refused to return back to USA, to live with him, for the reasons best known to her. However, according to the Respondent wife, she refused to go back with him for the reason that while she was staying in the USA, with him, she was subjected to acts of

domestic violence . Therefore, she had no desire to join him back in the USA. In January, 2007, the Respondent wife filed a petition under Section 9(6) and 37 (2) (d) of the Act before the learned Magistrate. In order to buttress her contentions, the Respondent wife examined herself as a witness, and submitted 86 documents. On the other hand, the husband examined himself as a witness, and submitted 115 documents. After going through the oral and documentary evidence, vide judgment dated 29-6-2010, the learned Magistrate allowed the petition in the terms aforementioned. Since the Petitioner was aggrieved by the said judgment, he filed an appeal under Section 29 of the Act. However, vide judgment dated 19-1-2011, the learned Judge confirmed the judgment dated 29-6-2010, and dismissed the appeal. Hence, this revision petition before this Court.

3. Mr. Mohit Tiwari, the learned Counsel for the Petitioner, has raised the following contentions before this Court:

Firstly, that the learned Magistrate, and the learned Judge have not appreciated the evidence in proper perspective. They have erroneously concluded that the Petitioner husband had committed acts of cruelty towards the Respondent wife.

Secondly, both the learned courts below have failed to consider the fact that the Petitioner husband is unemployed; he does not have means to give the monetary relief as directed by the court. Therefore, the maintenance allowance is unreasonable.

Thirdly, the Respondent wife herself is a renowned artist, who earns about Rs. 1 lac per month by selling her paintings.

Fourthly, learned courts below have erred in calculating the maintenance in terms of US dollars, instead of Rupees. In fact, the learned Magistrate should have calculated the maintenance in terms of Rupees.

Lastly, relying on the case of Sanjay Bhardwaj and Ors. v. State and Anr., (Cr.M.C. No. 491/2009 decided by Delhi High Court on 27-8-2010), the learned Counsel has contended that "there is no requirement in law for the husband to maintain his wife. For, the Court cannot tell the husband to beg, borrow, or steal but give maintenance to the wife, more so when the husband and wife are almost equally qualified and almost equally capable of earning". Thus, according to the learned Counsel, in the present case, since the husband is unemployed, since the wife is earning by selling her paintings, the husband cannot be forced to maintain his wife.

4. On the other hand, Mr. S.R. Bajwa, Senior Advocate, the learned Counsel for the Respondent wife, has raised the following contentions:

Firstly, both the learned courts below have meticulously examined the evidence. They have validly concluded that the Respondent wife was subjected to domestic violence . Moreover, question of facts cannot be disturbed under the revisional jurisdiction.

Secondly, the Act is a social beneficial piece of legislation, which is meant not only to protect the women from domestic violence, but also to provide them economic assistance; it ensures that their economic rights are implemented. The said Act does not make an exception that in case the husband is unemployed, he is absolved of his liability to maintain his wife.

Thirdly, before the learned trial court, the husband pleaded that he has been fired from his job. However, according to the documents produced by the husband he had left his job voluntarily. Therefore, he had raised a false plea before the learned trial court.

Fourthly, despite the orders of the learned trial court to the Petitioner to produce statements of his Bank accounts, he singularly failed to do so. Therefore, the learned trial court was

certainly justified in concluding that the Petitioner was earning \$ 9000 per month. Further, out of \$ 9000, the learned trial court has directed him to pay merely \$ 2000 per month, which is a mere fraction of his monthly salary. Hence, he is liable to maintain his wife.

Fifthly, unemployment is not a valid defence. The Petitioner happens to be not only a qualified person, but was also working abroad, that too, in America. Therefore, he is capable of earning in his own country.

Sixthly, from the money sent by him his mother had bought two properties in Delhi, therefore, his family has sufficient means for maintaining the wife.

Seventhly, it is misnomer to claim that Respondent wife is an internationally renowned artist. Although documents have been submitted before the learned trial court to show that the Respondent wife had participated in certain art exhibition, in America, but most of them were within the college, where she was studying in America. Although she has also exhibited her paintings in New Delhi, but she has not been able to sell her art work on a regular basis. Learned Counsel has also emphasised that life of an artist is a life of struggle. Therefore, the Respondent continues to be financially dependent upon her parents. Hence, she is entitled to monetary relief under the Act.

Lastly, he has questioned the veracity of the observation made in the case of Sanjay Bhardwaj and Anr. (supra); he has contended that the observations made by Their Lordships of the Delhi High Court are legally untenable.

Learned Public Prosecutor has echoed the arguments raised by Mr. S.R. Bajwa.

5. Heard learned Counsel for the parties, perused the impugned judgments, and considered the case law cited at the Bar.

6. Women have been subjected to violence, domestic or otherwise, throughout the pages of history-whether they be Helen of Troy, or Sita of Ramayana, whether they be Casandra of Troy, or Dropadi of Mahabharata. Women have been easy pray to the male ego, and dominance. Much as the Indian Civilization pays obedience to the feminine divine, but the harsh reality remains that throughout the length and breath of this country, women are assaulted, tortured, and burnt in their daily lives. The phenomenal growth of crime against women, has attracted the attention of the international community. The International organisations took a serious look at the epidemic called "domestic violence". The Vienna Accord of 1994, and the Beijing Declaration and the Platform for Action (1995) felt the necessity for a proper law on this burning issue. The United Nations Committee on Convention on Elimination of All Forms of Discrimination Against Women (CEDAW)

asked the member nations to enact a proper law for dealing with the mischief of domestic violence.

7. In India, although the criminal law deals with domestic violence in the form of Section 498-A IPC, but there was no provision in the Civil Law to deal with the said problem. In order to get rid of the mischief of domestic violence, the Parliament, in its wisdom, enacted the Act, which came into force on 26 October, 2006. The Act is a social beneficial piece of legislation, which should be given as wide and as liberal an interpretation as possible.

8. Section 3 of the Act defines the words " domestic violence " as under:

Definition of domestic violence.- For the purposes of this Act, any act, omission or commission or conduct of the Respondent shall constitute domestic violence in case it-

(a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or

(b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or

(c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in Clause (a) or Clause (b); or

(d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person.

Explanation. I for the purpose of this section

(i) "physical abuse" means any act of conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force.

(ii) "sexual abuse" includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of women;

(iii) "verbal and emotional abuse" includes-(a) insults, ridicule, humiliation, name calling and insults or ridicule specially with regard to not having a child or a male child; and (b) repeated threats to cause physical pain to any person in whom the aggrieved person is interested.

(iv) "economic abuse" includes-

(a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance;

(b) disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person; and

(c) prohibition or restriction of continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.

Explanation II.- For the purpose of determining whether any act, omission, commission or conduct of the Respondent constitutes " domestic violence " under this section, the overall facts and circumstances of the case shall be taken into consideration.

9. Interestingly, the Act defines the term "economic abuse". While explaining the term economic abuse, the Act has defined economic rights of the women, the right to stridhan, the right to maintenance, the right to have access to the joint property owned by the aggrieved party, the right to shared household etc.

10. The right to maintenance is further reflected in Section 20 of the Act, which is as under:

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 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.

Section 20 bifurcates monetary relief into two categories, firstly compensation, and secondly maintenance. Section 20(1) (a) (b) and (c) deals with compensation which should be paid to the aggrieved party for the loss of earning, for medical expenses, for loss caused due to destruction, damage or removal of any property from the control of the aggrieved party. However, these three categories are merely illustrative, and are not meant to be exhaustive in their content.

Section 20(1) (d) deals with maintenance both for the aggrieved party, and for children, if any. According to Section 20(2), monetary relief shall be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved party is accustomed to. According to Section 20(3), the Magistrate is empowered to order the payment of monetary

relief either by way of lump sum payment, or as monthly payment, in the facts and circumstances of the case may require. Section 20(5) casts a duty upon the Respondent to pay the monetary relief within the specified period as directed by the order. Section 20(6) empowers the Magistrate to direct the employer or a debtor of the Respondent to pay the monetary relief either directly to the aggrieved party, or to deposit the same with the court, in case the Respondent fails to pay the monetary relief.

Thus, Section 20 of the Act is meant to ameliorate the financial condition of the aggrieved person, who may suddenly find herself to be without a hearth and home. Financially, the aggrieved person may exist in a suspended animation, if she is neither supported by the husband, nor by her parents. In order to protect women from such a perigory, Section 20 bestows a right to seek monetary relief in the form of compensation and maintenance. Section 20, thus, is a powerful tool for ensuring gender equality in economic terms. Section 20, does not contain any exception in favour of the husband. In fact, it recognises the moral and legal duty of the husband to maintain the wife.

11. After meticulously examining the evidence available on record, both the learned courts below have opined that the Petitioner had committed acts of domestic violence upon the Respondent wife, both during their stay at USA, and otherwise. They have noticed the fact that when the wife's visa was about to expire, the Petitioner kept on threatening her that he would not get the visa renewed, but instead would have her deported from the USA; they have noticed the fact that he would lock the computer, and deny access to the wife; they have noticed the fact that he would hardly give her any money to survive in an alien land; they have noticed the fact that he would ridicule her for her dark complexion, for her wearing Indian clothes in America; they have noticed the fact that despite her unwillingness to go to nude camps, he would drag her there. They have also noticed the fact that ever since the Respondent wife has returned to India, that too with a child, the Petitioner has failed to pay any maintenance to the wife. All these acts fall within the definition of domestic violence contained in Section 3 of the Act. Hence, learned courts below were certainly justified in concluding that the Respondent wife was subjected to domestic violence .

12. A perusal of the judgment dated 29-6-2010, clearly reveals that during the course of proceedings the Respondent wife had submitted sufficient evidence to prove that the Petitioner husband was earning about US \$ 9000 per month since 1996. In the span of twelve years, he had accumulated almost Rs. 6 crores. Moreover, in 2006 he had three fixed deposits in ICICI Bank totaling an amount of Rs. 26 lacs; in his regular bank account, he had about Rs. 25 lacs. Moreover, he had bought two houses, one in Vindychal Nagar,

Miyawali, and the other in Vrinda City, Greater Noida. The judgment further reveals that although the learned trial court had passed an order under Section 91 Code of Criminal Procedure directing the Petitioner husband to submit statements of his bank accounts, but he singularly failed to do so. Although he pleaded that he does not have sufficient financial means, but he failed to establish this fact.

13. It is, indeed, trite to state that there is a difference between a statement of fact, and the proof thereof. It is not sufficient for a party to merely claim that a fact exist; it is important and essential that the party should prove that the fact does exist. After all, the courts of law demand that cogent evidence be marshaled out, and a fact stated by a party be established to exist. This is rather clear from the provisions of the Evidence Act, which lays down the principles governing proof. Therefore, it was not sufficient that the Petitioner pleaded that he did not have financial means to maintain the wife: it was essential that he should establish this fact. Since, even after the direction of the learned trial court, the husband failed to submit relevant statements of his bank accounts, the learned trial court was certainly justified in drawing adverse inference against the Petitioner husband under Section 114 (f) of the Evidence Act. Hence, the Petitioner's plea that he is not able to maintain the wife was rightly rejected.

14. Of course, the Petitioner has pleaded, both before the appellate court and before this Court, that the Respondent wife has sufficient means to support herself. Again he has failed to establish this fact. Exhibits D-5 to D-14, and D-114, are merely documents which prove the fact that Respondent had exhibited her art work in different art galleries. But there is difference between exhibition of art work and sale thereof. Merely because paintings were exhibited, it can not be presumed that they were sold. It is common knowledge that the life of an artist, is a life of struggle, and not a bed of roses. Art history, whether of the East or the West, bears testimony to the fact that even famous artist like Van Gogh have died in poverty and have committed suicide. Moreover, some of the paintings were exhibited in college campus. The exhibition of art work in college campus is merely display of work by a student; they are not necessarily meant for sale to the public at large. Therefore, the documents showing the holding of exhibition do not substantiate the plea of the Petitioner that through such exhibition the Respondent wife has a regular source of income. Therefore, the learned trial court, as well as the appellate court were justified in concluding that Respondent did not have means to support herself. In fact, financially she was dependent on her parents, and on her sister.

15. Learned Counsel for the Petitioner is not justified in claiming that maintenance should have been calculated in terms of Rupees, rather than in terms of dollars. The documents which were submitted before the learned trial court showed the earning of the Petitioner in

terms of dollars. Moreover, while calculating the monetary relief under Section 20 of the Act, the learned trial court has clearly stated that equivalent amount of dollars should be paid to the Respondent. Therefore, the contention raised by the learned Counsel is unsustainable.

16. Section 20 (2) of the Act casts a duty upon the Court to award a fair, adequate and reasonable maintenance while keeping in mind the standard of living to which the aggrieved person has used to. In the present case since the Respondent wife had lived in the USA, naturally she was used to a high standard of living. Therefore, the maintenance of \$ 2000 per month is most fair, & reasonable.

17. In an era of human rights, of gender equality, the dignity of women is unquestionable. Articles 14 and 15 of the Constitution of India recognise the dignity of women. The Constitution empowers the Parliament to enact laws in favour of women. Flowing from the constitutional ranges, Section 125 Code of Criminal Procedure, Section 24 Hindu Marriage Act, Section 20 Domestic Violence Act, ensure that women are paid maintenance by the husband. Section 26 of the Act further lays down that the maintenance paid under the Act, would be in addition to maintenance paid under any other law being in force for the time being. Therefore, the provisions of the Act are supplementary to provisions of other law in force, which guarantee the right of maintenance to the women. Hence, the observations made by Their Lordship of Delhi High Court, in the case of Sanjay Bhardwaj, that "No law provides that a husband has to maintain a wife, living separately from him, irrespective of the fact whether he earns or not". Such an observation is clearly contrary to the provisions of law. Hence, this Court respectfully disagrees with the opinion of Their Lordship of the Delhi High Court.

18. None of the laws, mentioned above, make the inability of earning as a valid defence. In fact, according to Section 125(3) Code of Criminal Procedure, if a husband does not maintain his wife, after an order has been passed in favour of the wife, he is liable to be imprisoned. Section 20(6) of the Act empowers the Court to direct a debtor of the Respondent to either directly pay the maintenance to the aggrieved person, or to deposit the maintenance/ compensation in the court. Of course, while granting maintenance the court has to weigh the comparative hardship of the husband and of the wife. In case the wife has sufficient means to maintain herself, and in case the husband does not have any means whatsoever, in such a scenario the court may not impose the liability of maintenance upon the husband. However, such is not the case here.

As mentioned above, the Petitioner could not establish the fact that Respondent has a regular source of income. On the contrary, the wife has been able to establish that the

Petitioner was gainfully employed in America and has accumulated no dearth of wealth. Therefore, both the courts below were legally justified in directing the Petitioner to maintain the wife.

19. The Law has always stood to favour of the women. For the Law recognises their vulnerability for survival in the cruel world. Women, being a keeper of hearth in home, need to be protected as they are the foundation of any society. If women are exposed to physical abuses, to sexual exploitation, the very foundation of the society would begin to weaken. It is only after recognising their importance, sociologically, that the ancient Indian Seers had opined that "Gods dwell only in those houses, where women are respected". Thus, both the law and society recognise a moral and legal duty of the husband to maintain the wife.

20. Therefore, this Court does not find any perversity or illegality in the impugned order and the judgment. The revision petition, being devoid of merit, stands dismissed.

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