

Shanker Vs. Meena

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SooperKanoon Citation : sooperkanoon.com/921063

Court : Delhi

Decided On : Sep-20-2011

Judge : Suresh Kait, J.

Acts : [Protection of Women from Domestic Violence Act, 2005](#) - Section 12(2);
Protection of Women from Domestic Violence Rules, 2005 - Rule 6(5); [Code of Criminal Procedure \(CrPC\), 1973 \(CrPC\)](#) - Section 125 (3)

Appeal No. : CRL.M.C.No.1814/2011

Appellant : Shanker

Respondent : Meena

Advocate for Def. : Mr.Ashok Kumar; Mr.R.M.Tatia, Advs.

Advocate for Pet/Ap. : Ms.Saahila Lamba, Adv.

Judgement :

1. On 16.08.2011, this Court has passed following order:-

"1. The present petition is filed against the order dated 18.03.2011 passed by Id. Addl. Sessions Judge.

2. The learned counsel for the petitioner submits that vide order dated 05.10.2007 the learned MM had directed that a sum of Rs.2,000/- each per month would be paid by the petitioner, to the respondent/ complainant for her maintenance and

also for the maintenance of the minor daughter namely Bhavna, as an interim measure till the disposal of the petition.

3. Further the learned counsel for the petitioner submits that the application was filed for clarification of the said order dated 05.10.2007 that typographically it was directed that Rs.2,000/- each instead of Rs.2,000/- total in favour of the respondent for her maintenance and for the maintenance of her minor daughter. The same was dismissed on 18.12.2010 and confirmed the order dated 05.10.2007.

4. Being aggrieved the petitioner challenged the same before the Sessions Court vide order dated 18.03.2011, the learned Sessions Judge, Tis Hazari Courts, Delhi has also confirmed the order dated 05.10.2007 passed by the learned MM.

5. Learned counsel for the petitioner submits that learned ASJ has not dealt with the relevant points on the petition and has only given the opinion that learned Magistrate had no power to rectify the order passed on 05.10.2007.

6. Learned counsel for the petitioner has drawn the attention of this court to order dated 25.02.2008 passed by the learned ASJ wherein in para 5 as on page 19 it is stated as under :

"5. I have also gone through the provisions of Section 23(2) of the said Act. Under the Section learned Magistrate can grant even an ex parte order on the basis of the affidavit filed by the petitioner/ aggrieved person under the said Act. In the present case the learned Trial Court has duly considered the averments of both the parties. It is purely the interim order till the final decision of the case. The learned Trial Court shall come to the conclusion for grant of maintenance only after the evidence is lead by both the parties. The petitioner had his brothers also who could very well maintain his parents. Even as per minimum wages of an unskilled labour, the wages are approximately 3,500/- per month."

7. Learned counsel for the petitioner submits that the petitioner is earning Rs.5,000/- per month. Therefore, he cannot afford to pay Rs.4,000/- i.e. Rs.2,000/- each when he is also maintaining one daughter aged about 6 years. The petitioner

has drawn attention to order dated 18.12.2010 passed by learned trial court for the rectification of the order as under : "In support of the said contention, it is point out by Ld. Counsel for the respondent that the respondent had been continuously making payment of Rs.2,000/- per month to the petitioner w.e.f. 5.10.10.07 till 4.4.10 and no objection has been raised on behalf of the petitioner that the complete payment is not being made.

It is also pointed out that even some of the order sheets of my Ld. Predecessor like order sheet dated 29.1.07, 30.1.08 clearly reflect that payment of Rs.2000/- towards the month of November and December respectively. It is thus stated that the petitioner now cannot be permitted claim the additional maintenance @ Rs.2000/- per month and from the conduct of the parties as pointed out hereinabove, it is very clear that the order of interim maintenance was only for Rs.2000/- per month and not @ Rs.2000/- per month for each of the petitioners."

8. Keeping in mind the monthly wage of the petitioner/husband @ Rs.5,000/- per month and since he is also maintaining one daughter as the respondent. It is only fair that both children are provided with the right environment for a proper upbringing.

Therefore, in equity I deem it appropriate to modify the order to the extent that the petitioner shall continue to pay Rs.3,000/- per month to the respondent as maintenance till the disposal of the application. The arrears, if any, shall also be cleared as per the rate of Rs.3,000/- per month.

9. CRL.M.C. 1814/2011 is partially allowed. Order dated 05.10.2007 passed by the learned trial Judge is modified.

10. At this stage, the petitioner, who is present in person, submits that he is ready to keep his wife with him and he will keep her happy.

11. At his request, re-notify on 23rd August, 2011.

12. The notice be served to respondent through SHO concerned and ensure the presence of the respondent on the next date of hearing in the Court."

2. Since, the SHO concerned could not serve the respondent on 23.08.2011, therefore, she did not appear, hence the matter was adjourned.

3. On 24.08.2011, respondent appeared in person with her learned counsel, and inter alia, following order was passed:-

"..... She submits that the petitioner is a man of means; apart from shirts business, he is also in the business of property dealing. He also owns some properties in Delhi. She further submits that before the separation she was staying with her husband at 331, J. J. Colony, Raghbir Nagar along with her brother-in-law namely Arjun, who is younger to the petitioner.

2. Respondent further submits that the said brother-in-law has left his first wife and he has kept another lady without taking divorce and he has three sons from his new wife, whereas, the first wife has one girl child and living separately.

3. She further submits that the petitioner is intending to repeat the same with her also, therefore, due to this reason she is not ready to go with the petitioner."

4. Inspector Jai Kishan Gautam, SHO police station Uttam Nagar, New Delhi was present in person and was directed to verify the total income earned by the petitioner and whether or not is there any property in his name.

5. Pursuant to the order dated 24.08.2011, SHO, police station Uttam Nagar, filed the status report and submits that on inquiry it is found that the property No.M-331, Raghbir Nagar, New Delhi, is registered in the name of father of petitioner, Shri Lalu Ram, which was purchased after selling his earlier House No.A-641 and A-646, Raghbir Nagar, New Delhi.

6. Further it is stated that, one Jhuggi No.W-52, R-144, near water tank, Raghbubir Nagar, Delhi was also found to be registered in the name of the father of the petitioner, which was purchased on 23.08.2005. One tenant Krishan s/o Sh.Laxman is stated to be in possession of said Jhuggi at a monthly rent of `1,200/-.

7. On inquiry it is further found that one Janta Flat No.268, Type GRP-1, Sector B-4, Pocket - 3, Narela, Delhi was allotted in the name of petitioner on 27.09.2007. However, same was disposed on 10.10.2008 for a sale consideration of ` 3.5lacs; a copy of the sale deed is produced by SHO, police station Uttam Nagar, New Delhi to prove the same. The photocopy seen and returned to the SHO concerned.

8. Learned counsel for respondent further submitted that the said Janta Flat at Narela was purchased during the pendency of the proceedings under the [Protection of Women from Domestic Violence Act, 2005](#). However, the petitioner neither has paid the arrear nor the installments.

9. However, learned counsel for the petitioner has clarified that the petitioner is paying ` 2,000/- per month as understood by both the parties. Further, she submits that the opposite party never raised any objection.

10. Learned counsel for the petitioner further submits that an order for the maintenance was passed on 05.10.2007.

Thereafter, the petitioner continued to pay to the respondent a maintenance amount of ` 2,000/- per month. She also continued to accept the same without any protest, till the filing of the execution petition on 04.04.2010. Further she submits that under Rule 6(5) of the Protection of Women from Domestic Violence Rules, 2005, which reads as under:-

"6.Applications to the Magistrate.--(1) Every application of the aggrieved person under section 12 shall be in Form II or as nearly as possible thereto.

(2) xx xx xx

(3) xx xx xx

(4) xx xx xx

(5) xx xx xx

(6) The application under section 12 shall be dealt with and the orders enforced in the same manner laid down under section 125 of the Code of Criminal Procedure,

1973."

11. Further submitted that under Section 12(2) of the [Protection of Women from Domestic Violence Act, 2005](#), 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.

12. Further submitted that, the application has to be disposed of as per the provisions under Section 125 (3) of the Code of Criminal Procedure, 1973; wherein it is enumerated as under:-

"125. Order for maintenance of wives, children and parents. -

(1) xx xx xx

(2) xx xx xx

(3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole, or any part of each month's allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be, remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made:

Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due:

Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under the section notwithstanding such offer, if he is satisfied that there is just ground for so doing."

13. Learned counsel for the petitioner submits that learned Magistrate has the power to issue any order for the amount which is due for a period of one year only from the date it became due.

14. Further, pointed out that the amount became due on 05.10.2007 and the execution petition filed on 04.04.2010, is barred by the provisions mentioned above.

15. It is submitted that when the respondent moved an application for execution before learned Metropolitan Magistrate; the petitioner simultaneously, also filed an application for clarification.

16. Vide order dated 18.12.2010, the application for clarification of the petitioner was dismissed whereas; the execution application filed by respondent was allowed and directed to pay the difference amount of ` 2,000/- per month from the date of order passed by learned Metropolitan Magistrate.

17. Thereafter, the petitioner filed the revision petition before the Sessions Court and the same was dismissed vide order dated 18.03.2011 on technical ground that the Magistrate has no powers to rectify its order, therefore, same was dismissed.

18. Vide the instant petition, the petitioner has assailed said order dated 18.03.2011 passed by learned Additional Sessions Judge.

19. Though, vide order dated 16.08.2011, on equity, this Court directed to reduce the amount from ` 4,000/- to ` 3,000/- per month, to which, petitioner had no objection.

20. Since, learned counsel for the petitioner was of the view that there are chances of the reconciliation in the matter, therefore, this matter was further adjourned and the SHO concerned was directed to ensure the presence of the respondent.

21. After hearing learned counsel for respondent, I am of the view that the chances for reconciliation are bleak; and just to clarify whether the petitioner is earning the same amount as he has agitated before the Trial Court, therefore, just

for substantial justice, I directed the concerned SHO for the purpose as mentioned above.

22. After perusing the status report and hearing both counsels, it is emerged that the petitioner is in the vocation of repairing and selling old shirts in Bazar. He is living with his parents and four children. Though, the father of the petitioner is having two Jhuggis in his name; one is occupied by tenant at a monthly rent of ` 1,200/- and the other one is being used as their residence.

23. Therefore, I am of the view that he is not a man of a high means, therefore, the order passed by this Court on 16.08.2011 is maintained; whereby the petitioner was directed to pay the arrears of maintenance @ ` 3,000/- per month.

24. On instructions, learned counsel for the petitioner submits that within ten days, the petitioner shall pay an amount of ` 7,000/- towards arrear and within 1½ months thereafter he shall clear the outstanding arrears from the date of the order till its realisation. The technical plea taken by the learned counsel for the petitioner being time barred is now, not to be pressed before the Trial Court.

25. If the petitioner fails to pay the said arrear amount within the specified period i.e. maximum two months then the respondent is entitled to simple interest @ 9% per annum on outstanding arrears.

26. I make it clear that this order has been passed with the consent of learned counsels for both parties. However, this order will not come in the way of respondent for the relief under Section 125 Code of Criminal Procedure.

27. Before parting with this order, I record my appreciation for the counsels for both parties, who have assisted the Court in reaching to the amicable settlement. In addition, I also record my appreciation for Inspector Jai Kishan Gautam, SHO police station Uttam Nagar, New Delhi who had submitted the report on pros and cons of income and property of the petitioner, in a very fair manner.

28. In view of above, Criminal M.C.No.1814/2011 is disposed of accordingly.