

AJAY KUMAR

A

v.

LATA @ SHARUTI & ORS.

(Criminal Appeal No. 617 of 2019)

APRIL 8, 2019

**[DR. DHANANJAYA Y CHANDRACHUD AND
HEMANT GUPTA, JJ.]**

B

Protection of Women from Domestic Violence Act, 2005 – ss.2(f),2(q), 2(s), 12 – Award of maintenance – Complainant-first respondent case that she resided with her husband at a house which constituted ancestral Hindu Joint family property – The appellant and her husband were brothers, who jointly carried on a business – After the death of her husband, she was not permitted to reside in her matrimonial home – Complainant sought maintenance for herself and her minor child under the Act – Trial Court directed interim award of maintenance against the appellant who was carrying on the business together with the deceased spouse of the complainant – This order was confirmed by the First appellate Court – Further, this view was affirmed by the High Court – On appeal, held: Sufficient averments in the complaint to sustain the order for award of interim maintenance – Whether the requirements of ss.2(f), 2(q), 2(s) are fulfilled is a matter of evidence which would be adjudicated upon the trial – At this stage, for the purpose of an interim order for maintenance, there was material which justified the issuance of a direction in regard to the payment of maintenance.

C

D

E

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 617 of 2019.

F

From the Judgment and Order dated 10.10.2018 of the High Court of Punjab & Haryana at Chandigarh in CRM-M No. 44823 of 2018.

Anil Singal, Arvind Kumar Gupta, Advs. for the Appellant.

Dr. Nirmal Chopra, Advs. for the Respondents.

The following Order of the Court was passed

G

O R D E R

1. Leave granted.

2. This appeal arises from a judgment of a learned Single Judge of the High Court of Punjab and Haryana dated 10 October 2018. The

H

A High Court dismissed a petition against the judgment of the Additional Sessions Judge, Panipat confirming an interim order for the award of maintenance to the first respondent and her minor child under the provisions of the Protection of Women from Domestic Violence Act, 2005¹.

B 3. The first respondent was married to Vijay Kumar Jindal on 12 December 2010. They have two children.

C 4. The first respondent filed a petition under Section 12 of the Act inter alia for the purpose of seeking an award of maintenance. The complaint contains a recital of the fact that after her marriage, the complainant and her spouse resided at a house which constitutes ancestral Hindu Joint Family Property. She and her husband resided on the ground floor of the residential accommodation. The appellant and the deceased spouse of the first respondent jointly carried on a business of a *kiryana* store at Panipat from which, it has been alleged, each had an income of about Rs 30,000 per month.

D 5. The complaint alleges that at the death of Vijay Kumar, the first respondent was pregnant and that she gave birth to a child on 31 January 2013. The travails of the first respondent are alleged to have commenced after the death of her spouse and she was not permitted to reside in her matrimonial home.

E 6. The learned Trial Judge by an order dated 3 July 2015 granted monthly maintenance in the amount of Rs 4,000 to the first respondent and Rs 2,000 to the second respondent. The award of maintenance was directed against the appellant who was carrying on the above business together with the deceased spouse of the first respondent. This order of the Judicial Magistrate, First Class, Panipat dated 3 July 2015 was confirmed by the Additional Sessions Judge, Panipat on 14 August 2018. The High Court, in a petition filed by the appellant, affirmed the view. Hence these proceedings came to be instituted under Article 136 of the Constitution of India.

G 7. The submission which has been urged on behalf of the appellant is that there was no basis under the provisions of the Act to fasten liability on the appellant, who is the brother of the deceased spouse of the first respondent. Learned counsel submitted that the sole basis on

H ¹ “Act”

which liability has been fastened is that the appellant and his deceased brother carried on a joint business. It was urged that this cannot furnish any lawful basis to direct the appellant to meet the award of maintenance. A

8. On the other hand, learned counsel appearing on behalf of the respondents has relied upon the averments in the complaint and submitted that at this stage, there is no reason or justification for the Court to interfere under Article 136 of the Constitution of India particularly against an interlocutory order. B

9. Section 12(1) provides that an aggrieved person may present an application to the Magistrate seeking one or more reliefs under the Act. Under the provisions of Section 20(1), the Magistrate while dealing with an application under sub-Section (1) of Section 12 is empowered to direct the respondent(s) 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 domestic violence. This may include but is not limited to an order for maintenance of the aggrieved person as well as her children, if any, including an order under or in addition to an order for maintenance under Section 125 of the CrPC or any other law for the time being in force. C D

10. The expression “respondent” is defined in Section 2(q) as follows:- E

2(q) “respondent” means any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act:

Provided that an aggrieved wife or female living in a relationship in the nature of a marriage may also file a complaint against a relative of the husband or the male partner; F

11. The substantive part of Section 2(q) indicates that the expression “respondent” means any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom relief has been sought. The proviso indicates that both, an aggrieved wife or a female living in a relationship in the nature of marriage may also file a complaint against a relative of the husband or the male partner, as the case may be. G

H

- A Section 2(f) defines the expression “domestic relationship” thus:
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,
B adoption or are family members living together as a joint family;

12. Section 2(f) defines the expression ‘domestic relationship’ to mean a relationship where two persons live or have lived together at any point of time in a shared household when they are related by consanguinity, marriage or through a relationship in the nature of marriage, adoption or
C are members living together as a joint family.

The expression “shared household” is defined in Section 2(s) as follows:-

- 2(s) “shared household” means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a house hold whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the
D
E joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household;

13. All these definitions indicate the width and amplitude of the intent of Parliament in creating both an obligation and a remedy in the terms of the enactment.
F

14. In the present case, at this stage, it would be sufficient to advert to the contents of paragraph 10 of the complaint which read as follows:-

- G “10. That the marriage between the Complainant No. 1 and Sh. Vijay Kumar Jindal was settled through Sh. Narender Jain S/o. Late Sh. Rameshwar Dass R/o Haryana School-Wali-Gali, VIII, Inder Garhi, Tehsil Gohana, Distt. Sonapat, and before marriage he (Mediator namely Sh. Narender Jain) told that previously there
H was a residential house situated near Railway Fathak, Jatal Road,

Panipat, which was constructed by Sh. Mai Dhan (Grandfather of Sh. Vijay Kumar Jindal and Respondent No. 2) and after the death of said Sh. Mai Dhan, his son Sh. Brahmanand Jindal (Father of Sh. Vijay Kumar Jindal and Respondent No. 2) became the owner in possession of the said house and later on Sh. Brahmanand Jindal, sold away the said house and purchased H No. 149, Eight Marla Colony, Kranti Nagar, Near Radha Krishna Mandir, Panipat in the name of his wife Smt. Rajo Devi (Respondent No. 1) about 8 years ago. Thus the said house i.e. H No. 149, Eight Marla Colony, Kranti Nagar, Near Radha Krishna Mandir, Panipat is ancestral Joint Hindu Family property / residential house standing in the name of Respondent No. 1 qua the present complainants.”

In paragraph 12 and 13, it has been averred as follows:-

“12. That after marriage between the Complainant No. 1 and Sh. Vijay Kumar Jindal, the Respondents provided the ground floor of H No. 149, Eight Marla Colony, Kranti Nagar, Near Radha Krishna Mandir, Panipat to the newly wedded couple (i.e. Complainant No. 1 and Sh. Vijay Kumar Jindal) and they kept all dowry articles, house hold articles etc. mentioned above in the said residential accommodation (ground floor of said house) and she (i.e. Complainant No. 1) also consummated her marriage with her husband in the Ground floor of said house and Kirti Jindal (Complainant No. 2) was born out of the said wedlock. It is pertinent to mention here that all dowry articles, istridhan, household articles, furniture etc. etc. are still kept in said house / matrimonial house of Complainant No. 1 and the golden ornaments and jewelry etc., all are yet in possession of the Respondents.

13. That it is worthwhile to mention here that after the marriage of Complainant No. 1, both brother Sh. Vijay Kumar Jindal and Ajay Kumar Jindal were running their joint business of M/s. Ajay Kumar Vijay Kumar Kiryana Store, at Jatal Road, Sanjay Chowk Panipat, very smoothly and both brothers were taking / deciding Rs. 30,000/- P.M. each, out of the income of the said business, for the maintenance of their respective families. However after the death of Sh. Vijay Kumar, the Respondent No. 2 has been running the said business and the Complainants are equally entitled to the amount which the respondent No. 2 has been deducting from the

A said joint business or at least Rs. 30,000/- P.M. which the Complainant No. 1 has been receiving during the life time of Sh. Vijay Kumar Jindal.”

15. At the present stage, there are sufficient averments in the complaint to sustain the order for the award of interim maintenance.
B Paragraph 10 of the complaint *prima facie* indicates that the case of the complainants is that the house where the first respondent and her spouse resided, belong to a joint family. The appellant and his brother (who was the spouse of the first respondent and father of the second respondent) carried on a joint business. The appellant resided in the same household.
C Ultimately, whether the requirements of Section 2(f); Section 2(q); and Section 2(s) are fulfilled is a matter of evidence which will be adjudicated upon at the trial. At this stage, for the purpose of an interim order for maintenance, there was material which justifies the issuance of a direction in regard to the payment of maintenance.

16. However, we clarify that the present order as well as orders
D which have been passed by the courts below shall not come in the way of a final adjudication on the merits of the complaint in accordance with law.

17. The arrears shall be paid over within a period of four months
E from today by equal monthly installments.

18. The Appeal is, accordingly, disposed of.

19. Pending application(s), if any, shall also stand disposed of.