

Shalu Ojha vs Prashant Ojha on 18 September, 2014

Equivalent citations: AIR 2015 SUPREME COURT 170, 2014 AIR SCW 5709, AIR 2014 SC (CRIMINAL) 2130, 2014 (6) ADR 475, 2014 (3) ABR (CRI) 771

Bench: A.K. Sikri, J. Chelameswar

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.2070 OF 2014
(Arising out of Special Leave Petition (Crl.) No.6220 OF 2014)

Shalu Ojha

... Appellant

Versus

Prashant Ojha

...Respondent

J U D G M E N T

Chelameswar, J.

1. Leave granted.

2. This is an unfortunate case where the provisions of the Protection of Women from Domestic Violence Act, 2005 are rendered simply a pious hope of the Parliament and a teasing illusion for the appellant.

3. The appellant is a young woman who got married to the respondent on 20.04.2007 in Delhi according to Hindu rites and customs, pursuant to certain information placed by the respondent on the website known as “Sycorian Matrimonial Services Ltd.”.

4. According to the appellant, she was thrown out of the matrimonial home within four months of the marriage on 14.8.2007. Thereafter, the respondent started pressurizing the appellant to agree for dissolution of marriage by mutual consent. As the appellant did not agree for the same, the respondent filed a petition for divorce being H.M.A. No.637 of 2007 under Section 13(1) of the Hindu Marriage Act, 1955 on 17.10.2007 before the Additional District Judge, Tis Hazari Courts, Delhi. The said petition was dismissed by an order dated 03.10.2008. Within four months, the

respondent filed another petition on 08.04.2009 once again invoking Section 13(1) of the Hindu Marriage Act, 1955 before the Additional District Judge, Patiala House Courts, Delhi being H.M.A. No.215 of 2009 and the same on being transferred is pending before the Family Court, Saket and renumbered as H.M.A. No.266 of 2009.

5. On 04.06.2009, the appellant filed a complaint case No.120/4/09 under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as “the DV Act”).

6. The said complaint case came to be disposed of by the learned Metropolitan Magistrate, New Delhi by his order dated 05.07.2012. By the said order, the Magistrate granted an amount of Rs.2.5 lacs towards monthly maintenance of the appellant which included rental charges for alternative accommodation. The respondent was made liable to pay such monthly maintenance from the date of filing of the petition, i.e. from 04.06.2009. The monthly maintenance was made payable on or before 10th of each succeeding month. The learned Magistrate further directed that the arrears of the maintenance be cleared by 05.12.2012.

7. Aggrieved by the above order, the respondent carried the matter in appeal under Section 29 of the DV Act in Criminal Appeal No.23 of 2012 before the learned Additional Sessions Judge, Rohini, New Delhi. On 10.01.2013, the learned Additional Sessions Judge while granting stay of the execution of the order under appeal passed an order directing the respondent to pay the entire arrears of the maintenance due to the appellant till the presentation of the appeal within a period of two months.

8. Since the respondent did not pay the arrears, the appellant moved an application for execution of the order dated 10.01.2013.

9. By an order dated 07.05.2013, Criminal Appeal No.23 of 2013 preferred by the respondent was dismissed by the learned Sessions Judge for non- compliance of the interim directions dated 10.01.2013.

10. Aggrieved by the order dated 07.05.2013, the respondent filed Crl. Misc. Case No.1975 of 2013 and Crl. Misc. Application No.78-34 of 2013 for interim directions in the High Court of Delhi on 08.05.2013. The High Court initially declined to pass an interim order in the said appeal. Aggrieved by the same the respondent approached this Court in SLP (Crl.) No.6509-6510 of 2013 which was dismissed in limine on 13.08.2013 with a direction to the parties to apply for mediation.

11. Pursuant to the said direction, the respondent filed Crl. Misc. Application No.12547 of 2013 in Crl. Misc. Case No.1975 of 2013 for direction to refer the matter to Mediation. The matter was referred accordingly. Eventually the mediation failed. On receipt of such failure report, the appeal was again listed before the High Court on 10.09.2013. The High Court directed the respondent to pay an amount of Rs.10 lakhs in two instalments and that the execution petition filed by the appellant for the recovery of the arrears be kept in abeyance.

12. Thereafter, an application was filed by the appellant before the High Court seeking direction to the respondent for the payment of monthly maintenance (current period) in terms of order dated

05.7.2012 of the learned Metropolitan Magistrate (supra). It appears that the matter underwent number of adjournments but no orders have been passed by the High Court.

13. In the said background, the appellant filed Special Leave Petition (Crl.) No.2210 of 2014 in this Court. The said petition came to be disposed of on 31.03.2014 by setting aside the interim stay granted by the High Court on the execution petition filed by the appellant. This Court categorically observed that - it is open to the petitioner to execute the order of maintenance passed by the learned Metropolitan Magistrate and requested the High Court to dispose of the appeal of the respondent expeditiously.

14. Strangely, when the appellant's application for the payment of current maintenance in C.M. No.18869 of 2013 was listed on 27.5.2014 before the High Court along with other connected matters in Appeal (Crl. Misc. Case No.1975 of 2013) preferred by the respondent, the application of the appellant was dismissed as "not pressed" on representation made by the counsel appearing for the appellant. The appellant appeared in person before us and made a statement that such instructions not to press the application were never given to the counsel who appeared in the High Court and hence the present appeal.

15. We have heard the appellant-in-person and learned counsel appearing on behalf of the respondent.

16. The learned counsel appearing on behalf of the respondent pleaded inability to make the payment of the arrears and the current maintenance due to the appellant in terms of the order passed by the learned Metropolitan Magistrate on 05.07.2012 on the ground that the respondent's annual income as can be seen from his income-tax returns for the last two years is only around Rs.2.50 lakhs per annum.

17. The appellant submitted that the income-tax returns of the respondent do not reflect the true picture of the income of the respondent. The appellant pointed out the profile of the respondent placed on the website of "Sycorian Matrimonial Services Ltd." wherein the respondent's personal income is shown as Rs.50 lakhs to Rs.1 crore per annum and monthly income of Rs.5 lakhs. He was shown to be a Managing Director or Director of four companies, the details of which are as under:

Sr. No.	Organization	Designation	
1	M/s Utkarsh Art Press Pvt. Ltd.	Managing Director/Share	
		Holder	
2	M/s Empress Infonet Pvt. Ltd.	Director/Share Holder	
3	Hotel Urban Pind	Director	
4	M/s Brahmani Apparel Pvt. Ltd.	Director/Share Holder	

18. Apart from that, the appellant also placed reliance on a article published in weekly magazine Business World (Issue dated 10.03.2014) wherein some information regarding a posh restaurant

known as Zerruco by Zilli at The Ashok, New Delhi was published. The article named the respondent along with one Kashif Farooq as the restaurateurs. According to the article, the restaurant was set up at astounding cost of Rs.7 crore. The relevant portion of the article reads as follows:

“If chef Back has been feeding American entertainment industry stars. London-based Aldo Zilli is well-known for his celeb-patronised Italian bites. He has just made his Asian foray with Zerruco by Zilli, set in the partly al fresco-partly indoors space at The Ashoka New Delhi that used to house Mashrabiya. The menu is simple, fresh and Med – salads, grills, the occasional show-offy “gelato ravioli” but this is one of those big “lifestyle restaurants” that we seem to be losing more recently with the spurt in made-to-look-like-mom-and-pop places.

Restaurateurs Kashif Farooq and Prashant Ojha known in the clubbing/partying circuits have brought in Zilli as part of their ambitious plans to grow and get taken seriously in the F&B realm. The restaurant (that will turn into a lounge/club in the evenings) has been set up at astounding Rs.7 crore cost. You can look to this one as an alternate to the “upscale, casual”, Olive-like spaces.”

19. Before we proceed to take any decision in the matter, we deem it appropriate to make a brief survey of the DV Act insofar as it is relevant for the present purpose. The preamble of the Act states that this is “an Act to provide for more effective protection of the rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family and for matters connected or incidental thereto.”

20. “Domestic violence” is defined under Section 3 as any act, omission or commission or conduct of any adult male who is or has been in domestic relationship.

“Section 3. 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— 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 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 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 otherwise injures or causes harm, whether physical or mental, to the aggrieved person.”

21. The expression “domestic relationship” is defined under Section 2(f)[1]. The expressions “physical abuse”, “sexual abuse”, “verbal and emotional abuse” and “economic abuse” are explained in Explanation-1 to Section 3.

22. Section 12 of the Act recognizes the right of an “aggrieved person”[2] (necessarily a woman by definition) to present application to the Magistrate seeking one or more reliefs under the Act. The reliefs provided under the Act are contained in Sections 17 to 22. Section 17 creates a right in favour

of a woman/aggrieved person to reside in a “shared household” defined under Section 2(s)[3].

23. Section 18 deals with various orders that can be passed by the Magistrate dealing with the application of an aggrieved person under Section 12. Section 19 provides for various kinds of residence orders which a Magistrate dealing with an application under Section 12 can pass in favour of a woman. Section 20 authorizes the Magistrate dealing with an application under Section 12 to direct the respondent to pay monetary relief to the aggrieved person. Section 20 reads as follows:

“Section 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,—

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the maintenance for the aggrieved person as well as her children, if any, including an order under or in addition to an order of maintenance 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.” (emphasis supplied)

24. Section 21 deals with the jurisdiction of the Magistrate to pass orders relating to custody of children of the aggrieved person. Section 22 deals with compensation orders which authorizes the Magistrate to pass an order directing the respondent to pay compensation and damages for the injuries including mental torture and emotional distress caused by the act of domestic violence committed by the respondent. The Magistrate receiving a complaint under Section 12 is authorized under the Act to pass any one of the orders under the various provisions discussed above appropriate to the facts of the complaint.

25. Section 29 provides for an appeal to the Court of Session against any order passed by the Magistrate under the Act either at the instance of the aggrieved person or the respondent.

26. One important factor to be noticed in the context of the present case is that while Section 23 expressly confers power on the Magistrate to grant interim orders, there is no express provision conferring such power on the Sessions Court in exercise of its appellate jurisdiction. Section 23 reads as follows:

“Section 23. Power to grant interim and ex parte orders.—(1) In any proceeding before him under this Act, the Magistrate may pass such interim order as he deems just and proper.

(2) If the Magistrate is satisfied that an application prima facie discloses that the respondent is committing, or has committed an act of domestic violence or that there is a likelihood that the respondent may commit an act of domestic violence, he may grant an ex parte order on the basis of the affidavit in such form, as may be prescribed, of the aggrieved person under section 18, section 19, section 20, section 21 or, as the case may be, section 22 against the respondent.”

27. It can be seen from the DV Act that no further appeal or revision is provided to the High Court or any other Court against the order of the Sessions Court under Section 29.

28. It is in the background of the abovementioned Scheme of the DV Act this case is required to be considered. The appellant made a complaint under Section 12 of the DV Act. The Magistrate in exercise of his jurisdiction granted maintenance to the appellant. The Magistrate's legal authority to pass such an order is traceable to Section 20(1)(d) of the DV Act.

29. Questioning the correctness of the Magistrate's order in granting the maintenance of Rs.2.5 lakhs per month the respondent carried the matter in appeal under Section 29 to the Sessions Court and sought stay of the execution of the order of the Magistrate during the pendency of the appeal. Whether the Sessions Court in exercise of its jurisdiction under Section 29 of the Act has any power to pass interim orders staying the execution of the order appealed before it is a matter to be examined in an appropriate case. We only note that there is no express grant of power conferred on the Sessions Court while such power is expressly conferred on the Magistrate under Section 23. Apart from that, the power to grant interim orders is not always inherent in every Court. Such powers are either expressly conferred or implied in certain circumstances. This Court in Super

Cassettes Industres Limited v. Music Broadcast Private Limited, (2012) 5 SCC 488, examined this question in detail. At any rate, we do not propose to decide whether the Sessions Court has the power to grant interim order such as the one sought by the respondent herein during the pendency of his appeal, for that issue has not been argued before us.

30. We presume (we emphasize that we only presume for the purpose of this appeal) that the Sessions Court does have such power. If such a power exists then it can certainly be exercised by the Sessions Court on such terms and conditions which in the opinion of the Sessions Court are justified in the facts and circumstances of a given case. In the alternative, if the Sessions Court does not have the power to grant interim orders during the pendency of the appeal, the Sessions Court ought not to have stayed the execution of the maintenance order passed by the Magistrate. Since the respondent did not comply with such conditional order, the Sessions Court thought it fit to dismiss the appeal. Challenging the correctness of the said dismissal, the respondent carried the matter before the High Court invoking Section 482 of the Code of Criminal Procedure, 1973 and Article 227 of the Constitution.

31. The issue before the High Court in Crl. MC. No. 1975 of 2013 is limited i.e. whether the sessions court could have dismissed the respondent's appeal only on the ground that respondent did not discharge the obligation arising out of the conditional interim order passed by the sessions court. Necessarily the High Court will have to go into the question whether the sessions court has the power to grant interim stay of the execution of the order under appeal before it.

32. In a matter arising under a legislation meant for protecting the rights of the women, the High Court should have been slow in granting interim orders, interfering with the orders by which maintenance is granted to the appellant. No doubt, such interim orders are now vacated. In the process the appellant is still awaiting the fruits of maintenance order even after 2 years of the order.

33. We find it difficult to accept that in a highly contested matter like this the appellant would have instructed her counsel not to press her claim for maintenance. In our view, the High Court ought not to have accepted the statement of the counsel without verification. The impugned order is set aside.

34. We are of the opinion that the conduct of the respondent is a gross abuse of the judicial process. We do not see any reason why the respondent's petition Crl. MC No. 1975 of 2013 should be kept pending. Whatever be the decision of the High Court, one of the parties will (we are sure) approach this Court again thereby delaying the conclusion of the litigation. The interests of justice would be better served if the respondent's appeal before the Sessions Court is heard and disposed of on merits instead of going into the residuary questions of the authority of the appellate Court to grant interim orders or the legality of the decision of the Sessions Court to dismiss the appeal only on the ground of the non-compliance by the respondent with the conditions of the interim order. The Criminal Appeal No.23/2012 stands restored to the file of the Sessions Court.

35. We also direct that the maintenance order passed by the magistrate be executed forthwith in accordance with law. The executing court should complete the process within 8 weeks and report compliance in the High Court. We make it clear that such hearing by the Sessions Court should only

be after the execution of the order of maintenance passed by the Magistrate.

36. In the event of the respondent's success in the appeal, either in full or part, the Sessions Court can make appropriate orders regarding the payments due to be made by the respondent in the execution proceedings.

The appeal is disposed off accordingly.

.....J. (J. Chelameswar)J. (A.K. Sikri) New Delhi;

September 18, 2014

[1] Section 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, adoption or are family members living together as a joint family.

[2] . Section 2.(a) "aggrieved person" means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent;

[3] . Section 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 household 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 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.
