

Suraj Parkash Singh And Others vs Arti Devi on 12 August, 2022

Author: Sindhu Sharma

Bench: Sindhu Sharma

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

CRM(M) No. 319/2019
CrLM No. 756/2019
CrLM No. 1531/2021

Pronounced on: 15.08.2022

Suraj Parkash Singh and others

.... Petitioner/Appellant(s)

Through:- Mr. R. K. S. Thakur, Advocate.

V/s

Arti Devi

.....Respondent(s)

Through:- Mr. Navneet Dubey, Advocate.

CORAM: HON'BLE MRS. JUSTICE SINDHU SHARMA, JUDGE

JUDGMENT

01. The petitioners have assailed the order dated 19.01.2018 passed by the learned City Judge (JMIC), Jammu and the order dated 22.10.2018 passed in appeal by the learned Principal Sessions Judge, Jammu, whereby the order of the learned City Judge (JMIC), Jammu has been upheld. The petitioners in this petition also seek quashing of the complaint as well as proceedings initiated against them under the provisions of Jammu & Kashmir Protection of Women from Domestic Violence Act, 2010.

02. The facts as narrated in the petition are as under:-

Petitioner No. 1 was married with respondent-Arti Devi in the year 2012 in accordance with the Hindu Rites and Customs on 28.10.2012. The relations between the parties were not cordial and differences arose between them, as such, petitioner No. 1 filed a petition under Section 13 of the Hindu Marriage Act for dissolution of marriage in the Court of Principal District Judge, Ramban on 21.04.2014. The respondent-Arti Devi initially appeared in the proceedings before the Court of Principal District Judge, Ramban but subsequently, remained absent and was, accordingly, set ex-parte on 31.01.2015. The petition for dissolution of marriage was decided on 29.05.2015 and the marriage between the parties was dissolved on

29.05.2015, on the grounds of cruelty and desertion by the respondent.

03. The respondent filed an application under the provisions of The Jammu & Kashmir Protection of Women from Domestic Violence Act, 2010 (hereinafter to be referred to as „Domestic Violence Act) against the petitioners i.e., her husband, mother-in-law, three sister-in-laws, two brother-in-laws and aunt of her husband. The allegations leveled against the petitioners were that the life of the respondent was made miserable due to atrocities and cruelty of the petitioners, right from the inception of marriage, it is alleged that the petitioners did not treat her well and also had demanded dowry and had also taken away all the valuable items of the respondent. The allegations against the other relatives of the petitioners are that they also threatened the respondent to do as her husband would ask her to do, otherwise she would have to face the consequences. The mother of her husband was also not happy with the respondent and used to torment her. It was also alleged that petitioner No. 1 was having illicit relations with some other woman. It is submitted that the respondent was subjected to constant physical, mental, emotional and economic abuse by the petitioners. The respondent, therefore, in her application had sought monetary relief of maintenance, compensation, police protection against harassment as also an order to reside in the shared household.

04. The petitioners filed their objections to the application and submitted that the application is not maintainable since the marriage of petitioner No. 1 and the respondent/wife has been dissolved by a decree of divorce on 29.05.2015 by the learned Principal District Judge, Ramban. It was submitted that the respondent was neither an aggrieved person nor in domestic relationship with petitioner No. 1 in terms of the Domestic Violence Act, as she had herself left the matrimonial home. It was also submitted that the Domestic Incident Report with the application had been prepared and filed by the respondent & her counsel and, therefore, the same cannot be taken into consideration while initiating any proceedings under the Act.

05. The learned Trial Magistrate, after considering the pleadings of the parties vide order dated 19.01.2018, directed petitioner No. 1 to pay monthly maintenance to the respondent till the lis is decided. Relevant part of the order reads as under:-

"Having heard the rival submissions, gone through the pleadings of the parties and upon appreciation of arguments advanced by the ld. Counsels for the parties, I am constrained to hold that applicant have succeeded in establishing a case of domestic violence against the respondents and thus, found entitled to the relief granted by this Court in terms of order dated 20.04.2016 which is required to be made absolute and is hereby made.

Respondent No. 1 shall in terms of the order pay monthly monetary relief at the rate of Rs.3000/- and Rs. 2000/- each to applicant and her daughter, till the disposal of main lis."

06. The petitioner No. 1 assailed the order dated 19.01.2018 of the Trial Court in an appeal which was dismissed by the Principal Sessions Judge, Jammu vide impugned order dated 22.10.2018 by

holding that the same being without any merit.

07. Both the orders, i.e., of the trial Court and the Appellate Court, as well as, the proceedings initiated in the application under the Domestic Violence Act have been challenged in this petition by invoking inherent jurisdiction of this Court under Section 561-A of the J&K Code of Criminal Procedure.

08. Learned counsel for the petitioners submits that the application under the Domestic Violence Act was filed after three years from the date, the respondent/wife had left the matrimonial home and almost one year after the dissolution of their marriage by divorce. Therefore, there being no domestic relationship between the parties, the application was not maintainable. The cause of action, if any, had accrued to the respondent, when she had left the matrimonial home or when the petition for dissolution of marriage had been filed. Since, the respondent did not chose to file any proceedings in any forum, at the time, when the marriage was subsisting, therefore, these proceedings are only a counter blast after the marriage of the parties was dissolved by decree of divorce.

09. It is also submitted that both the Courts below had proceeded only on the premise that since the decree for dissolution of marriage was stayed in application for condonation of delay in an appeal filed under Section 34 of the Jammu & Kashmir Hindu Marriage Act, therefore, the petition was maintainable and ignored the fact that the stay was granted only in the condonation of delay application and the appeal was yet to be registered and considered, therefore, the proceedings under the D.V. Act were not maintainable. The proceedings under the Act have been initiated as an afterthought with mala fide intention. Learned counsel for the petitioners has placed reliance on a judgment of the Hon ble Apex Court in „Inderjit Singh Grewal versus State of Punjab and another', (2011) 12 SCC 588, wherein it has been held that where the decree of divorce subsists, no application under the Domestic Violence Act is maintainable.

10. Per Contra Mr. Navneet Dubey, learned counsel for the respondent, has stated that the respondent-wife falls within the definition of aggrieved person in terms of definition 2(a) of The Jammu & Kashmir Protection of Women from Domestic Violence Act, 2010 as the aggrieved person would mean any woman, who is or has been, in a domestic relationship with the respondent. The parties were in domestic relationship as defined under Clause 2(f) of the Domestic Violence Act, as such, the Trial Court after considering the pleadings have rightly granted maintenance to the respondent. It is also alleged that a divorced woman is also entitled to maintain a petition as she is aggrieved person in domestic violence relationship in terms of the Protection of Women from Domestic Violence Act, 2010.

11. The contention of the petitioners is that the respondent is neither an aggrieved person, nor there is any domestic relationship between the parties, appears to be without any merit as an „aggrieved person" as per Section 2(a) of the Act means, any women who is in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent. Domestic relationship is defined under the 2(f) of the Act would mean "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". Thus, relationship between two persons who lived or have at any point of time lived together in a shared household is covered under the definition.

12. The respondent, as per the above definition, was clearly in a domestic relationship with petitioner No. 1 as it was not necessary that the domestic relationship was subsisting at the time of filing of the petition. The respondent, thus, being an aggrieved person under the Act and the application filed by her was maintainable.

13. In „Juveria Abdul Majid Patni vs. Atif Iqbal Mansoori and another', (2014) 10 SCC 736, the Hon ble Apex Court, while interpreting the definition of aggrieved person under Section 2(a) of the Domestic Violence Act, has held that apart from any woman, who is in a domestic relationship come within the meaning of aggrieved person.

14. It was, therefore, not necessary that domestic relationship between the parties be subsisting at the time of filing of an application by the respondent. It is not necessary for the Magistrate to rely on the Domestic Incident Report and even in the absence of the Domestic Incident Report, the Magistrate is empowered to pass both ex-parte as interim or final order under the provisions of Domestic Violence Act. The report of the Protection Officer is thus not sine qua non for issuing process of an application under the Domestic Violence Act, as held in 'Rakesh Choudhary and others vs. Vandana Choudhary', 2019 SCC Online J&K 512.

15. It is, thus, well settled that even a woman, who is divorced, is entitled to file a petition under Domestic Violence Act and the same has to be dealt in accordance with the provisions of the Domestic Violence Act. The respondent was thus well within her right to file a petition under the provisions of Domestic Violence Act and the trial Court had to consider the same on its own merit, even in the absence of „Domestic Incident Report .

16. It is further contended that the entire family of petitioner No. 1, i.e., his mother, three sisters, two brother-in-laws and an aunt have been dragged in this petition by raising allegations against them after the divorce was granted. It is urged that these allegations against the petitioner Nos. 2 to 8 are groundless and more so, when not even whisper was made against them from the time, the parties were married in 2012 and till the time, the divorce was granted, i.e., on 29.09.2015. The relatives of petitioner No. 1-Husband have been involved only to harass the petitioner No. 1.

17. The submission of the petitioner holds merit, as the respondent/wife did not raise any allegations or proceed against the petitioner or his family in any forum, till the time, the divorce was granted. It was only after the proceedings were stayed in appeal that allegations have been made against all the sisters, brother-in-laws, mother and an aunt. It appears to be only an afterthought and casts a shadow of doubt on the motive behind the same that they would have to undergo the agony of trials.

18. Reliance is also placed on a judgment of Hon ble Apex Court in "Kailash Chandra Agarwal vs. State of UP and another", (2014) 4 RCR (Criminal) 439 [Recent judgment (2014) AIR (SCW) 6152]; wherein it has been held as under:-

"...a tendency has, however, developed for roping in all relations of the in-laws of the deceased wives in the matters of dowry deaths which, if not discouraged, is likely to affect the case of the prosecution even against the real culprits. In their over enthusiasm and anxiety to seek conviction for maximum people, the parents of the deceased have been found to be making efforts for involving other relations which ultimately weaken the case of the prosecution even against the real accused as appears to have happened in the instant case."

19. Since the petition does not attribute any specific role of the petitioner Nos. 2 to 8 i.e., relatives of petitioner No. 1, therefore, the proceedings qua respondent Nos. 2 to 8 are quashed.

20. It is already settled that a divorce woman can maintain an application under Section 12 of the Domestic Violence Act for monetary relief, right to claim protection Order under section 18, residence order under Section 19, monetary reliefs under Section 20, compensation order under Section 22 of the Act but the trial Court while considering the application of the respondent for interim relief had to adjudicate the petition finally and was to see the authenticity of the allegations made. Since, the divorce granted to the respondent was on the ground of cruelty and desertion and there was no attempt by the respondent in any proceeding to seek maintenance and no attempt was made by the respondent to file a petition for maintenance or to seek monetary relief in any proceedings.

21. The trial Court while considering the application of the respondent had to adjudicate the petition finally and to test the authenticity of the allegations more so when divorce was granted on the basis of desertion and cruelty meted out by the respondent. The daughter of the parties is already receiving maintenance under Section 488 of the J&K CrPC. Though, the respondent is entitled to maintain application under the Domestic Violence Act even after being divorced but any order granting maintenance in these circumstances can only be after the final adjudication of the application.

22. In view of the aforesaid facts and circumstances, the impugned orders dated 19.01.2018 and 22.10.2018 are set aside. The trial Court is directed to decide the proceedings pending before it expeditiously. The maintenance amount, if any, received by the respondent till date shall not be recovered from her.

23. This petition is disposed of in the aforementioned terms.

(Sindhu Sharma) Judge JAMMU 15.08.2022 Michal Sharma Whether the judgment is speaking : Yes/No Whether the judgment is reportable : Yes/No