

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

CrMMO No. 30 of 2011
Decided on: May 2, 2017

Anil KumarPetitioner

Versus

Shashi Bala and others ...Respondents

Coram

Hon'ble Mr. Justice Sandeep Sharma, Judge.
Whether approved for reporting¹? Yes.

For the petitioner: Mr. Ajay Sharma, Advocate.

For the respondents: Mr. Adarsh K. Vashishta, Advocate, for
respondent No.1

Mr. Parveen Chandel, Advocate, for
respondents No.2 and 3.

Sandeep Sharma, J. (Oral)

Delinked from FAO(HMA) No. 205 of 2011.

2. Instant petition filed under Section 482 CrPC is directed against judgment dated 4.12.2010 passed by Additional Sessions Judge, Fast Track Court, Hamirpur in Criminal Appeal No. 30 of 2009, reversing judgment dated 24.3.2009 passed by Judicial Magistrate 1st Class, Court No. III, Hamirpur in Domestic Violence Complaint No. 2-1 of 2009, whereby application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter, 'Act'), having been filed by respondent No.1-complainant ('complainant', hereafter), came to be dismissed.

3. Briefly stated the facts as emerge from the record are that the complainant preferred an application under Section 12 of the Act

Whether reporters of the Local papers are allowed to see the judgment?

alleging therein that she was married to appellant-Anil Kumar as per Hindu rites and customary ceremonies on 17.6.2003 and two children were born out of said wedlock. Complainant further averred that she was turned out by her in-laws. Complainant further claimed that after being ousted from the house, she remained in her parents' house for eight months and came back on 22.11.2008, when her father-in-law did not allow her to enter the house. After two days, she went back to her parents' house. On 14.12.2008, when she again came back, she was taken out of the room and was not allowed to meet her children. Complainant further alleged that false allegations have been leveled against her. She further complained that on 23.12.2008, all of her family members had left the house by locking it and since then she had been residing in her courtyard and bathroom respectively. Her husband had also gone away with other family members. In the aforesaid background, Complainant prayed for providing protection under Sections 18, 19, 20 and 21 of the Act.

4. Petitioner alongwith proforma respondents No.2 and 3, by way of reply, refuted the aforesaid claim of the complainant and stated that false and frivolous application has been moved by the complainant to put undue pressure as well as to cause harassment to them. However, petitioner admitted the complainant to be his legally wedded wife but specifically stated that she developed illicit relations, as a result of which, divorce petition has been filed. As per petitioner, despite repeated requests, complainant failed to mend her ways and,

on 23.6.2008, was caught red-handed. Petitioner specifically denied allegations of maltreatment and claimed that all the basic necessities of life were provided to the complainant when she remained with him. With the aforesaid submissions, petitioner claimed that the complainant is not entitled to the reliefs as claimed in the application.

5. Complainant, by way of rejoinder, reasserted her claim as put forth in the complaint and specifically denied the allegations as contained in the reply having been filed by the respondents.

6. Learned trial Court, on the basis of pleadings adduced on record by the respective parties, framed following questions, for determination:

- “1. Whether the applicant is entitled for protection and relief as claimed in the application? If so, to what extent?
2. Final Order.”

7. However, the fact remains that learned trial Court, on the basis of evidence adduced on record by the respective parties, came to the conclusion that there is no merit in the application having been filed by the complainant and accordingly, rejected the same.

8. Being aggrieved by and dissatisfied with the rejection of aforesaid application, complainant preferred an appeal under Section 29 of the Act before Additional Sessions Judge, Fast Track Court, Hamirpur, which came to be registered as Criminal Appeal No. 30 of 2009. Learned appellate court below, while partly accepting the appeal filed by the complainant, quashed and set aside order dated 24.3.2009 and held complainant entitled to maintenance allowance of Rs.1,000/-

per month, from the date of order. At this stage, it may be noticed that while passing aforesaid judgment, learned appellate court specifically concluded that no evidence has been led on record by the complainant to prove serious allegations as leveled against the respondents in the complainant. The court below further concluded that no evidence has been brought on record to demonstrate violence, if any, by the respondents and accordingly, held her not entitled to protection, residence and custody order in her favour. Learned appellate court below, while partly allowing appeal, held that since complainant has to live and maintain herself and she has no independent source of income, she is entitled to monetary relief under Section 20 of the Act.

9. Mr. Ajay Sharma, learned counsel representing the petitioner, while referring to the impugned judgment passed by court below, vehemently argued that same is not sustainable in the eyes of law, as such, same deserves to be quashed and set aside. While inviting attention of this Court to impugned order passed by court below, Mr. Sharma, strenuously argued that once learned Court below had come to the conclusion that no evidence worth the name has been led on record by the complainant, to prove violence, if any, against her by the petitioner and his family members, there was no occasion, whatsoever, to provide maintenance of Rs.1,000/- per month. Mr. Sharma, also invited attention of this Court to the evidence led on record by the complainant in support of her complaint filed before learned trial Court, to demonstrate that there is no illegality or

infirmity in the order of learned trial Court, whereby it has rightly come to the conclusion that complainant has not been able to prove contents of application, so as to make herself entitled to reliefs under Sections 18, 19, 20 and 21 of the Act. Mr. Sharma, further contended that earlier, complainant had filed divorce petition against petitioner leveling serious allegations of sexual harassment against his father but same was later on withdrawn. Mr. Sharma also invited attention of this Court to the decree of dissolution of marriage passed by matrimonial court in the petition having been filed by the petitioner, wherein allegations with regard to illicit relations of complainant with one Jeet Ram, stood duly proved. In the aforesaid background, Mr. Sharma, prayed that impugned order passed by learned appellate Court below may be set aside and that of learned trial Court be restored.

10. Mr. Adarsh K. Vashishta, learned counsel representing the complainant, supported the impugned judgment passed by learned appellate Court below. Mr. Vashishta while refuting aforesaid contentions having been made by the learned counsel representing the petitioner, stated that there is no illegality or infirmity in the judgment passed by learned Court below, wherein he has specifically come to the conclusion that since complainant has to live and maintain herself, and she is having no independent source of income, she is entitled for monetary relief under Section 20 of the Act.

11. He also contended that a very meager sum of Rs.1,000/- per month has been awarded by the learned Court below as such, there

is no scope of interference, specifically in view of the fact that it stands duly proved on record that respondent-complainant is legally wedded wife of petitioner and it is/was his bounden duty to maintain her during subsistence of their marriage. Mr. Vashishta also made this Court to travel through evidence led on record by the complainant before learned trial Court, to suggest that learned trial Court miserably failed to appreciate evidence in its right perspective, as a result of which, erroneous findings have come on record, which were later on rectified in accordance with law, by the learned appellate Court below, in the appeal having been filed by the complainant. In the aforesaid background, Mr. Vashishta, prayed for dismissal of petition.

12. I have heard the learned counsel representing the parties and also gone through the record very carefully.

13. Before advertng to the genuineness and correctness of the impugned order passed by appellate court below as well as submissions of learned counsel representing the parties, it may be noticed that marriage of petitioner with complainant stands dissolved on the ground of cruelty, as is evident from decree passed by learned District Judge in HMA No. 18 of 2008, on 3.3.2011, whereby matrimonial court, while accepting petition filed by the petitioner has dissolved marriage on the ground of cruelty. It may also be stated at this stage that aforesaid judgment having been passed by matrimonial court was laid challenge before this Court by way of FAO No. **205 of 2011**, which came to be decided by this Court on **2.5.2017**. This

Court, vide aforesaid judgment, while dismissing appeal having been preferred by the complainant, has upheld the decree of dissolution of marriage passed by matrimonial court. ◊

14. This Court, solely with a view to ascertain the perversity, if any, in the impugned judgment passed by appellate court, carefully perused pleadings as well as evidence adduced on record by the respective parties, perusal whereof certainly compels this Court to agree with the contentions raised by learned counsel representing petitioner that learned appellate Court below has failed to appreciate evidence adduced on record by respective parties in its right perspective, as a result of which, erroneous findings have come on record. Bare perusal of impugned judgment passed by learned appellate Court below itself suggests that even appellate court was not convinced of evidence led on record, which could make complainant entitled for protection as claimed by way of application under Section 12 of the Act. Learned appellate Court below, in para 16 of the impugned judgment has categorically stated that from the record, it appears that serious allegations had been leveled against complainant and no evidence had been brought for providing maintenance and as such she was not held entitled to protection, residence and custody order in her favour. It has also come in the judgment passed by learned Court below that no violence, if any, on the part of petitioner was proved. While granting compensation of Rs.1,000/- per month, in favour of the complainant, learned appellate Court below took into

consideration status of complainant, who admittedly had to live and maintain herself and she had no independent source of income. But, if evidence led on record by the complainant before learned trial Court, to prove contents of her application under Section 12 of the Act, is seen and perused carefully, it nowhere suggests that maltreatment and violence as defined under the Act was ever meted to the complainant. There is no specific allegation, if any, of beatings given by husband or family members, rather there is bald statement of complainant (AW-1) that she was maltreated but no specific instance as such has been reported with regard to violence, if any, done on her by the respondents. Father of the complainant (AW-3) namely Bihari Lal has also not stated anywhere anything specific with regard to violence, if any, committed by petitioner or his family members. Apart from above, no independent witness, if any, from locality was associated to prove allegations of maltreatment and violence in terms of provisions contained in the Act. As far as allegations with regard to throwing complainant from the house are concerned, there is evidence led on record by the petitioner, that complainant left the house at her own, after being caught red handed with one Jeet Ram, with whom, she had illicit relations (as stood proved in the divorce petition). All the witnesses of the respondent have stated that complainant left the house to answer call of nature and never turned up thereafter.

15. This Court, after having bestowed its thoughtful consideration to the pleadings available on record, has no hesitation to

conclude that appellate court below, while granting maintenance of Rs.1,000/- to the complainant got swayed by emotions and completely ignored overwhelming evidence available on record suggestive of the fact that complainant herself had left the house. Since there was no evidence with regard to maltreatment or violence, learned appellate Court below ought not have granted any amount on account of maintenance. Moreover, as has been noticed above, marriage between the parties has been dissolved vide judgment dated 3.3.2011, which has been further upheld by his Court and as such, this Court sees no force, much less substantial, in the complaint of the complainant, which was rightly rejected by the learned trial Court.

16. Consequently, in view of above, judgment dated 4.12.2010 passed by Additional Sessions Judge, Fast Track Court, Hamirpur in Criminal Appeal No. 30 of 2009 is set aside and judgment dated 24.3.2009 passed by Judicial Magistrate 1st Class, Court No. III, Hamirpur in Domestic Violence Complaint No. 2-1 of 2009 is upheld. However, keeping in view the fact that instant petition under Section 12 of the Act remained pending adjudication till passing of decree of dissolution of marriage i.e. wherein allegations with regard to illicit relationship of complainant stood proved, this court deems it fit to grant/award of Rs.10,000/- to the complainant, to be paid by the petitioner, within a period of eight weeks from today, as maintenance under Section 12 of the Act.

17. The petition stands disposed of accordingly. Pending applications, if any are also disposed of. Interim directions, if any, are also vacated.

(Sandeep Sharma)
Judge

May 2, 2017
(Vikrant)

High Court of H.P.