

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR
BENCH JAIPUR
ORDER

S.B.Criminal Revision Petition No.670/2016

Geeta Singh W/o Shri O.P.Meena D/o Late Shri Ramchandra Meena, aged about 57 years, Resident of H-47, Tagore Path, Bani Park, Jaipur (Raj.)

Petitioner/Complainant.

Versus

1. State of Rajasthan through Public Prosecutor.

2. Shri Omprakash Meena S/o Late Shri Narain Meena, by caste Meena, Resident of H-47, Tagore Path, Bani Park, Jaipur at present residing at Flat No.304, Palm Grove Apartment, Chitrangan Marg, C-Scheme, Jaipur.

...Respondents



Date of Order

.....

17.11.2016

HON'BLE MR. JUSTICE PRASHANT KUMAR AGARWAL

Mr.H.V.Nandwana and
Mr.R.M.Bairwa, for the petitioner.
Mr.Prakash Thakuria, Public Prosecutor for State.
Mr.A.K.Bhandari Senior Advocate with
Mr.Atul Bhardwaj, for the respondent.

The petitioner-complainant has filed this Criminal Revision Petition under Section 397 read with Section 401 Cr.P.C. against the order dated 2.5.2016 passed by the Additional Sessions Judge No.2, Jaipur Metropolitan, Jaipur in Criminal Appeal No.70/2015 whereby learned appellate Court by dismissing the appeal filed by the petitioner affirmed and upheld the order dated 7.11.2015 passed by the Additional Chief Metropolitan Magistrate No.6, Jaipur Metropolitan, Jaipur in Case No.270/2015 whereby learned trial Court refused to grant interim monetary relief to the petitioner's daughter Miss.Geetanjali.

Brief relevant facts for the disposal of this petition are that petitioner-complainant wife of respondent-Shri Omprakash Meena filed a

complaint/application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter to be referred as "the Act") claiming various reliefs provided under the Act. It was averred in the complaint that she and daughter of the parties Miss.Geetanjali are aggrieved person within the meaning of the Act. One of the reliefs sought is that respondent may be directed to pay 700 pounds per month as living expenditure under Section 20 of the Act for the period from September 2014 to April 2015 as arrear accrued for that period and thereafter from May 2015 onwards to Miss. Geetanjali as presently she is pursuing her higher studies at Cardiff University, England. It was further averred that petitioner has taken a loan of Rs. 16 lacs from a bank for the further education of their daughter in England. It was also averred that respondent is an Officer of Indian Civil Services and is presently getting Rs.1,96,000/- per month as salary but he refused to incur the living expenses of Miss. Geetanjali. Petitioner sought interim relief as per Section 23 of the Act during the pendency of the complaint. In his reply to the complaint, it was averred by the respondent that presently age of their daughter is 31 years and all her school and college education expenses were incurred by him and even educational and all other expenses for her higher studies at Nottingham, England in the year 2009 were incurred by the respondent. It was further averred that Miss.Geetanjali was sent for further studies/education by the complainant without the consent of respondent rather against his wishes. It was also averred that Miss.Geetanjali is a mature girl of 31 years capable of earning her own income and complainant, an officer of the Rajasthan Administrative Services, is presently getting Rs.1,40,000/- as salary and she is capable to



incur all expenses which are being sought from the respondent. It was further averred that as Miss.Geetanjali is pursuing her higher studies abroad without the consent of her father rather against his wishes, she is not entitled to claim any amount from him as living or other expenses.

Learned trial Court vide order dated 7.11.2015 declined to grant interim monetary relief claimed as living expenses for pursuing higher studies at a University in England observing that complainant herself is an Administrative Officer in Government of Rajasthan and Miss. Geetanjali has attained the age of 31 years and previously she was in job in Delhi. The matter was unsuccessfully carried by the petitioner in appeal

which was dismissed by the appellate Court vide impugned order by recording the same reasons as recorded by the trial Court. It was also observed by the appellate Court that no reliable documentary evidence has been produced on record about higher education of Miss.Geetanjali in England and the expenses incurred by her for her education as well as living expenses.

I have considered the submissions made on behalf of the respective parties and the material made available on record as well as the relevant legal provisions.

The question involved in this petition for determination by this Court is whether unmarried daughter of respondent, who is of the age of more than 30 years and who has already completed her Post Graduation from a reputed University in India like Delhi University and who also pursued her further studies at Nottingham, England in the year 2009, is an aggrieved person within the meaning of the Act and if yes, whether she can claim interim monetary relief as her living expenses for pursuing her



further studies without the consent of her father (respondent) rather against his witnesses from a University abroad merely by the reason that presently she does not have her own independent source of income and her other educational expenses are being incurred by her mother (petitioner) after taking loan from a bank.

Sub-section (1) of Section 20 of the Act is as follows:-

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—

- (a) the loss of earnings;
- (b) the medical expenses;
- (c) the loss caused due to the destruction, damage or removal of any property from the control of the aggrieved person; and
- (d) 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.

Thus, according to this provision all expenses incurred by an aggrieved person as a result of the domestic violence can be awarded to the aggrieved person from the respondent but such expenses must be incurred by the aggrieved person as a result of domestic violence committed by the respondent. As per sub-section (2) of Section 20 of the Act, the monetary relief must be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved person is accustomed. Sub-section (1) of Section 23 provides that in any proceeding under the Act, Magistrate may pass such interim order as he deems just and proper. Thus, according to this provision monetary relief as interim



measure can also be awarded during the pendency of a proceeding under Section 12 of the Act.

As per clause (a) of Section 2 of the Act, 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.

Thus, to be an aggrieved person for the purpose of the Act, following conditions are required to be fulfilled:

- (i) the woman must have a domestic relationship with the respondent;
- (ii) she must be subjected to some kind of domestic violence by the respondent.

As per clause (f) of Section 2, 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.

In the present case, it cannot be denied that being daughter, Miss.Geetanjali has domestic relationship with the respondent her father but only by that reason she cannot claim to be an aggrieved person unless it is further found that she was subjected to some kind of domestic violence by the respondent. Clause (g) of Section 2 of the Act provides that "domestic violence" has the same meaning as assigned to it in section 3. What is domestic violence has been provided in Section 3 which is as follow:-

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—

(a) 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

(b) 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

(c) 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 **(d)** otherwise injures or causes harm, whether physical or mental, to the aggrieved person. Explanation I.—For the purposes of this section;

(i) “physical abuse” means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force;

(ii) “sexual abuse” includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman;

(iii) “verbal and emotional abuse” includes—

(a) insults, ridicule, humiliation, name calling and insults or ridicule specially with regard to not having a child or a male child; and

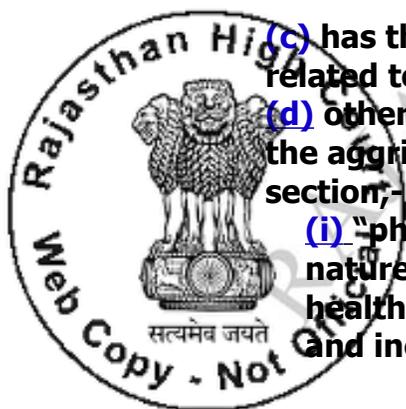
(b) repeated threats to cause physical pain to any person in whom the aggrieved person is interested.

(iv) “economic abuse” includes—

(a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance;

(b) disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person; and

(c) prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household. Explanation II.—For the purpose of determining whether any act, omission, commission or conduct



of the respondent constitutes "domestic violence" under this section, the overall facts and circumstances of the case shall be taken into consideration.

For the purpose of present controversy between the parties "economic abuse" is relevant and is required to be seen and considered.

According to sub-clause (a) of clause (iv) to explanation-I appended to Section 3 of the Act, deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom, whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity and also maintenance.



The question in the present case is whether refusal by the respondent to incur living expenses of his daughter can be said to be commission of economic abuse. No law or custom has been shown by the petitioner under which a well educated daughter of the age of more than 30 years can claim her living expenses to the tune of 700 pound per month for pursuing her further higher studies from a foreign University. According to this provision deprivation of economic or financial resources which the the aggrieved person requires out of necessity also amount to economic abuse. For the applicability of this part of the provision, requirement of the aggrieved person must be out of necessity. In my opinion each and every expenses incurred or to be incurred by the aggrieved person for her study cannot be termed to be a requirement out of necessity. Expenses incurred or to be incurred by daughter of a person for her reasonable studies can be said to be a requirement out of necessity but living expenses incurred or to be incurred by a daughter for pursuing her further higher studies from a foreign University and more particularly in view of the fact that she has already obtained a post graduate degree

from a reputed University in India and has already taken further studies from a foreign University and who is capable of earning her own income by joining a job and who has joined her further studies without the consent of his father rather against his wishes cannot be said to be a requirement out of necessity and even if father has refused to bear such expenses, it cannot be said that the daughter has been subjected to economic abuse within the meaning of the Act. Although, the Act has been enacted to provide more effective protection of the rights of women but that does not mean that a woman can claim any expenses as monetary relief from the respondent. Unless the act of the respondent comes within the purview of the domestic violence as specified under Section 3 of the Act and unless the petitioner is an aggrieved person, no relief can be granted to her. In the facts and circumstances of the case it cannot be said that Miss. Geetanjali has been subjected to economic abuse within the meaning of the Act.

Consequently, the revision petition being meritless is, hereby, dismissed. The stay application also stands dismissed.

(PRASHANT KUMAR AGARWAL), J

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Reserved order

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