

**IN THE COURT OF MS. SANTOSH SNEHI MANN  
ADDITIONAL SESSIONS JUDGE (CENTRAL)  
TIS HAZARI COURTS, DELHI**

Criminal Appeal No. 15/2010

Sh. Anshu Gupta S/o Late Sh. B. D. Gupta  
C/o Mohan Sharma  
R/o 51, West Guru Angad Nagar,  
Laxmi Nagar, Delhi – 110092. .... Appellant

VERSUS

1. State (NCT of Delhi)  
Through Chief Secretary Delhi Secretariat  
I. P. Estate, New Delhi – 110002.  
2. Smt. Monika Gupta W/o Sh. Anshu Gupta  
D/o Sh. V. K. Jain  
R/o 3002, Gali Neel Kanth, Opp. Golcha Cinema,  
Darya Ganj, New Delhi – 110002. .... Respondents

Date of filing of Criminal Appeal : 03.05.2010

Date of conclusion of arguments: 13.04.2011

Date of Judgment : 15.04.2011

Criminal Appeal under Section 29 of Protection of Women from Domestic Violence Act, 2005 on behalf of the appellant against the order dated 27.03.2010 passed by Ms. Twinkle Wadhwa, Ld. Metropolitan Magistrate, Delhi in CC No. 143/6/2007.

JUDGMENT:

This appeal is filed under Section 29 of the Protection of Woman from Domestic Violence Act, 2005 (in short the “D. V. Criminal Appeal No. 15/2010; Anshu Gupta V/s State & Another Page No. 1 of 9Act”) by the appellant/husband against the judgment dated 27.03.2010 passed by Ld. Metropolitan Magistrate in CC No. 143/6/2008 under Section 12 of the D. V. Act, whereby appellant has been directed to pay monthly maintenance @ Rs. 2,500/- and compensation of Rs. 1.5 lacs for the loss of earnings to the respondent No. 2, his legally wedded wife, besides a restraint order that appellant would not commit any act of domestic violence against the respondent No. 2.

2. Respondent No. 1/State is a performa party. Notice was given to respondent No. 2, who appeared and filed reply.

3. I have heard Mr. Vipin Kumar, counsel for the appellant, and Mr. B. P. Dhalla, counsel for the respondent No. 2. I have carefully perused the Trial Court Record.

4. The brief facts in the background of this appeal, as per Trial Court Record, are that an application under Section 12 of D. V. Act was filed by the respondent/wife against the appellant/ husband and 07 of his relatives on 24.04.2007 for various reliefs under the D. V. Act. Notice of the application was given to the respondents, who filed a joint reply/written statement to the application and contested the claims of the respondent/wife. Vide order dated 12.08.2008 appellant/husband was directed to pay interim maintenance @ Rs. 2,200/- per month to the respondent/ wife towards maintenance and expenditure of the complainant w.e.f. filing of the application. The order of interim maintenance was challenged in appeal and vide order dated 21.11.2008 the then Ld. Additional Sessions Judge, Delhi dismissed the appeal, but directed that names of the female respondents No. 2, 3, 4 and 8 be deleted from the main complaint, on the basis of unopposed submission of the counsel for the appellant in the said appeal & that only male adult members could be made respondents in proceedings under the D. V. Act.

Thereafter, on the direction of the Trial Court parties filed their affidavits in evidence and vide the impugned judgment the application was disposed of whereby monetary reliefs in terms of maintenance, compensation for loss of earnings and protection order, as detailed in the earlier part of this order was granted against the appellant/husband. No other relief was granted against any of the respondents.

5. The impugned order is assailed on the grounds that there is no evidence on record to prove that the appellant/husband had sent various complaints against the respondent/wife casting aspersions on her character; there is no evidence on record to prove loss of income of the respondent/wife; income of the appellant has been assessed very high without any basis and lastly that while granting monetary relief to the respondent/wife, Trial Court ignored the fact that she had received Rs. 1.25 lacs and other items in a criminal case from the appellant.

6. On the other hand, the appeal has been contested by the respondent No. 2 contending that judgment of the Trial Court is based on proper analysis of the evidence on record and there is no merit in the appeal.

7. I have carefully considered the rival submissions put- forth in the light of material on record.

8. Ld. Trial Court has awarded the maintenance @ Rs. 2,500/- per month to the respondent No. 2 and relevant portion of the judgment of the Trial Court in this regard is reproduced as under:

Para-19 – Though the complainant has stated that her husband has various properties but she has not filed any proof regarding the said property on record along with affidavit. The same have been denied on affidavit by respondent. Petitioner has not filed any proof regarding the status of the respondent. While respondent has admitted that he was

working in BSES and has stated that he was earning Rs. 4,500/- per month approximately and has filed the salary slip on record.

Para-20 – The respondent has tried to state very nominal amount as his income in order to evade his

responsibility towards his wife keeping in view the status of the parties as I assessed from their dressing, their behaviour and interaction with the Court, I presume the income of the respondent as Rs. 10,000/- per month. Since the complainant has admitted that she was working in A-One Watch Company and was earning Rs. 8,800/- per month which she is capable of earning. In such circumstances, I hereby award maintenance @ Rs. 2,500/- which includes rent. This maintenance is awarded keeping in view the fact that she is also able bodied and capable of earning.

9. Further, relevant portion of the judgment of the Trial Court granting Rs. 1.5 lacs as compensation to respondent No. 2 for loss of earning is reproduced below:

Para-21 – Complainant has also claimed loss of earning. She has filed her salary certificate from A-One Watch Company on record according to which her last drawn salary is Rs. 8,800/- per month. Further she has filed various complaints filed by the respondent against complainant and her employer due to which she was thrown out from the job and hence she has been able to prove the loss for earning @ Rs. 8,800/- per month from the date of her dismissal i.e. 25.09.2006. Hence, she is entitled to be compensated for the loss of earning and I hereby award her compensation of Rs. 1.5 lacs.

10. And lastly finding of the Trial Court while passing restraint order against the appellant from committing any domestic violence against the complainant is reproduced as under:

Para-23 – As far as protection order is concerned, parties started residing separately since June, 2006. Thereafter her husband filed various false complaints against her thereby mentioning that she is sex worker which proves that she was harassed by her husband even after filing of the present case. Hence entitled to protection order. Respondent Anshu Gupta is restrained from committing any act of domestic violence against the complainant.

11. It is a matter of record that contesting parties filed affidavits in support of the claims and counter-claims. It is also a matter of record that Trial Court has given finding on the issues between the parties relating to the claims and counter-claims only on the basis of the pleadings and respective affidavits filed. Before coming to the merits of findings of the Trial Court on various issues, it is necessary to examine the procedure followed by the Ld. Trial Court because one of the grounds in appeal is that Trial Court findings are not based on any evidence.

12. The D. V. Act has been enacted to provide for an effective protection of rights of women guaranteed under the Constitution who are victims of violence of any kind

occurring within the family and for matters connected therewith or incidental thereto. This is a complete code in itself about substantive reliefs available to women, as well as, about the procedure to be followed by the Trial Courts while adjudicating the matters under this Act.

13. Chapter IV of the D. V. Act provides procedure for obtaining orders of various reliefs under the Act. Section 12 of this Chapter provides that an aggrieved person or any person on her behalf may file an application before the Magistrate for seeking one or more reliefs provided under the D. V. Act. Various reliefs available under the D. V. Act are Protection Order (Section 18), Residence Order (Section 19), Monetary Relief (Section 20), Custody Orders (Section 21) and Compensation Orders (Section 22). Section 28 of this Chapter in the D. V. Act lays down the procedure to be followed by the Magistrate while dealing with an application filed under Section 12 of the D. V. Act for various reliefs, according to which all proceedings under this Act shall be governed by the provisions of the Code of Criminal Procedure, 1973 (in short "Cr. P. C.") until and unless provided otherwise in the Act. However, this Section also provides that nothing shall prevent the Trial Court from laying down its own procedure for disposal of an application under the D. V. Act.

14. Corresponding Rule in the Protection of Women from Domestic Violence Rules, 2006 is Rule 6, according to which an application under Section 12 of the D. V. Act shall be dealt with in the manner prescribed in Section 125 of the Cr. P. C. and all orders passed under the D. V. Act shall be enforced in the same manner. The procedure required to be followed for the proceedings under Section 125 Cr. P. C. is laid down in Section 126 Cr. P. C. according to which the evidence is required to be recorded in the manner prescribed for "summons cases".

15. The position which emerges from the various provisions referred and discussed above is that as a rule, the proceedings under the Act shall be governed by the provisions of Cr. P. C.

However, when there is no procedure provided in the Cr. P. C. to deal with a particular situation of a case, the Court may lay down its own procedure for disposal of an application under Section 12 of the Act. It gets further clarified by Rule 6 of The Protection of Women from Domestic Violence Rules, 2006, which provides that applications under Section 12 of the Act shall be dealt with and the orders be enforced in the same manner laid down under Section 125 of Cr. P. C. The procedure required to be followed under Section 125 Cr. P. C. is prescribed in Section 126 Cr. P. C., according to which it would be as prescribed for the "summons cases". Therefore, as a general rule, the Courts of Metropolitan Magistrates while adjudicating and deciding the applications under Section 12 of the Act are required to follow the procedure laid down in Cr. P. C. for trial of summons cases, which would include taking and recording of evidence and finding of the Court on proof of facts.

16. Coming to the impugned judgment under challenge, it is revealed from the Trial Court Record that the judgment is passed only on the basis of affidavits of the parties.

Parties have not been given the opportunity to cross-examine each others witnesses, which is a basic procedure for leading evidence and right of the opposite party. The Trial Court is expected to give the findings on facts affecting claims and counter-claims on the basis of evidence on record. In a trial, findings cannot be given merely on the basis of affidavits of the witnesses until and unless they are subjected to cross-examination and due opportunity is given to the other party in this regard. Therefore, since the findings of Ld. Trial Court in the impugned order are given merely on the basis of affidavits, and they are not based on any proof after analysis of the material and evidence, the impugned order cannot sustain.

17. In view of the requirement of the legal procedure as discussed above, the impugned judgment dated 27.03.2010 is set-aside. Matter is remanded back to the Trial Court with direction to decide and give findings on facts affecting claims and counter-claims of the parties on the basis of evidence led by the parties including due opportunity to cross-examine the witnesses.

18. Trial Court Record be returned along with a copy of this judgment.

19. Parties to appear before the Trial Court on

25.04.2011.

20. It is made clear that this judgment will not have any bearing on the order of the Trial Court dated 12.08.2008 whereby interim maintenance has been granted to the respondent No. 2.

21. Criminal Appeal file be consigned to Record Room.

Announced in the open court (Santosh Snehi Mann)

on 15th April, 2011

Additional Sessions Judge (Central)  
Tis Hazari Courts, Delhi