

**IN THE COURT OF MRS. VEENA RANI, METROPOLITAN MAGISTRATE,
NEW DELHI**

CC No:2979/1/2007 P.S. Dabri

Smt. Rekha Gupta
W/o Sh. Dinesh Gupta,
D/o Sh. Bangali Babu,
R/o A-312, Shastri Nagar,
Delhi-110052Applicant

Versus

1. Sh. Dinesh Kumar Gupta (Husband)
2. Sh. Sunil Gupta (Brother in law)
3. Sh. Narender Gupta (Brother in law)

All sons of Sh. Faqir Chand.

4. Smt. Urmila Devi (Mother in law)

W/o Sh. Faqir Chand
All R/o C-242/60, Foot Road,
Mahavir Enclave Part III,
Dabri Mor, Uttam Nagar West
New DelhiRespondents

ORDER

1. The present application u/s 12 of the Protection of Women from Domestic Violence Act, 2005 has been filed on 12th December, 2007 by Mrs. Rekha Gupta against her husband Dinesh Kumar Gupta and other respondents No:2 to 4. The complainant/applicant has also filed the copy of FIR and the petition under section 125 Cr.P.C. The Protection of Women from Domestic Violence Act, 2005 would be referred as the Act, 2005.

2. By way of this petition the following orders has been sought:
a. The protection orders u/s 18 of the Act, 2005;
b. The residence orders u/s 19 of the Act, 2005;
c. The monetary relief u/s 20 of the Act, 2005;
d. The compensation and damages u/s 21 of the Act, 2005;
e. Order prohibiting the respondents committing acts of domestic violence and repeating the same as mentioned above.

f. Pass an order under section 21 of the Act and to direct the respondents to pay compensation/maintenance for the two minor children which are still in the custody of respondents and the father/respondent no:1 is still in the judicial custody in case U/s 498A/406 IPC in FIR No:405/2007 since 16-11- 2007 and respondents also be directed to handover the minor children to the complainant/mother immediately for their routine life and for the sake of there future.
g. and such interim order or orders as deemed fit just and proper in the circumstances of the case.

3. It has been averred in the application that the applicant was married to the respondent no:1 on 14-3-1994. the couple was blessed with a daughter 'Ruchi' on 10-1-1995 and a

son 'Boby' on 26-8-1999. the respondent no:1 is said to be in the business of mobile phones in association with the other respondents i.e. R-2 to R-4. The respondents i.e. R1 to R-4 had been very unkind and brutal to the applicant. The applicant narrates the incidence dt.11-4-07 in the paragraph no:4 of the application whereby it is averred that the respondents no:1 to 4 had thrashed the applicant badly and the respondent no:4 i.e. the mother in law actually wanted to kill the applicant by tightening the duppatta like noose around the applicant's neck.

4. The application has been supported by an affidavit of the applicant.
5. All the four respondents appeared on notice sent to them of the petition and the interim application and filed the reply to the application.

All the respondents R-1 to R-4 have denied the allegations of any incident of the domestic violence. It has been specifically alleged that there is no cause of action in filing the petition and that by filing the petition the petitioner is trying to get benefit of her own wrong doings. It is alleged that the applicant and the respondent no:1 husband had been residing separately for the last twelve years in the house no:C-242/60 at Mahavir Enclave Part III (Delhi) and the rest of the respondents R-2 to R-4 were residing in the rented accommodation at B-542, Mahavir Enclave Part III (Delhi). It is also averred that the mother in law i.e. R-4 is the owner of the house no:C-242/60 at Mahavir Enclave Part III (Delhi). In the reply it is also stated that the applicant-complainant happens to be greedy lady who had earlier on many occasions tried to influence the respondent no:4 i.e. the mother in law to alienate the dwelling house i.e. house no:C- 242/60 at Mahavir Enclave Part III (Delhi) in the favour of the applicant-complainant. The husband of the complainant is said to have a monthly salary of only Rs.3,000/- (Rupees Three Thousand). Further it has been specifically ;stated that the petition is not maintainable against the women respondents in view of the definition of respondents contained in section 3 clause (q). 6. I have heard the arguments tendered by the learned counsels of the parties and have perused the record carefully.

7. After the acknowledgment of domestic violence as a human rights issued by the Vienna Accord of 1994, the Beijing Declaration and the Platform for Action, the United Nations general assembly also released a report on domestic violence. This report included many groundbreaking aspects of the issue. In this context, the Domestic Violence Act in India also becomes critically important in the relevant areas and aspects covered. In the fact of the findings and ecommendations of the UN general assembly report on violence 4 against women, the implementation of the Domestic Violence Act (DVA) 2005 becomes crucial in India. The act attempts to address the concerns of the victims by first of all recognizing the fact that domestic violence is a reality. Prior to the inaction of the law, the only remedy available for marital violence was section 498 of IPC.

8. At the out set the maintainability of the petition against the women respondents No:4 i.e. Smt. Urmila Devi (the mother-in-law) needs to be considered. In this context the definition of the respondents is reproduced as under: The said definition is thus: The said definition is thus: S.3(q) "respondent" means any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act: Provided that an aggrieved wife or female living

in

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relationship in the nature of a marriage may also file a complaint against a relative of the husband or the male partner:

9. The definition of respondents prohibits manifestly the launching of proceedings under the protection of the Act, 2005. As a matter of law as envisaged under the Act it is the women who is the aggrieved person qua the adult male person as defined in S.2(q) of the Act, The impleading of women member as the respondent in the petition shows the very mala-fide intention of the petitioner. Hence the petition along with merit dismissal against the R-4 Smt. Urmila Devi (the mother-in-law) as being not maintainable.

10. I also want to cite the authority reported as S.R. Batra Vs.Smt. Taruna Batra, 2006 (13) SCALE 652. The facts of this case were that Trauna Batra and Amit Batra were married on April 14, 2000. After marriage, Taruna started living with her husband Amit on the second floor of her mother-in-law's house at Ashok Vihar in Delhi. Amit Batra filed a divorce petition against his wife. Taruna Batra filed a First Information Report for cruelty, intimidation and breach of trust against her in laws, husband and sister-in-law. Taruna shifted to her parent's house. Later, when she tried to enter the house she found that the main entrance was locked. She filed a suit for mandatory injunction to enter the premises. According to the husband's family, Taruna Batra forcibly broke open the lock of her mother-in-law's house and terrorised them. The family also stated that the husband Amit had moved out of Ashok Vihar to his own flat at Mohan Nagar. The trial court held that Taruna was in possession of the second floor of the house and granted an injunction restraining the husband's family from interfering with her possession. In appeal, the learned court held that Taruna was not living on the second floor of the premises. The learned court also held that Amit Batra was not living in the Ashok Vihar premises, and that the 'matrimonial home' could not be said to be a place where only the wife was residing. The application seeking that the husband's family be restrained from interfering with the wife's possession was dismissed by the court. Taruna Batra subsequently filed a petition in the Hon'ble Delhi High Court.

11. The Hon'ble Delhi High Court took the view that mere change of residence by the husband would not shift the matrimonial home, particularly when he had filed a divorce petition against his wife. Therefore, the shifting of the husband Amit Batra to Mohan Nagar in Ghaziabad would not make that house the matrimonial home of the wife Taruna. The Hon'ble Delhi High Court held that Taruna Batra was entitled to continue to reside on the second floor of the Ashok Vihar premises, as that was her matrimonial home. Amit and his family appealed to the apex court.

12. The Hon'ble Supreme Court observed that in England the rights of the spouse to the matrimonial home were governed by the Matrimonial Homes Act, 1967. But no such rights exist in India. Illustrating the mindset that the court brought to bear on interpreting a law that deals with the rights of a wife in the matrimonial home, the judgment declares that, in any case, the rights which may be available under any law could only be against the husband and not against the mother in law or father in law. The court held that the Ashok Vihar house belonged to the mother in law and not to be husband. Therefore, Taruna Batra could not claim any right to live in the premises. The judgment observes that Taruna Batra was not residing in the house and so could not claim an injunction restraining the husband's family from dispossessing her of the premises. Therefore, the court goes on to interpret the definition of 'shared household' in the Domestic Violence

Act and the rights of a woman in the household. The Domestic Violence Act clearly defines 'shared household' in Section 2(s) as a household where the aggrieved person "lives or at any stage has lived in a domestic relationship either singly or along with the respondent". The definition covers household owned or tenanted, or joint family property, irrespective of whether the respondent or the aggrieved person has a right, title or interest in the shared household. The submission made on behalf of Taruna Batra was that the definition of 'shared household' in the Domestic Violence Act clearly included a household where the aggrieved person lives or at any stage had lived in a domestic relationship. As Taruna Batra had admittedly lived in the premises at Ashok Vihar, it clearly constituted her 'shared household'. The Hon'ble Supreme Court, rejected the submission that the second floor premises of Ashok Vihar were the shared household of the wife Taruna Batra. The court also rejected Taruna Batra's claim for alternative accommodation under the Domestic Violence Act. The judgment holds that the property belonged to the husband's mother and could not be claimed by the wife as 'shared household'. 13. I am also basing my decision on the above-discussed reported as S.R. Batra Vs. Smt. Taruna Batra, 2006 (13) SCALE 652. Therefore the prayer No:2 of the complainant-applicant can not be granted. 14. There is another significant aspect of the present application. The applicant has also filed an FIR bearing No:405 of 2007 on the allegation of the incidence averred by the applicant in the present application in the paragraph No:4. Thus I see that the present applicant has been vexatious. The husband i.e. R-1 as per the averments is in Jail on account of the FIR No:405/2007 under section 498-A/406/34 IPC. There also happens to be another litigation pursued by the applicant and which is her petition under section 125 Cr.P.C. Through that petition the present applicant-complainant had sought monetary maintenance. Considering that the applicant has merely tried to use the previous FIR in order to ask for the relief through the present complaint/application I find the applicant has been vexatious in her litigations. 15. The applicant also sought custody of his two children Ms. Ruchi and Master Bobby who are in the custody of their father. On 28-6-2008, I personally enquired from the children as to with whom they want to live. Ms. Ruchi is aged about 10-12 years of age and Master Bobby is of 7-8 years old. Both children desired to live with their father. In this circumstance the desire/wish of children is of paramount consideration, therefore, the court can not compel, the children to live with their mother against their wishes. Hence this relief is declined. Moreover, the applicant is also getting the maintenance u/s 125 Cr.P.C. Hence there is further no need to award maintenance to the applicant in the present case. As far as other relief are concerned, they are vexatious, therefore, declined. However, this observation will not cause any prejudice to the rights of the parties in any other case or proceedings.

Announced in the open court. (VEENA RANI)

Dt.28-7-2008 MM:N.Delhi

Dt. 28-7-2008

