

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Reserve: 9th August, 2010

Date of Order: 27th August, 2010

+Crl.M.C.No. 491/2009

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27.08.2010

Sanjay Bhardwaj & Ors. ... Petitioner
Through: Dr. Naipal Singh, Advocate

Versus

The State & Anr. ... Respondents
Through: Mr. O.P.Saxena, APP for the State
With Mr. Gajraj Singh, SI
Mr. K.C.Jain, Adv. for the Complainant/Wife

JUSTICE SHIV NARAYAN DHINGRA

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| 1. Whether reporters of local papers may be allowed to see the judgment? | Yes. |
| 2. To be referred to the reporter or not? | Yes. |
| 3. Whether judgment should be reported in Digest? | Yes. |

JUDGMENT

The present petition under Section 482 Cr.P.C. assails an order of interim maintenance under The Protection of Women from Domestic Violence Act, 2005 (in short Domestic Violence Act) passed by the learned MM on 16th January, 2008 and confirmed by the learned Additional Sessions Judge in appeal by order dated 29th February, 2008.

2. The petitioner was a Non-Resident Indian, working in Luanda, Angola in Africa as a Manager. He came to India

taking leave from his job for marriage. Marriage between the petitioner and respondent no.2/wife was settled through matrimonial advertisement. The respondent wife was MA (English) and MBA. As per her bio-data sent before marriage, she was doing job with a Multinational Company. The marriage between the parties was solemnized on 14th May, 2007 at a Farmhouse in Vasant Kunj and was got registered on 25th May, 2007. The parties lived together for a limited period of 10 days i.e. from 15th May, 2007 to 19th May, 2007 and from 2nd June to 6th June, 2007. While the allegations of husband are that marriage failed within 3 weeks since the wife was suffering from a chronic disease about which no information was given to him before marriage and a fraud was played. The allegations made by wife were as usual of dowry demand and harassment. Since the marriage did not succeed, the husband/petitioner filed a petition under Section 12 of Hindu Marriage Act for declaring the marriage as null and void and the wife first filed an FIR against the husband under Section 498A/406 IPC and then filed an application under Section 12 of Domestic Violence Act.

3. It is not relevant for the purpose of this petition to go into the details of allegations and counter allegations made

by each other. Suffice it to say that the learned MM passed an order dated 16th January, 2008 directing husband to pay an interim maintenance of ₹ 5000/- pm to the wife. He fixed this maintenance without considering the contentions raised by the husband (as is stated in the order) that the husband lost his job in Angola (Africa) where he was working before marriage because his passport was seized by police and he could not join his duties back. After marriage he remained in India, he was not employed. In the appeal, learned Additional Session Judge noted the contentions raised by the husband that he had become jobless because of the circumstances as stated by him and he had no source of income, he was not even able to maintain himself and had incurred loan, but observed that since the petitioner had earlier worked abroad as Sales Manager and in view of the provisions of Domestic Violence Act, he had the responsibility to maintain the wife and monetary relief was necessarily to be provided to the aggrieved person i.e. wife. He observed that the wife was not able to maintain herself therefore husband, who earned handsomely in past while working abroad, was liable to pay ₹ 5000/- pm to the wife as fixed by the learned MM.

4. A perusal of Domestic Violence Act shows that Domestic Violence Act does not create any additional right in favour of wife regarding maintenance. It only enables the Magistrate to pass a maintenance order as per the rights available under existing laws. While, the Act specifies the duties and functions of protection officer, police officer, service providers, magistrate, medical facility providers and duties of Government, the Act is silent about the duties of husband or the duties of wife. Thus, maintenance can be fixed by the Court under Domestic Violence Act only as per prevalent law regarding providing of maintenance by husband to the wife. Under prevalent laws i.e. Hindu Adoption & Maintenance Act, Hindu Marriage Act, Section 125 Cr.P.C - a husband is supposed to maintain his un-earning spouse out of the income which he earns. No law provides that a husband has to maintain a wife, living separately from him, irrespective of the fact whether he earns or not. Court cannot tell the husband that he should beg, borrow or steal but give maintenance to the wife, more so when the husband and wife are almost equally qualified and almost equally capable of earning and both of them claimed to be gainfully employed before marriage. If the husband was BSc. and Masters in Marketing Management from Pondicherry University, the wife was MA

(English) & MBA. If the husband was working as a Manager abroad, the wife with MBA degree was also working in an MNC in India. Under these circumstances, fixing of maintenance by the Court without there being even a prima facie proof of the husband being employed in India and with clear proof of the fact that the passport of the husband was seized, he was not permitted to leave country, (the bail was given with a condition that he shall keep visiting Investigating Officer as and when called) is contrary to law and not warranted under provisions of Domestic Violence Act.

5. We are living in an era of equality of sexes. The Constitution provides equal treatment to be given irrespective of sex, caste and creed. An unemployed husband, who is holding an MBA degree, cannot be treated differently to an unemployed wife, who is also holding an MBA degree. Since both are on equal footing one cannot be asked to maintain other unless one is employed and other is not employed. As far as dependency on parents is concerned, I consider that once a person is grown up, educated he cannot be asked to beg and borrow from the parents and maintain wife. The parents had done their duty of educating them and now they

cannot be burdened to maintain husband and wife as both are grown up and must take care of themselves.

6. It must be remembered that there is no legal presumption that behind every failed marriage there is either dowry demand or domestic violence. Marriages do fail for various other reasons. The difficulty is that real causes of failure of marriage are rarely admitted in Courts. Truth and honesty is becoming a rare commodity, in marriages and in averments made before the Courts.

7. I therefore find that the order dated 16th January, 2008 passed by the learned MM and order dated 29th February, 2008 passed by the learned Additional Sessions Judge fixing maintenance without there being any prima facie proof of the husband being employed are not tenable under Domestic Violence Act. The petition is allowed. The orders passed by Metropolitan Magistrate and learned Additional Sessions Judge are hereby set aside.

August 27, 2010
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SHIV NARAYAN DHINGRA, J.