

**HIGH COURT OF TRIPURA
AGARTALA**

Crl.Rev.P.No.36 of 2020

Ramendra Kishore Bhattacharjee

Son of Late Santi Gopal Bhattacharjee
Resident of Badharghat, Sreepalli
P.S.-Amtali
District-West Tripura

.....Appellant(s)

Versus

Smt.Madhurima Bhattacharjee

Wife of Ramendra Kishore Bhattacharjee
C/O Sri Tapan Bhattacharjee
of Ramnagar Road No.4
P.S: West Agartala
District: West Tripura
and Anr.

.....Respondent(s)

For the Appellant(s) : Mr.B.Deb, Adv.

For the Respondent(s) : Mr.S.Debnath, Addl. PP
Mr.Raju Datta

Date of hearing : **03.12.2020**

Date of delivery of
Judgment & order : **10.02.2021**

Whether fit for reporting :

Yes	No
<input type="checkbox"/>	<input checked="" type="checkbox"/>

BEFORE

HON'BLE MR.JSUTICE S.G.CHATTOPADHYAY

JUDGMENT

[1] This criminal revision petition has been filed under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973(Cr.P.C. hereunder) against the judgment and order dated 18.07.2020 delivered in Criminal Appeal No. 16 of 2018 by the Additional

Sessions Judge (Court No.4) West Tripura, Agartala partly allowing the appeal against the judgment and order dated 23.08.2018 passed by the Judicial Magistrate, First class (Court No.8) Agartala in case No. CR 54 of 2016 under the Protection of Women from Domestic Violence Act, 2005 ('the DV Act' in short).

[2] Brief facts of the case are as under:

The wife presented an application under Section 12 of the DV Act in the court of the Judicial Magistrate of the First class (court No.8) at Agartala on 22.01.2016 seeking various reliefs under the DV Act wherein she referred to several incidents of domestic violence against her husband. It was stated by her that after solemnization of their marriage a son was born to them on 28.05.2001. Their relationship was normal for a period of 01 year only. Thereafter, her husband subjected her to harassment and torture for dowry and since she was unable to meet his demand, she was physically assaulted by her husband on various dates. Gradually he developed an extramarital affair. When the wife raised protest against his conduct he assaulted her. As a result of continuous assault on 16.12.2015 and 17.12.2015 she became ill and received treatment

in IGM Hospital at Agartala. Unable to bear his torture, the wife parted with his company on 17.12.2015. In this factual background, she claimed the following reliefs in the trial court under the DV Act:

- (i) A protection order under Section 18 of the DV Act restraining her husband from committing acts of domestic violence to her.
- (ii) Residence order under Section 19 of the DV Act restraining the husband from dispossessing her from the shared household.
- (iii) Monetary relief under Section 20 of the DV Act @Rs.15,000/- per month along with one time medical expenses of Rs.1 lakh.
- (iv) Compensation order under Section 22 of the DV Act against the husband for payment of compensation and damages of an amount of Rs.3 lakhs for the injuries including mental torture and emotional distress caused to her by her husband by his acts of domestic violence.

[3] Her application was registered in the trial court as case no. CR 54 of 2016 and notice was issued to the husband.

सत्यमेव जयते

[4] The husband filed written objection against the complaint of his wife. In his written objection he stated that his wife filed a false and frivolous complaint against him. According to him, she was very arrogant

and torturous right from the beginning of their marriage. But he condoned her conduct and wanted to continue the relationship. He noticed no change in her behavior even after the birth of their son. After he was transferred to the court of District and Sessions Judge at Kailashahar, he had taken his wife and child to there from where the wife used to visit her parents at Agartala frequently without taking any care of his convenience. Having noticed growth of abnormalities in her conduct day by day, the husband with the consent of her parents had taken her to various psychiatrists. He had also taken her to Bangalore for treatment in the National Institute of Mental Health And Neuro Science (NIMHANS) in 2012 which brought no change in her. The husband then approached the State Commission for Women for reconciliation. He also approached the State Legal Services Authority for a settlement. His efforts yielded no result. Ultimately, his wife filed an FIR against him and his old parents on 18.12.2015. Since then, the husband has been living separately along with his son who is studying in school. Having denied the allegations of his wife, he claimed that his wife was solely responsible for their matrimonial discord

and as such she was not entitled to any relief under the DV Act.

[5] During the trial of the case, the wife examined herself as **PW-1**, her elder brother Tapan Bhattacharjee as **PW-2** and her neighbor Ranajoyti Bhattacharjee as **PW-3**.

[6] The husband on the other hand examined himself as **DW-1**, his neighbor Priya Bhusan Deb as **DW-2** and Smt. Rekha Roy as **DW-3**.

[7] The learned trial court on appreciation of evidence granted reliefs to the wife vide paragraph 12 of his judgment dated 23.08.2018 which is as under:

ORDER

(12) In the result, the application filed by the aggrieved petitioner U.S. 12 of the Act is partly allowed and the aggrieved petitioner is found entitled to protection order, residence order and monetary relief. The respondents are prohibited from committing any act of domestic violence or aiding or abetting in the commission of acts of domestic violence upon the aggrieved petitioner. The Respondent No.1 is further directed as part of residence order to make payment of Rs.2000/- per month as rent for accommodation to the aggrieved petitioner. He is further directed to make payment of Rs.15,000/- per month as monetary relief in the form of maintenance to the aggrieved petitioner. The payment of Rs.2000/- per month as residence order and Rs.15,000/- per month as maintenance is to be deposited within the 10th day of every month in the Bank account of the aggrieved petitioner.

Supply a copy of this judgment and order free of cost to both the parties and to the C.D.P.S's of their respective jurisdiction of address for doing the needful. This Judgment is

passed on this 23rd day of August, 2018 under the seal and signature of this Court.

Thus, the case is disposed off on contest. Make entry in the concerned T.R. The record shall be consigned to Record Room after due compliance of all legal formalities.”

[8] The husband and his mother, brother and sister being appellants challenged the said judgment of the learned trial court in criminal appeal no.16 of 2018 before the learned Additional Sessions Judge [Court no.4] at Agartala in West Tripura and the leaned Additional Sessions Judge by the impugned judgment partly allowed the appeal vide paragraph 8 of the impugned judgment and directed as under:

“8. In view of the discussion made above, the present criminal appeal partly succeeds and the judgment and order dated 23.8.2018 passed by the Ld. Trial Court in C.R. 54 of 2016 is partly upheld and interfered with as stated herein below : -

(a) The husband-appellant No.1 is solely proved to have committed and liable for the acts of Domestic Violence upon his aggrieved wife and all other appellant Nos.2, 3 and 4 are hereby discharged from the liabilities.

(b) The protection order passed by the Ld. Trial Court under Section 18 of the PWDV Act is upheld with a direction that the husband-appellant No.1 strictly adhered the same.

(c) The order of monetary relief passed in the form of maintenance under Section 20(1)(d) of the PWDV Act for an amount of Rs.15,000/- per month is hereby upheld, and

(d) The order of relief passed under Section 19(f) of the PWDV Act is hereby set aside.”

[9] Aggrieved with the impugned judgment of the learned Additional Sessions Judge, the husband has challenged the said judgment in this criminal revision petition.

[10] Heard Mr. B. Deb, learned counsel appearing for the husband as well as Mr. Raju Datta, learned counsel appearing for the wife.

[11] The grounds of challenge to the impugned judgment of the appellate court are as under:

i) The learned courts below have not properly appreciated the evidence and materials on record and as such their judgments are erroneous and liable to be set aside.

ii) The learned courts below have failed to appreciate the fact that the wife has left the son in the custody of her husband. Thereafter, the husband alone has been shouldering all expenses of the son including his educational expenses. The learned courts below without taking into consideration the expenses borne by the husband directed him to provide monetary relief to the wife @ ₹15,000/- per month.

iii) While providing the monetary relief to the wife under Section 18 of the DV Act, the courts below did not also take into consideration personal expenses of the husband and expenses borne by him for maintaining his old and ailing mother. Moreover, the learned courts below did not also consider his permanent disability and the recurring medical expenses for his treatment. While determining the amount of monetary relief the courts below did not also take into consideration the order of the Family Court, Agartala passed in Misc. Case No.463 of 2017 whereby the husband was directed to pay ₹ 6000/- to his wife in a proceeding under Section 125 Cr.P.C.

iv) The trial court as well as the appellate court issued the protection order against the husband without any proof of commission of domestic violence. According to the husband, evidence adduced by him was not appreciated by the trial court as well as the appellate court while issuing such protection order. सत्यमेव जयते

[12] Besides projecting the grounds stated above, Mr.B.Deb, learned counsel appearing for the husband has also contended that where there is no

evidence of domestic violence, the wife is not entitled to any relief under the DV Act. In this regard Mr. Deb, learned counsel has relied on order dated **28.01.2019** of the Apex Court passed in ***Sangita Saha vs. Abhijit Saha And Others.*** [In **Petition(s) for Special Leave to Appeal(Crl.) No(s). 2600-2601 /2016**] wherein the Apex Court has held that petitioner is entitled to relief under the DV Act only in case she establishes domestic violence. Mr. Deb, learned counsel has also contended that in absence of the proof of the ingredients of domestic violence, the wife is not entitled to relief/relieves provided under the DV Act. In support of his contention, Mr. Deb, learned counsel has placed reliance on the order dated **04.10.2019** of the Apex Court in ***Kamlesh Devi vs. Joypal And Others.***[**Special Leave Petition (Criminal)Diary No.(s) 34053 /2019**] wherein the Apex Court has held that relief under DV Act can be declined where ingredients of domestic violence are wholly absent. Further submission on behalf of the husband is that the learned trial court as well as the appellate court should not have ignored the maintenance awarded to the wife in a

proceeding under Section 125 Cr.P.C while determining the amount of monetary relief to the wife under Section 20 of the DV Act. In support of his contention, Mr. Deb learned counsel has referred to the decision of the Apex Court in ***Rajnish vs. Neha and Another*** reported in ***2020 SCC Online SC 903*** wherein the Apex Court has directed as under:

"Directions on overlapping jurisdictions

It is well settled that a wife can make a claim for maintenance under different statutes. For instance, there is no bar to seek maintenance both under the D.V. Act and Section 125 of the Cr.P.C., or under H.M.A. It would, however, be inequitable to direct the husband to pay maintenance under each of the proceedings, independent of the relief granted in a previous proceeding. If maintenance is awarded to the wife in a previously instituted proceeding, she is under a legal obligation to disclose the same in a subsequent proceeding for maintenance, which may be filed under another enactment. While deciding the quantum of maintenance in the subsequent proceeding, the civil court/family court shall take into account the maintenance awarded in any previously instituted proceeding, and determine the maintenance payable to the claimant. To overcome the issue of overlapping jurisdiction, and avoid conflicting orders being passed in different proceedings, we direct that in a subsequent maintenance proceeding, the applicant shall disclose the previous maintenance proceeding, and the orders passed therein, so that the Court would

take into consideration the maintenance already awarded in the previous proceeding, and grant an adjustment or set-off of the said amount. If the order passed in the previous proceeding requires any modification or variation, the party would be required to move the concerned court in the previous proceeding."

[13] Mr. Deb, learned counsel appearing for the husband has finally argued that since there is no proof of domestic violence, the impugned judgment is liable to be set aside.

[14] Mr. Raju Datta, learned counsel appearing for the wife on the other hand contends that admittedly the husband is a government employee having a monthly salary of not less than ₹50,000/- who is quite able to maintain his wife. Further contention of Mr. Datta, learned counsel, is that the wife by producing cogent and coherent evidence proved that she was subjected to domestic violence by her husband and the courts below on appreciation of her evidence and the entire facts and circumstances of the case granted the reliefs to her under the DV Act. It is therefore, submitted by Mr. Datta that there is no reason to interfere with the findings of the courts below. According to Mr. Datta,

learned counsel, the wife is entitled to the same standard of living as she would have lived in the house of her husband and therefore, the trial court rightly granted ₹15,000/- per month as monetary relief to her which was also upheld by the appellate court. In support of his contention, Mr.Datta has referred to the decision of the Apex Court in **Reema Salkan vs. Sumer Singh Salkan** reported in **(2019) 12 SCC 303** wherein the Apex Court succinctly held that while determining the maintenance allowance for the wife, regards must be had to the living standard of his husband and his family.

[15] With regard to the determinants of the maintenance allowance, Mr.Datta, learned counsel appearing for the wife has also placed reliance on the decision of Delhi High Court in **Babita Bisht vs. Dharmender Singh Bisht** reported in **(2019) SCC Online Del 8775** wherein Delhi High Court has held as follows:

"16. The Supreme Court in **Reema Salkan vs. Sumer Singh Salkan** in **Cri.A.No.1220/2018** in judgment dated **25.09.2018** relying on the earlier judgment of the Supreme Court in **Bhuvan**

Mohan Singh vs. Meena: (2015) 6 SCC 353 held that "the concept of sustenance does not necessarily mean to lead the life of an animal, feel like an unperson to be thrown away from grace and roam for her basic maintenance somewhere else. She is entitled in law to lead a life in the similar manner as she would have lived in the house of her husband. That is where the status and strata come into play, and that is where the obligations of the husband, in case of a wife, become a prominent one. In a proceeding of this nature, the husband cannot take subterfuges to deprive her of the benefit of living with dignity. Regard being had to the solemn pledge at the time of marriage and also in consonance with the statutory law that governs the field, it is the obligation of the husband to see that the wife does not become a destitute, a beggar. A situation is not to be maladroitly created where under she is compelled to resign to her fate and think of life "dust unto dust". It is totally impermissible. In fact, it is the sacrosanct duty to render the financial support even if the husband is required to earn money with physical labour, if he is able-bodied. There is no escape route unless there is an order from the court that the wife is not entitled to get maintenance from the husband on any legally permissible grounds."

[16] Mr.Datta, learned counsel appearing for the wife has further argued that monetary relief contemplated under Section 20 of the DV Act is different from maintenance which can be in addition to an order of maintenance granted under Section 125 Cr.P.C. or any other law. In support of his contention Mr. Datta, learned counsel has referred to the decision

of the Apex Court in ***Juveria Abdul Majid Patni vs. Atif Iqbal Mansoori And Another*** reported in **(2014)10 SCC 736** wherein the Apex Court has held as under:

"23. In the instant case, the appellant sought relief under Sections 18 to 23 of the Domestic Violence Act, 2005. It includes Protection order under Section 18, Monetary relief under Section 20, Custody orders under Section 21, Compensation under Section 22 and interim relief under Section 23. Relevant provisions read as follows:

"Monetary reliefs.—(1) 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.

(2) The monetary relief granted under this section shall be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved person is accustomed.

(3) The Magistrate shall have the power to order an appropriate lump sum payment or monthly payments of maintenance, as the nature and circumstances of the case may require.

(4) The Magistrate shall send a copy of the order for monetary relief made under sub-section (1) to the parties to the application and to the in-charge of the police station

within the local limits of whose jurisdiction the respondent resides.

(5) The respondent shall pay the monetary relief granted to the aggrieved person within the period specified in the order under sub-section (1).

(6) Upon the failure on the part of the respondent to make payment in terms of the order under sub-section (1), the Magistrate may direct the employer or a debtor of the respondent, to directly pay to the aggrieved person or to deposit with the court a portion of the wages or salaries or debt due to or accrued to the credit of the respondent, which amount may be adjusted towards the monetary relief payable by the respondent."

The Monetary relief as stipulated under Section 20 is different from maintenance, which can be in addition to an order of maintenance under Section 125 of the Cr.P.C. or any other law. Such monetary relief can be granted to meet the expenses incurred and losses suffered by the aggrieved person and child of the aggrieved person as a result of the domestic violence, which is not dependent on the question whether the aggrieved person, on the date of filing of the application under Section 12 is in a domestic relationship with the respondent."

[17] Mr. Datta, learned counsel has also placed reliance on a decision of the Delhi High Court in ***Shome Nikhil Danani vs. Tanya Benon Danani*** reported in ***(2019) 54 Online Del 8016*** wherein the Delhi High Court has held as follows:

"17. Clearly the scope of Section 20 of the DV Act is much wider than that of Section 125 Cr.P.C. While Section 125 Cr.P.C. talks only of maintenance, Section 20 DV Act stipulates payment of monetary relief to meet the expenses incurred and losses suffered as a result of the domestic violence including but not limited to loss of earning, medical expenses, loss caused due to destruction, damage or removal of

any property from the control of aggrieved person. Further, Section 20(1)(d) of the DV Act clearly provides that "In proceedings under the DV Act, the magistrate may direct the Respondent to pay the maintenance to 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 Cr.P.C. or any other law for the time being in force."

18. This clearly shows that an order under Section 20 DV Act is not restricted by an order under section 125 Cr.P.C. The Trial Court clearly erred in not appreciating the distinction between the two provisions and the reasoning is clouded by an impression that the respondent-wife in the application under section 23 was only seeking an order of maintenance, which is not the case. In her application under section 23 of the DV Act, the respondent wife has inter-alia sought residence rights under Section 19 and protection under Section 18 apart from the monetary relief under Section 20.

19. Reference may also be had to the Judgment of a coordinate bench of this court in Karamchand & Ors Vs State NCT of Delhi & Anr (2011) 181 DLT 494 and of the Supreme Court of India in Juveria Abdul Majid Khan Patni Vs Atif Iqbal Mansoori (2014) 10 SCC 736, wherein the Supreme Court has held that monetary relief as stipulated under Section 20 is different from maintenance, which can be in addition to an order of maintenance under Section 125 Cr.P.C. or any other law.

20. Further, it may be seen that proceeding under the DV Act and under section 125 Cr.P.C are independent of each other and have different scope, though there is an overlap. In so far as the overlap is concerned, law has catered for that eventuality and laid down that at

the time of consideration of an application for grant of maintenance under DV Act, maintenance fixed under section 125 Cr.P.C shall be taken into account.

21. The Judgment in the case of Rachna Katuria Versus Ramesh Kathuria (supra) relied upon by learned Senior Counsel for the Petitioner to contend that DV Act does not create any additional right to claim maintenance on the part of the aggrieved person and if a woman had already filed a suit claiming maintenance and after adjudication maintenance has been determined, she does not have a right to claim additional maintenance under the DV Act is per in curium as it does not notice the very provisions of Section 20 and 23 of DV Act. Further now the Supreme Court of India in Juveria Abdul Majid Khan Patni Vs Atif Iqbal Mansoori (supra) has held that monetary relief under Section 20 DV Act is in addition to maintenance under section 125 Cr.P.C."

[18] Learned counsel, therefore, contends that the judgment of the appellate court does not call for any interference in this criminal revision petition.

[19] As discussed, the wife in support of her case submitted her examination in chief on affidavit and got her subjected to cross examination before the trial court as **PW-1**. In her examination-in-chief she had repeated the incidents of torture and harassment meted out to her by her husband and reiterated that her husband had compelled her to leave her matrimonial home by committing physical torture on

her at 8 O'clock in the morning on 17.12.2015. She also stated that as a result of his torture, she received treatment from IGM Hospital, Agartala as an outdoor patient on 18.12.2015. She further stated that after the said incidences, she filed FIR to the Officer-in-charge of Amtali Police Station which was registered as Amtali P.S.Case No.2015 AMT 178 dated 17.12.2015 under Sections 498A and 325 IPC and investigation of the case was also taken up by police. During the proceeding under the DV Act at the trial court, this FIR lodged by her was taken into evidence and marked as **Exhibit-1**. She also submitted the photocopy of doctor's prescription to prove that she attended IGM Hospital at Agartala on 18.12.2015 in the Out Patient Department after she was assaulted by her husband on the previous day. In her cross examination she denied that her husband had taken her to NIMHANS in Bengaluru for neurological treatment. She also denied that she was advised to visit NIMHANS at the interval of every 6 months. She denied that she made false allegations of domestic violence against her husband because of the only reason that she suspected that her husband was having extramarital affair.

[20] Elder brother of the wife was examined as **PW-2**. In his examination-in-chief submitted on affidavit, he supported the case of his sister with regard to her allegations of domestic violence against her husband. The PW stated at the trial that her husband used to assault his sister almost on every day to meet his demand of dowry. His sister complained to him that her husband had developed extramarital affair. It was further stated by the PW that his sister was physically assaulted by her husband on 16.12.2015 and 17.12.2015 for which she left her matrimonial home. In his cross examination the PW asserted that he met the husband of his sister and his relatives several times for mitigation of the discord and differences between the spouses. But his efforts did not work.

[21] **PW-3** Ranajyoti Bhattacharjee in his examination in chief on affidavit supported the case of the wife with regard to her allegations of violence and atrocities against her husband. The PW also stated that the wife told him that her husband developed an extramarital relationship. But the PW was not produced in court for cross examination.

Learned counsel appearing for the husband agitated on this point. According to him the courts below should not have taken his examination in chief into consideration because this PW was not produced in court for cross examination by the husband.

[22] **DW-1**, Ramendra Kishore Bhattacharjee, the husband repeated the same story which was projected by him in his written objection against the petition of his wife. He reiterated that he never committed any sort of domestic violence on his wife. Rather, he left no stone unturned for her well being. But there was no change in her conduct despite his efforts. Rather, she became more violent and abusive to the husband. According to the PW, his wife was always suspicious and only for this reason she brought all these false allegations against him. In his cross examination, the husband admitted that he was drawing a monthly salary of ₹49,000/- (Forty-nine thousand) and he also admitted that he gave no maintenance allowance to his wife after she parted with his company.

[23] **DW-2** Priya Bhusan Deb is the neighbor of the husband. Priya Bhusan stated at the trial that when he was secretary of Nabajagaran Sangha, a meeting

was held in the house of the husband at the instance of the club for settlement of the disputes between them. During such meeting it came to light that the main reason of grievance of the wife against her husband was her suspicion that her husband had an extramarital affair. They tried to restore their relationship but their efforts did not work.

[24] **DW-3**, Smt. Rekha Roy, another neighbor of the husband has also given similar evidence. She also supported the fact that a meeting was held in the house of the husband at the instance of local club where efforts were taken to solve the differences between the spouses. But the efforts failed since the wife had suspected her husband to have extramarital affair.

[25] The core issue which has been agitated by learned counsel appearing for the husband is that relief under the DV Act has been provided to the wife in absence of any proof of domestic violence.

[26] Under Section 12 of the DV Act only the aggrieved person or a protection officer appointed under the DV Act or any other person on behalf the aggrieved person may present an application to the

magistrate seeking one or more reliefs under this Act. It would be apposite to reproduce Section 12 of the DV Act at this juncture which is as under:

"12. Application to Magistrate.—(1) An aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person may present an application to the Magistrate seeking one or more reliefs under this Act:

Provided that before passing any order on such application, the Magistrate shall take into consideration any domestic incident report received by him from the Protection Officer or the service provider.

(2) The relief sought for under sub-section (1) may include a relief for issuance of an order for payment of compensation or damages without prejudice to the right of such person to institute a suit for compensation or damages for the injuries caused by the acts of domestic violence committed by the respondent:

Provided that where a decree for any amount as compensation or damages has been passed by any court in favour of the aggrieved person, the amount, if any, paid or payable in pursuance of the order made by the Magistrate under this Act shall be set off against the amount payable under such decree and the decree shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), or any other law for the time being in force, be executable for the balance amount, if any, left after such set off.

(3) Every application under sub-section (1) shall be in such form and contain such particulars as may be prescribed or as nearly as possible thereto.

(4) The Magistrate shall fix the first date of hearing, which shall not ordinarily be beyond three days from the date of receipt of the application by the court.

(5) The Magistrate shall Endeavour to dispose of every application made under sub-section (1) within a period of sixty days from the date of its first hearing."

[27] Aggrieved person has been defined under Section 2(a) of the DV Act which reads as under:

"2. Definitions.—In this Act, unless the context otherwise requires,—

(a) "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;

(b)

(c)

:
:
:
:

[28] A conjoined reading of Section 12 and Section 2(a) makes it abundantly clear that relief under the DV Act can be granted only to an aggrieved person defined under the DV Act and an aggrieved person has been defined as a woman who is or has been in a domestic relationship with the respondent who alleges to have been subjected to any act of domestic violence by the respondent. Therefore, allegation of domestic violence is a sine qua non for pursuing a petition under the DV Act.

[29] In this case, the wife who filed the application under Section 12 of the DV Act in the trial court is obviously an aggrieved person within the meaning of the Act because she made allegations of domestic violence against her husband and the fact that she was in a domestic relationship with the husband as

his wife has been admitted by her respondent husband. Now the question is whether the wife proved commission of domestic violence against her husband at the trial court and become entitled to a relief under Section 12 of the DV Act.

[30] In the definition clause of the DV Act i.e. Section 2 under clause (g) states that domestic violence has the same meaning as assigned to it in Section 3 of the DV Act. Section 3 of the DV Act defines domestic violence as under:

"3. 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, house hold 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 house hold 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."

[31] Apparently, domestic violence has been defined under Section 3 of the Act in a very wider term and with regard to proof of domestic violence, explanation II to said Section 3 provides that for determining whether any act, an omission, commission or conduct of the respondent constitutes "domestic violence" under the said Section, the overall facts and circumstances of the case, shall be taken into consideration.

[32] It may be recalled that in the present case, the spouses have brought allegations and counter allegations against each other and the learned additional sessions Judge after examining these allegations and the materials placed before the court by the contesting spouses set aside the protection order as against the mother, brother and the sister of the husband. While affirming the protection order as well as the monetary relief against the husband, the residence order for payment of house rent @Rs.2000/- per month to the wife under Section 19(f) was also set aside by the learned Additional Sessions Judge by the impugned judgment.

[33] In gist, the Additional Sessions Judge upheld the direction of the trial court prohibiting the husband from committing any kind of domestic violence or aiding or abetting in the commission of any act of domestic violence upon the wife and by means of monetary relief as under Section 20 of the Act, the order for payment of ₹15,000/- to the wife was also upheld.

[34] In the instant case, during his cross-examination before the trial court the husband had categorically admitted that his monthly salary was ₹49,000/- excluding all deductions. He also admitted that he gave nothing towards maintenance of his wife from 13.12.2015. His statement is reproduced as under:

"At present my gross salary is 49,000/- excluding deductions. It is true that I have not given any maintenance to my wife since 13.12.2015."

[35] Section 20 of the DV Act provides for payment of monetary relief to the aggrieved person which reads as under:

"20. Monetary reliefs.—(1) 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 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.

(2) The monetary relief granted under this section shall be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved person is accustomed.

(3) The Magistrate shall have the power to order an appropriate lump sum payment or monthly payments of maintenance, as the nature and circumstances of the case may require.

(4) The Magistrate shall send a copy of the order for monetary relief made under sub-section (1) to the parties to the application and to the in charge of the police station within the local limits of whose jurisdiction the respondent resides.

(5) The respondent shall pay the monetary relief granted to the aggrieved person within the period specified in the order under sub-section (1).

(6) Upon the failure on the part of the respondent to make payment in terms of the order under sub-section (1), the Magistrate may direct the employer or a debtor of the respondent, to directly pay to the aggrieved person or to deposit with the court a portion of the wages or salaries or debt due to or accrued to the credit of the respondent, which amount may be adjusted towards the monetary relief payable by the respondent.”

[36] Under Section 3 of the DV Act which defines domestic violence, ‘economic abuse’ is a form of

domestic violence. Clause (iv) of explanation I of Section 3 relates to 'economic abuse' which includes deprivation of all or any economic financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise. The said clause (iv) of the Explanation I of Section 3 of the DV Act, reads as under:

“(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.”

[37] In the present case, obviously the wife is legally entitled to maintenance allowance from her husband who is a salaried government employee. She has made out a good case justifying her separate living. Admittedly, she is a housewife and she has no source of earning whereas the husband draws a monthly salary of ₹49,000/- excluding all deductions. In these circumstances, denial of maintenance allowance to the wife obviously causes 'economic abuse' to her within the meaning of domestic violence as under Section 3 of the DV Act. There is, therefore, no infirmity in the impugned judgment.

[38] In so far as the quantum of monetary relief is concerned, it is asserted by the husband in his memo of appeal that the Family Court, Agartala in Misc. case No. 463 of 2017 also directed the husband to pay monthly maintenance allowance of ₹6,000/- to his wife and it has been averred by the husband that the learned trial court as well as the appellate court committed error in not taking into account this amount while determining the amount of monetary relief in the proceeding under the DV Act. The Apex Court in case of **Rajnish vs. Neha** (supra) has held that maintenance

provided in a previously instituted proceeding can be adjusted or set off in the subsequent proceeding. Though the husband has not produced any document with regard to his averment that there is an order passed by the Family Court for payment of monthly maintenance allowance of Rs.6000/- to the wife, such amount, if any, shall be adjusted towards the said amount of ₹15,000/- in view of the directions issued by the Apex Court in the case of **Rajnish vs. Neha**(supra).

[39] The husband will, therefore, pay ₹15,000/- to his wife as monetary relief as directed by the Additional Sessions Judge by the impugned judgment w.e.f the date of filing of the petition i.e. from 01.10.2018. The said monetary relief shall be paid by the husband by depositing the same in her savings bank account. The learned Judge, Family Court Agartala will determine the mode of payment of the outstanding arrear till 31.01.2021 after issuing notice to the parties and hearing them in person. If the husband fails to pay the arrear, the same shall be deducted from his salary and paid to the wife.

[40] Resultantly, the petition stands dismissed.

Interim order with regard to monetary relief,
if any, stands vacated.

Send back the LCR.

Pending application(s), if any, also stands
disposed of.

Copy of this judgment be supplied to the
parties and a copy be sent to Judge, Family Court,
Agartala immediately.



Saikat Sama