Delhi High Court
Damanpreet Kaur vs Indermeet Juneja & Anr. on 14 May, 2012
Author: Pratibha Rani

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
% RESERVED ON : 19.04.2012
PRONOUNCED ON: 14.05.2012

+ CRL.REV.P. 344/2011

DAMANREET KAUR ..... Petitioner
Through: Mr.Sugam Puri, Advocate

versus

INDERMEET JUNEJA & ANR ..... Respondents

Through: Mr.Shyam Moorjani with Mr.Taru Goomber, Mr.Pankaj Mendiratta and Mr. Gaurav Goswami, Advocates.

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI %

1. The petitioner has preferred this revision petition impugning the order dated 01.06.2011 passed by the learned Addl. Sessions Judge, Delhi. The petitioner is wife of respondent Indermeet Juneja. She filed a complaint case bearing No.352/3 under Section 12 of Protection of Women from Domestic Violence Act, 2005 alongwith an application for monetary relief under Section 23 of the Act. Her prayer for interim monetary relief was declined vide order dated 18.11.2010 by the learned M.M.

2. Feeling aggrieved, she preferred an appeal against the said order passed by the learned M.M. declining monetary relief to her. In appeal, the learned ASJ vide the impugned order dated 01.06.2011 though declined the prayer of interim monetary relief to the petitioner, partly allowed the appeal and directed the respondent to pay a sum of Rs.10,000/- per month from the date of filing of the petition towards contribution of the respondent to maintain the child born out of the wedlock of the parties.

3. The grievance of the petitioner is that the learned ASJ committed an error in declining the relief to her on the ground that she was well qualified, capable to maintain herself and had the capacity to work and that she had also been actually earning in the past and was thus not entitled to get any maintenance from the respondent. The petitioner has submitted that earlier she was working with Met Life Insurance Company since the birth of her child. The company due to its relocation process had asked the petitioner to shift to Bangalore. She could not accept this offer as it would not be appropriate for the child to be uprooted from the place where she has been residing and due to the fact that there were visitation orders passed by the learned Sessions Court and had the petitioner

along with the child shifted to Bangalore, the said orders could not have been complied with. As such the petitioner turned down the offer of the company. The company refused to change its policy and the petitioner was forced to resign from her job.

4. The relieving letter placed on record by the petitioner is dated 17.08.2010. As per this relieving letter the date of joining of the petitioner with Met Life was 07.01.2008 and her designation at the time of leaving the company was Assistant Manager (Service Delivery). She has been relieved pursuant to her resignation letter dated 17.06.2010. This letter is not accompanied by the resignation letter of the petitioner giving the reasons for her resignation or the policy of the company to shift her to Bangalore. It is relevant to mention here that while the date of joining of petitioner with Met Life Insurance is 07.01.2008, the petitioner has given birth to a female child on 18.09.2008 i.e. in the same year and despite having infant child to take care, she has served the company till she was relieved on 17.08.2010.

5. The contention of petitioner is that in order to comply with the order of the Court to allow the respondent to have visitation right she could not shift to Bangalore. There is nothing on record to indicate that at any point of time despite continuous litigation going on between the parties she had approached the Court for modification of the order regarding visitation right. If the petitioner of her own prefers to resign, she cannot take shelter under the Court order regarding visitation right. With the passage of time the child has grown up and is of school going age. Thus, it is more convenient for a working mother to be in the job then to sit at home.

6. The learned ASJ has rightly declined the interim monetary relief to the petitioner by holding that she was well educated lady earning Rs.50,000/- per month and had chosen not to work of her own will though had the capacity to work and find a suitable job for herself.

7. The learned ASJ in the impugned order has also corrected the error appearing in the order of learned M.M declining the monetary relief to the child for the reason that she was not the petitioner before the Court. In para-10 of the impugned order, the learned ASJ, after considering the facts and relevant case law has concluded as under:-

> "10. On perusal of record and after hearing the submissions made at bar, I do not find any infirmity in the impugned order as regards maintenance to the appellant/wife is concerned. The question, whether appellant/wife was forced to resign or she had resigned herself is a question to be considered by the court during trial and also the question whether the reasons given by her for resigning were satisfactory or not. These are the question to be gone into during evidence by the Learned Trial Court. But, the observation of the Learned Trial Court in para-10 i.e. "As far as the maintenance of the child is concerned, since she is not the petitioner in the present complaint, I would not be able to pass any orders as regards the maintenance for the daughter of the parties", is erroneous and cannot be sustained. Admittedly on the date, when application u/s. 12 of the act was filed by the appellant/wife, child was in the custody of the husband. Secondly, if the scheme of the act is seen as a whole, it is obvious that it is not necessary that the child should be impleaded as a party. Relief

can be granted to the child or for the benefit of the child without child being impleaded as a party. The relief can be granted not only to the aggrieved person, but also to the child. On reading of Section 20 and 21 of the Act it is clear that not only aggrieved person, but any child or children may be granted relief. The court has to keep in mind the interest and the welfare of the child, even if child is not a party. Therefore, orders as regard custody or the maintenance or the welfare of the children can be passed even if child is not a party in the application filed under the Act before Learned Metropolitan Magistrate. There is manifest error in the impugned order as regards the observations in para-10 of the impugned order, which is set aside. In view of this, it is directed that Learned Trial Court shall decide the quantum of maintenance for the minor daughter of the parties after making a realistic assessment of the needs of child, keeping in view the status of parties, on the basis of material placed on record by the parties. Respondent/husband submitted that he was ready and willing to bear 50% of expenditure of the child. He can show his bonafide by providing some assistance to the child so that the child is brought up in an appropriate atmosphere and so that she is provided with minimum comfort, which the child requires.

11. In the circumstances, till further orders are passed by the Learned Trial Court, I deem it expedient in the interest of justice to direct the respondent/husband to pay sum of Rs.10,000/- per month towards his contribution from the date of filing of the petition to maintain the child. The amount ordered to be paid by respondent/husband shall not tantamount to be an expression on merits of the case. Appeal stands disposed of accordingly. TCR be sent back alongwith copy of this order. File be consigned to Record Room."

8. In Smt.Mamta Jaiswal vs. Rajesh Jaiswal 2000(3) MPLJ 100, the High Court of Madhya Pradesh while dealing with identical situation observed that well qualified spouses desirous of remaining idle, not making efforts for the purpose of finding out a source of livelihood, have to be discouraged, if the society wants to progress. For better appreciation, relevant paragraphs of the said decision are reproduced hereunder:-

"In view of this, the question arises, as to in what way Section 24 of the Act has to be interpreted. Whether a spouse who has capacity of earning but chooses to remain idle, should be permitted to saddle other spouse with his or her expenditure? Whether such spouse should be permitted to get pendent lite alimony at higher rate from other spouse in such condition? According to me, Section 24 has been enacted for the purpose of providing a monetary assistance to such spouse who is incapable of supporting himself or herself inspite of sincere efforts made by him or herself. A spouse who is well qualified to get the service immediately with less efforts is not expected to remain idle to squeeze out, to milk out the other spouse by relieving him of his or her own purse by a cut in the nature of pendent lite alimony. The law does not expect the increasing number of such idle persons who by remaining in the arena of legal battles, try to squeeze out the adversary by implementing the provisions of

law suitable to their purpose. In the present case Mamta Jaiswal is a well qualified woman possessing qualification like M.Sc. M.C M.Ed. Till 1994 she was serving in Gulamnabi Azad Education College. It impliedly means that she was possessing sufficient experience. How such a lady can remain without service? It really put a big question which is to be answered by Mamta Jaiswal with sufficient cogent and believable evidence by proving that in spite of sufficient efforts made by her, she was not able to get service and, therefore, she is unable to support herself. A lady who is fighting matrimonial petition filed for divorce, cannot be permitted to sit idle and to put her burden on the husband for demanding pendente lite alimony from him during pendency of such matrimonial petition. Section 24 is not meant for creating an army of such idle persons who would be sitting idle waiting for a dole to be awarded by her husband who has got a grievance against her and who has gone to the Court for seeking a relief against her. The case may be vice versa also. If a husband well qualified, sufficient enough to earn, sit idle and puts his burden on the wife and waits for a dole to be awarded by remaining entangled in litigation. That is also not permissible. The law does not help indolents as well idles so also does not want an army of self made lazy idles. Everyone has to earn for the purpose of maintenance of himself or herself, at least, has to make sincere efforts in that direction. If this criteria is not applied, if this attitude is not adopted, there would be a tendency growing amongst such litigants to prolong such litigation and to milk out the adversary who happens to be a spouse, once dear but far away after an emerging of litigation. If such army is permitted to remain in existence, there would be no sincere efforts of amicable settlements because the lazy spouse would be very happy to fight and frustrate the efforts of amicable settlement because he would be reaping the money in the nature of pendent lite alimony, and would prefer to be happy in remaining idle and not bothering himself or herself for any activity to support and maintain himself or herself. That cannot be treated to be aim, goal of Section 24. It is indirectly against healthiness of the society. It has enacted for needy persons who in spite of sincere efforts and sufficient effort are unable to support and maintain themselves and are required to fight out the litigation jeopardizing their hard earned income by toiling working hours.

In the present case, wife Mamta Jaiswal, has been awarded Rs.800/- per month as pendent lite alimony and has been awarded the relief of being reimbursed from husband whenever she makes up a trip to Indore from Pusad, Distt. Yeotmal for attending Matrimonial Court for date of hearing. She is well qualified woman once upon time obviously serving as lecturer in Education College. How she can be equated with a gullible woman of village? Needless to point out that a woman who is educated herself with Masters degree in Science, Masters Degree in Education, would not feel herself alone in travelling from Pusad to Indore, when at least a bus service is available as mode of transport. The submission made on behalf of Mamta, the wife, is not palatable and digestible. This smells of oblique intention of putting extra financial burden on the husband. Such attempts are to be discouraged."

9. Section 20 (1) (d) of PWDV Act, 2005 specifies that upon appropriate proof, the court may order the respondent to pay maintenance to the aggrieved person and to her children and further permits the Court to pass an order of maintenance under the PWDVA in addition to maintenance already granted under section 125 Cr.P.C.

10. In State of Maharashtra vs. Sujay Mangesh Poyarekar (2008) 9 SCC 475 it was held that powers of the revisional courts are very limited and the revisional court should not interfere unless there is a jurisdictional error or an error of law is noticed.

11. The learned ASJ in the impugned order has rightly observed that the question whether the petitioner-wife was forced to resign or had resigned herself is a question to be considered during trial and also the question whether the reasons given by her for resigning from her job were satisfactory or not.

12. It is worth mentioning here that the child for which maintenance of Rs.10,000/- per month from the date of filing of the petition has been ordered by Learned Addl. Sessions Judge is just and fair and sufficient to meet the requirements of a child which is aged about 3 ½ years.

13. There is no jurisdictional error or error in law in the impugned order. The petition being devoid of merit is hereby dismissed with no order as to costs.

(PRATIBHA RANI) JUDGE MAY 14, 2012/dc