

Priyanka Vs. Banmali Sahni & Ors.

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(CNR No: HRGR03-046852-2021)

(DV/197/2021)

UID No. HR0511

IN THE COURT OF MS. HIMANI GILL, JUDICIAL MAGISTRATE FIRST  
CLASS, GURUGRAM.

Present: Sh. B.S. Khatana, ld. counsel for the applicant-  
complainant.  
Shri Ashish Kumar, ld. counsel for respondents.

ORDER:-


1- By this order, I shall dispose of application under section 23 of the the protection of women from Domestic Violence Act, 2005 (hereinafter referred to as "DV Act" ) filed by complainant/petitioner.

2- Brief facts of the present case as alleged are that the complainant is the legally wedded wife of the respondent No. 1 and the marriage was solemnized on 31.05.2017 and no issue was born out of this said wedlock. The parties are residing separately since 28.04.2018. The complainant is residing in rented accommodation. The respondent no. 1 did not support the complainant in any way and rather humiliated and insulted the complainant and her family members. All the respondents were in collusion with each other and allegedly committed acts of domestic violence upon her. Despite various attempts to reconcile the matter and waiting for the respondents to change their behavior, nothing changed.

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3- Thereafter in compliance of the guidelines laid down by the Hon'ble Apex court in the case of Rajnesh Vs. Neha, (2021) 1SCC (CRI) 749 the complainant filed her affidavit of income, expenditure and assets. In the same it was disclosed that she is a graduate and not earning anything. She is staying in rented accommodation and her monthly expenditure all inclusive is Rs. 35,000/- per month. She has no dependent family members and no children. She was stated to be not employed anywhere and not owning any movable or immovable property. The complainant attached her bank account statement with her affidavit for the time period of 01.10.2019 to 10.10.2022 for Union bank of India.

4- Accordingly, the complainant prayed for interim relief of monetary and residential help for herself.

5- On notice of this application, respondents replied and admitted marriage between respondent no. 1 and the complainant and admitted the factum of separation of the parties. They denied all remaining allegations. They denied committing any act of domestic violence upon complainant and submitted that the complainant has suppressed true facts from the court and that she has not come to the court with clean hands. They denied that any gifts or dowry was demanded or taken. Lastly, they prayed for dismissal of application.

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6- Thereafter, in compliance of the guidelines laid down by the Hon'ble apex court in the case of Rajnesh vs Neha (2021) 1SCC (CRI) 749, the respondent no.1 filed his affidavit of income, expenditure and assets. In the same it was disclosed that he is B.com pass having separate residence. His monthly expenditure is Rs. 27,000/-. He has two dependents being his parents and he is spending Rs. 15,000/- on them every month. It was further disclosed that he is working as Senior Executive @ Rs. 39,000/- per month. He supported the affidavit with bank account statement and appointment letter.

7- In arguments, both the learned counsel argued in line with the pleadings. It was argued by counsel for complainant that the complainant requires monetary help for herself as she is unemployed but staying with her parents and supported by her brother. It was argued by the counsel for respondents that Rs. 11 lacs were deposited in bank account of Priyanka in the past 3 years but the source of the same was not explained. It was also argued that he has old aged parents who are dependent upon him and that complainant has also moved an application under Section 125 Cr.P.C. seeking maintenance even though she is educated and there is no issue was born out of the wedlock.

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awarding interim relief under the Domestic Violence Act was to ensure that the aggrieved person is able to sustain herself during course of the proceedings and so that she can be protected from vagrancy and destitution. The interim relief awarded under section 23 of the Domestic Violence Act is subject to the final relief awarded at the final stage after appraisal of evidence and after a complete trial.

10- Accordingly, on the basis of the pleadings in the backdrop of the law as discussed above duly taking into account arguments advanced in court and events which transpired after filling of the petition till date of this order, it has come forth that both the parties are educated and able bodied. The complainant has no disclosed about any physical infirmities which act as a hurdle in trying to get a job or working for a living. Further, the complainant has disclosed her monthly expenditure to be Rs. 35,000/- per month. However she is not disclosed as to how she is able to spend this amount of money without having any source of income. Further, perusal of the bank account statement of the complainant placed on record by the respondents for the time period from 01.10.2019 to 10.10.2022 shows that there have been multiple deposits of money which have not been explained by the complainant. The most recent transaction begin of Rs. 40,000/- on 24.02.2022 however, the complainant has nowhere disclosed about the source of this money. Further, before that as well money has been deposited in cash in bank account of the complainant multiple times and there are unexplained heavy

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credit entries in her bank account. It appears that complainant has deliberately concealed her true income as she placed on record bank account statement only for the time period from 01.04.2021 to 05.9.2022. Further, the complainant has nowhere stated to be suffering from any health diseases etc and hence she being an able bodied educated person is capable of earning to maintain herself. She is very much capable of working and earning to sustain herself during the pendency of the present case. The complainant has stated in the affidavit that she is residing in rented accommodation but she has not placed on record any rent agreement. Moreover, during course of argument counsel for complainant conceded that she is residing with her parents hence, it appears that complainant is not in need of any immediate shelter or residence.

11- Further, an order of interim maintenance is conditional on the circumstance that the wife or husband who makes a claim has no independent income, sufficient for her or his support. The Court must take into consideration the status of the parties and the capacity of the spouse to pay for her or his support. Further, the objective of granting interim maintenance is to ensure that the aggrieved party is not reduced to a state of destitution and vagrancy as was also reiterated in the case of **Rajesh vs Neha (2021) ISCC (CRI) 749**. Further, the Court exercises a wide discretion in the matter of granting alimony pendente lite but the discretion is judicial and neither arbitrary nor capricious. It is to be guided on sound principles of matrimonial law and to be exercised

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awarding interim maintenance is not to provide for luxuries of life but it is a mere interim temporary arrangement to ensure that the complainant does not lead a life of vagrancy.

14- Therefore, In view of the above discussion application under section 23 of the DV Act is dismissed. Nothing herein above stated shall be deemed to be an expression of the merits of the case. Let copy of this order be provided to the both parties free of cost.

Announced in open court:  
Dt. 06.02.2023


  
(Himani Gill)  
Judicial Magistrate 1st Class,  
Gurugram/ UID No. HR0511

Note: This order contains Eight pages and each page has been checked and signed by me.

  
(Himani Gill)  
Judicial Magistrate 1st Class,  
Gurugram/ UID No. HR0511  
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DV-197-2021

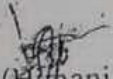
CNR No. HRGR03-046852-2021

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Present: Sh. B.S. Khatana, Id. counsel for the applicant-complainant.  
Shri Ashish Kumar, Id. Counsel for respondents.

Remaining arguments on application under section 23 of the the protection of women from Domestic Violence Act, 2005 advanced and heard. Vide my separate order of even date, the above said application is dismissed and disposed of accordingly.

Now, the case is adjourned to 11.05.2023 for evidence of complainant at own responsibility.


  
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Certified to be True Copy

Authorised by the JUDGE  
of the  
Indian Evidence Act 1872

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Registration No. 1595  
Date of registration of application 8/2/23  
Date of receipt 14/2/23  
No. of pages 10  
Urgent Form 00  
Copy of Form 00  
Section 106  
Name of the applicant 23/2/23  
Date of receipt 01  
Total Fee

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within the ambit of the provisions of the Act and having regard to the object of the Act. The Court would not be in a position to judge the merits of the rival contentions of the parties when deciding an application for interim maintenance and would not allow its discretion to be fettered by nature of the allegations made by them and would not examine the merits of the case. The Court must have regard to the appellants own income and the income of the respondent.

12- Further, 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 educated, cannot be treated differently to an unemployed wife, who is also educated. Since both are on equal footing one cannot be asked to maintain other unless one is employed and other is not employed but not out of choice.

13- Therefore, in view of the above, at this stage there appears to be no necessity to award interim monetary relief to the complainant as she is clearly capable of sustaining herself and has sufficient income, to sustain herself during the course of trial. She wouldn't be reduced to a state of destitution or render without roof over her head if she is not awarded interim maintenance. Also, there are final reliefs in the main application under Section 12 of the Domestic Violence Act are yet to be adjudicated upon and hence rights of the complainant are protected. Further, the objective of

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