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Before: Justice Jaishree Thakur.

VIKAS AND ORS. v. USHA RANI AND ORS.

Crl. Revision No. 3084 of 2016 (O&M)

17.04.2018

Present: Mr. Rajesh Hooda, Advocate, for the petitioners in Crl. Revision No. 3085 of 2016 and for the respondents in Crl. Revision No. 2984 of 2016. Mr. Vivek K. Thakur, Advocate, for the petitioner in Crl. Revision No. 2985 of 2016 and for the respondents in Crl. Revision No. 3084 of 2016.

Jaishree Thakur, J.

1. By this judgment, I propose to dispose of the above titled two revision petitions as they arise out of a similar set of facts, involving similar question of law. However, for the sake of convenience, facts are being taken from Criminal Revision No. 3084 of 2016.
2. In brief the facts, as alleged, are that a marriage was solemnized between Naresh Kumar and Usha Rani on 18.6.2002 as per Hindu rites and ceremonies. After some time, the husband of Usha Rani and his family members started demanding dowry and a motorcycle and threatened that in case the demands are not met, she would be turned out of her matrimonial home. There was no improvement in the behaviour of her husband and his family members and ultimately she was thrown out of the matrimonial home. Under these circumstances, Usha Rani was constrained to approach the police with a complaint, on the basis of which FIR No. 70 dated 23.10.2005 was registered under sections 498-a, 406 and 506 ipc. In the said proceedings, the husband Naresh Kumar was declared as proclaimed person. Thereafter, a petition under Section 12 of the Protection of Women from Domestic Violence Act 2005 (hereinafter referred to as Domestic Violence Act) was filed by Usha Rani against her husband Naresh Kumar, Smt. Santara (mother-in-law), Vikas, Narender and Dinesh (brothers-in-law) and Smt. Saroj (sister of Naresh Kumar). In the said complaint, petitioner Usha Rani, (for short 'the petitioner') submitted that the respondents-Naresh Kumar (husband), Smt. Santara (mother-in-law), Vikas, Narender and Dinesh (brothers-in-law) and Smt. Saroj (sister of Naresh Kumar) (for short 'the respondents') have committed domestic violence, gave beatings and threatened to eliminate her and, therefore, they be stopped from committing any kind of Domestic Violence against the petitioner. Protection order was issued under Section 18 of the Domestic Violence Act. The petitioner also sought relief under Section 19 as well as monetary relief to the petitioner under Section 20 of the Domestic Violence Act was sought, apart from compensation.
3. The petition was contested by all other than Naresh Kumar husband, who was proceeded against ex-parte. Eventually, the Judicial Magistrate Ist Class (JM IC), Dadri, Bhawani, after taking note of the fact that the petitioner is the wife of Naresh Kumar allowed interim claim of the petitioner by directing the aforesaid family members of Naresh Kumar to pay

₹15,000/- per month collectively, from the date of filing of the present application as well as to provide residential house constructed in 60 square yards. Aggrieved against the said order, an appeal under **Section 29 of the Domestic Violence Act** was preferred before the Additional Sessions Judge, Bhiwani, who modified the said judgment to the extent that the petitioner- wife would hand over the possession of the share household to the respondents but maintained that the respondents No. 2 to 4 would pay maintenance to the tune of ₹3,000/- per month collectively to the petitioner- wife. Aggrieved against the said order, Criminal Revision No. 3084 of 2016 has been filed by the Vikas, Virender and Dinesh (brothers-in-law) respondents for dismissing the complaint filed by the petitioner-wife, whereas Criminal Revision No. 2985 of 2016 has been preferred by the petitioner-wife for setting aside the order passed by the Additional Sessions Judge, Bhiwani, vide which maintenance has been reduced to ₹3000/- per month as well as her right to residence in the shared household has been taken away.

4. Learned counsel appearing on behalf of Vikas, Virender and Dinesh (petitioners in Criminal Revision No. 3084 of 2016) contends that the complaint filed under **Section 12 of the Domestic Violence Act** on **4.12.2015** before the JMJC, Charki Dadri, Bhiwani, is not maintainable and would be barred by limitation. It is further argued that as per the case set up by the petitioner-herself she had been turned out of the matrimonial home as far back as in 2005 itself, which resulted in registration of FIR 70 dated 23.10.2005. It is also submitted that the parties, namely, Naresh Kumar husband and Usha Rani wife had been residing separately on account of the matrimonial dispute and there was no shared household between them, while further submitting that the complaint is barred by limitation. In support of his contention, learned counsel relies on **Inderjit Singh Grewal V. State of Punjab and another 2011 (4) R.C.R.** (Criminal) 1, wherein the Supreme Court held that a complaint under the **provisions of Domestic Violence Act** is to be filed only within a period of one year from the date of the incident.

5. Per contra, learned counsel appearing on behalf of the complainant Usha Rani submits that being legally wedded wife of Naresh Kumar, she is entitled to residence in shared household and accommodation had been rightly allowed by the JMJC, Charki Dadri. Moreover, she would also be entitled to maintenance, since she does not have means to support herself. Moreover, it is only an interim application that had been allowed and without proper evidence being adduced, the relief as awarded of right of residence in a shared household as well as right of maintenance ought not to be interfered with.

6. Learned counsel for the complainant-Usha Rani relied on *Shalini V. Kishor and others 2015 (11) SCC 718*, wherein the Supreme Court allowed the claim of the wife for shared household, who had been living separately for the past 15 years from her husband. The Supreme Court reiterated the view taken in **Saraswathy v. Babu 2014 (4) SCC (Crl.) 688**, wherein the complaint was filed by the wife after almost fourteen years from the date she was driven out of her matrimonial home. In *Shalini's case (supra)*, the Supreme Court relied on **V.D. Bhanot v. Savita Bhanot 2012 (1) R.C.R. (Criminal) 834**, wherein the Supreme Court held that a wife will be entitled to maintain a petition under the provisions of the Domestic Violence Act, even if the act of domestic violence had been committed prior to coming into force of the Domestic Violence Act.

7. I have heard learned counsel for the parties and have perused the record.

8. The Protection of Women from Domestic Violence Act, 2005 was enacted to protect women against violence of any kind specially violence occurring within the family. In the 'Statement of Objects and Reasons', it is noticed that the situation wherein a woman is subjected to cruelty by her husband or his relatives was originally sought to be dealt with by the addition of Section 498-A in the Indian Penal Code, however, this law did not cover the entire spectrum of the violence, maltreatment etc. meted out to a woman. It was in this background that the aforesaid Act of 2005 came into existence. The Act of 2005 proposes to cover and provide protection to those women who are or have been in a relationship with the abuser where both the parties have lived together in a shared household and are related by consanguinity, marriage or through a relationship in the nature of marriage or adoption or are family members living together as a joint family. Those women who are sisters, widows, mothers, single woman or living with the abuser are entitled to legal protection. Section 2(a) defines as to who would be an aggrieved person under the Act while defining domestic relationship under Section 2(f), respondent under Section 2(q) and shared household has been defined under Section 2(s). The definition of sections which are relevant for the purpose of adjudicating the controversy are reproduced for ready reference: 2(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; 2(f) "domestic relationship" means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family; 2(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 a relationship in the nature of a marriage may also file a complaint against a relative of the husband or the male partner; 2(s) "shared household" means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household.

9. Admittedly, the complainant-Usha Rani was married to Naresh Kumar (brother of Vikas etc., and who was proceeded against ex- parte) and, therefore, it can safely be stated that Naresh Kumar and the complainant-Usha Rani were in domestic relationship, since they resided together for a considerable period of time, before she was turned out of her matrimonial home on account of bringing inadequate dowry, as alleged by her.

10. From the arguments, as raised before this Court, the question that would arise for consideration is, whether the complaint under the Domestic Violence Act filed by the petitioner-wife in the year 2015, after a period of 10 years having left/turned out of her

matrimonial home, would be barred by limitation and, whether the petitioners in Criminal Revision No. 3084 of 2016, being brothers-in-law of the complainant-wife, are liable to maintain her, being wife of their brother, in his absence.

11. To arrive at a conclusion, it would be expedient to refer to Section 28 of the Domestic Violence Act, 2005, which lays down the procedure specifying that all the proceedings under Sections 12, 18, 19, 20, 21, 22 and 23 and offences under Section 31 shall be governed by the provisions of the Code of Criminal Procedure. Section 31 in turn provides for penalty for breach of protection order by respondent which specifies that a breach of protection order, or of an interim protection order, by the respondent shall be an offence punishable with imprisonment of either description for a term which may extend to one year and to refer to Rule 15 (6) which specifies that when charges are framed under Section 31, they be tried in accordance with the provisions of Chapter XXI of the Code of Criminal Procedure, 1973.

12. There is no dispute regarding the subsistence of the marriage between the parties, but would the complaint be hit by the bar of limitation, as has been held in *Inderjit Singh Grewal (Supra)*? The facts, as emerged, in *Inderjit Singh Grewal* are that the wife filed a criminal complaint before the competent court to initiate criminal proceedings against her husband alleging that the decree of divorce had been obtained by playing fraud and the marriage was solemnized at Jalandhar. On account of the fact that the parties could not pull along, a divorce under Section 13-B of the Hindu Marriage Act was filed for dissolution of marriage by mutual consent. The statements of both the parties were recorded and the proceedings were adjourned for more than six months, enabling the parties to re-consider their decision to part ways. The parties in that case had appeared again before the Courts on 20.3.2008 and got recorded their statements affirming that they could not reside together and, thereafter the District Judge, Ludhiana, allowed the said petition and dissolved their marriage. Thereafter, the wife filed a complaint under the provisions of the Domestic Violence Act before the Senior Superintendent of Police, Ludhiana, alleging that the divorce was a sham transaction and even after getting the divorce they are residing as husband and wife. She has been forced to leave the matrimonial home and, therefore, she should be allowed interim protection as provided under the Domestic Violence Act. Eventually, the wife filed a complaint under the Domestic Violence Act and summons were issued, while also filing a Civil Suit seeking declaration that the decree of divorce was null and void. She also lodged FIR under Sections 406, 498-A, 376, 120-B IPC. Under the circumstances, the husband filed a criminal petition before the High Court for quashing of the complaint filed by the wife under Section 12 of the Domestic Violence Act. The High Court dismissed the petition of the husband, which led to filing Criminal Appeal before the Supreme Court. It is in this background, the Supreme Court held that the complaint filed by the wife under the Domestic Violence Act would not be sustainable, in view of the fact that the decree of divorce subsisted and that the complaint had been filed beyond the period of one year from the date of incident.

13. However, in a subsequent judgment rendered in **Shalini's case** (supra), the Supreme Court clearly allowed the complaint filed under the Domestic Violence Act at the behest of the wife holding that a wife can claim residence in a shared house, even though she had

been living separately for the past 15 years, while interpreting the term domestic relationship.

14. Later in **Krishna Bhattacharjee v. Sarathi Choudhury**, (2016-3)183 PLR 624 (SC), the question of limitation arose before the Supreme Court wherein the wife was seeking return of her Istridhan back from her husband. In **Krishna Bhattacharjee's case** (supra), a matrimonial dispute arose and the wife was driven out of her matrimonial home. Conciliation was arrived at between the parties and both started living in a rented house. However, within a short period, the husband filed a petition for judicial separation before the Family Court, which prayer was allowed and the parties got judicial separation in the year 2010. It was thereafter that an application under Section 12 of the Domestic Violence Act was filed seeking seizure of Istridhan articles from the possession of the husband. The application, which was made before the CDPO was forwarded to the Chief Judicial Magistrate, Agartala Sadar, West Tripura, who issued notice to the respondent-husband, who in turn filed his objection thereto. The Chief Judicial Magistrate, after taking into consideration that the wife was an aggrieved person opined that no domestic relationship existed between the parties, as there was a judicial separation. Therefore, relief was declined to the wife. The Additional Sessions Judge, while relying upon the judgment rendered in **Inderjit Singh Grewal's case** (supra), dismissed the appeal so filed being time barred, as did the High Court. It is in this background that the Supreme Court, while relying upon the judgment rendered in **Saraswathy** (supra), decided the core issue, whether the wife had ceased to be an aggrieved person (while relying on judgment rendered in **Jeet Singh v. State of U.P. And others (1993) 1 SCC 325**) on account of a judicial separation, and held that the relationship of the husband and wife does not get severed. The Supreme Court held as under:- In view of the aforesaid pronouncement, it is quite clear that there is a distinction between a decree for divorce and decree of judicial separation; in the former, there is a severance of status and the parties do not remain as husband and wife, whereas in the latter, the relationship between husband and wife continues and the legal relationship continues as it has not been snapped. Thus understood, the finding recorded by the courts below which have been concurred by the High Court that the parties having been judicially separated, the appellant wife has ceased to be an aggrieved person is wholly unsustainable while further holding that retention of Istridhan by the husband or any other family members is a continuing offence and held the wife to be an aggrieved person under the provisions of the Domestic Violence Act while allowing the appeal. As regards, the question of limitation, the Supreme Court held as under:- Regard being had to the aforesaid statement of law, we have to see whether retention of stridhan by the husband or any other family members is a continuing offence or not. There can be no dispute that wife can file a suit for realization of the stridhan but it does not debar her to lodge a criminal complaint for criminal breach of trust. We must state that was the situation before the 2005 Act came into force. In the 2005 Act, the definition of aggrieved person clearly postulates about the status of any woman who has been subjected to domestic violence as defined under Section 3 of the said Act. Economic abuse as it has been defined in Section 3(iv) of the said Act has a large canvass. Section 12, relevant portion of which have been reproduced hereinbefore, provides for procedure for obtaining orders of reliefs. It has been held in **Inderjit Singh Grewal** (supra) that Section 498 of the Code of Criminal Procedure applies to the said case under the 2005 Act as

envisaged under Sections 28 and 32 of the said Act read with Rule 15(6) of the Protection of Women from Domestic Violence Rules, 2006. We need not advert to the same as we are of the considered opinion that as long as the status of the aggrieved person remains and stridhan remains in the custody of the husband, the wife can always put forth her claim under Section 12 of the 2005 Act. We are disposed to think so as the status between the parties is not severed because of the decree of dissolution of marriage. The concept of continuing offence gets attracted from the date of deprivation of stridhan, for neither the husband nor any other family members can have any right over the stridhan and they remain the custodians.

15. As already stated, this Court has to answer the question, whether the complaint is barred by limitation based upon the provisions of the Domestic Violence Act and the law, as cited. Section 28 of the Domestic Violence Act mandates all proceedings under Sections 12, 18, 19, 20, 21, 22, and offences under Section 31 shall be governed by the Code of Criminal Procedure. Whereas Section 31 provides for penalty of breach of protection order against the respondent and Rule 15 of the Rules Of 2006 provides for procedure under Section 31 of the Domestic Violence Act.

16. An aggrieved person is permitted to present an application to the Magistrate seeking one or more reliefs under this Act and the Magistrate shall take into consideration any domestic incident report received by him from the Protection Officer also. Section 12 of the Domestic Violence Act is enabling provision to file an application, whereas Sections 18 to 22 of the Domestic Violence Act provide for rights of the aggrieved person to seek different reliefs like protection, residence, monetary relief, custody of minor and compensation. No limitation has been prescribed for seeking any such relief. Penal provisions under Section 31 of the Domestic Violence Act would get attracted on a breach of a protection order . It is only in a situation when there is a breach of any protection order on an application under Section 12 or on any of the reliefs under Sections 18 to 22 of the Domestic Violence Act, then and then only, an application under Section 31 of the Domestic Violence Act is to be filed within one year from the date of such breach and not thereafter. Therefore, the court is of the opinion that there is no limitation prescribed to institute a claim seeking relief under Sections 17 to 22 of the Domestic Violence Act.

17. Economic abuse is a form of Domestic Violence as recognized by the Domestic Violence Act and is defined under Section 3(iv) :- (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. 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. Being the lawfully married wife of Naresh Kumar, the petitioner is entitled to seek maintenance under Section 125 of the Code of Criminal Procedure. Similar provision has been made under the provisions of the Domestic Violence Act, if it can be substantiated that there is economic abuse. It is trite to say that a husband is duty bound to maintain his wife, but would the in-laws have the same burden cast upon them?

18. The term “domestic relationship” means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family. In the case of **S.R. Batra v. Taruna Batra** (2007) 3 SCC 169, the question raised before the Supreme Court was, whether a daughter-in-law had any right to claim residence in a property belonging to the mother-in-law by claiming it to be shared residence answered in the negative. It was held:

28. Learned counsel for the respondent Smt Taruna Batra has relied upon Section 19(1)(f) of the Act and claimed that she should be given an alternative accommodation. In our opinion, the claim for alternative accommodation can only be made against the husband and not against the husband’s (sic) in-laws or other relatives.

29. As regards Section 17(1) of the Act, in our opinion the wife is only entitled to claim a right to residence in a shared household, and a shared household would only mean the house belonging to or taken on rent by the husband, or the house which belongs to the joint family of which the husband is a member. The property in question in the present case neither belongs to Amit Batra nor was it taken on rent by him nor is it a joint family property of which the husband Amit Batra is a member. It is the exclusive property of Appellant 2, mother of Amit Batra. Hence it cannot be called a shared household.

19. On that corollary, if an aggrieved person is not permitted to continue to stay in premises that do not belong to the husband, or have been rented by him, or in such property he does not have a share in being joint property, can the brothers-in-law be directed to maintain the aggrieved person by giving her maintenance as has been done in the instant case? There is no dispute with the proposition that the husband has a moral and a statutory obligation to maintain his wife, but can liability or obligation as it may be, be fastened on to his brothers?

20. As per the provisions of the Domestic Violence Act 2005 domestic relationship means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family whereas 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. The aggrieved person in order to claim a right of

residence has to establish that her husband is owner of the property or that property is joint family property. Similarly, maintenance too would be payable by the husband and in his absence cannot be fastened upon his brothers. At best a claim can be made from an income derived from joint assets in which the husband would have a share.

21. In a recent case reported in **Abdulrahim Abdulmiya Pirzada v. State of Gujarat & others 2016 SCC Online Gujarat 1187** the High Court while dealing with a similar question held:

8. At this juncture, it may be germane to refer to certain decisions of the Supreme Court. In the case of Vimlaben Ajitbhai Patel v. Vatslaben Ashokbhai Patel and others, (2008) 4 SCC 649, the Supreme Court has, after referring to the provisions of Section 3(b), 18 and 19 of the Hindu Adoptions and Maintenance Act, 1956, observed that maintenance of a married wife, during subsistence of marriage, is on the husband. It is a personal obligation. The obligation to maintain a daughter-in-law arises only when the husband has died. Such an obligation can also be met from the properties of which the husband is a co-sharer and not otherwise. The Court further observed that Sections 18 and 19 of the said Act prescribe the statutory liabilities in regard to maintenance of wife by her husband, and only on his death, upon the father-in-law.

Mother-in-law, thus, cannot be fastened with any legal liability to maintain her daughter-in-law from her own property or otherwise.

9. In the case of S.R. Batra and another v. Taruna Batra (Smt.), (2007)3 SCC 169, the Supreme Court has expressed the opinion that the rights which may be available under any law can only be as against the husband and not against the father-in-law or mother-in-law. In the facts of the said case, the Court observed that the house in question belonged to the mother-in-law of Smt. Taruna Batra and did not belong to her husband Amit Batra, hence Smt. Taruna Batra cannot claim any right to live in the said house. The Court was further of the view that the house in question could not be said to be a 'shared household' within the meaning of Section 2(s) of the Protection of Women from Domestic Violence Act, 2005. It was contended before the Supreme Court that a 'shared household' includes a household where the person aggrieved lives or has at any stage lived in a domestic relationship. The court did not agree with the said submission and was of the opinion that the wife is only entitled to claim a right to residence in a shared household, and a shared household would only mean the house belonging to or taken on rent by the husband, or the house which belongs to the joint family of which the husband is a member.

10. From the principles enunciated in the above referred decisions, it is apparent that any right which the wife has during the subsistence of her marriage and during the lifetime of her husband is against the husband and she has no right to claim any relief against the father-in-law or sister-in-law or any of the relatives of her husband inasmuch as the obligation to maintain her lies only on her husband. On that premise it can be said that the obligation to maintain the wife and pay her a monthly maintenance would be on the husband and not on the other family members as has been done in the present case.

22. For the reasons afore-stated, Criminal Revision No. 3084 of 2016 (filed by Vikas, Virender and Dinesh, brothers-in-law of Usha Rani) is allowed and the impugned order dated 25.7.2016 passed by the Additional Sessions Judge (Exclusive Court), Bhiwani, vide which they have been directed to pay maintenance @ Rs. 3000/- per month collectively to Usha, is set aside. Consequently, Criminal Revision No. 2985 of 2016 (filed by Usha Rani) is dismissed. However, Usha Rani is at liberty to claim residence in the house, which belongs to the joint family of which her husband is a member or claim maintenance against her husband.