

copy of Judgment

CNR No: H
CIS No:

1

UID No.

**IN THE COURT OF MOHOMMAD SAGEER JUDICIAL
MAGISTRATE FIRST CLASS, FARIDABAD.**

UID No. 1
CIS No. D.V.
Petition No. : 7
Date of Instt:
Date of Decision :

ti wife of : n Aged 34 years R/o H.
No. , Sector- , Faridabad
.....Applicant

Versus

1. n son of Shri
2. C
3. Smt. wife of Shri
4. S am son of
- R/o H. No. Mandawali Fazalpur Delhi-96.
5. D/o S h W/o
6. Both R/o H. No. Gali No. Ft Road Near Gulab Cable
Dabua Colony, NIT Faridabad.

...Respondents.

**PETITION UNDER SECTION 12 SECTION FOR SEEKING
RELIEFS UNDER SECTION 18,19,20,21,22 AND 23 OF PROTECTION
OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005.**

Present: - Shri , Advocate for the complainant.
Shri V v, Advocate for the respondents

JUDGMENT:

By filing the present petition under Section 12 section for

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seeking reliefs under section 18, 19, 20, 21, 22 and 23 of protection of women from domestic violence act, 2005. the petitioner- sought the relief of protection order; residence order, monetary relief and compensation 12 section for seeking reliefs under section 18, 19, 20, 21, 22 and 23 of protection of women from domestic violence act, 2005 respectively of Protection of Women from Domestic Violence Act, 2005 and any other order which may be deemed fit by the Court in connection with the facts and circumstances of the present case.

2. As per the averments made in the petition, are that the marriage of applicant was solemnized with respondent no.1 on 17.06.2009 as per Hindu rites and ceremonies at Faridabad and the parents of the applicant had spent about Rs. 21 lacs in the marriage. Since after the marriage, even after so huge expenses, the respondents were not satisfied with dowry articles given in the marriage and they taunted her for bringing less dowry. On 19.06.2009, after reception party of marriage, respondents no. 2 and 3 had snatched all jewelery which was given in the marriage by her parents. When applicant informed respondent no. 1 about it, he did not listen her and beat her. The respondent no. 1 used to commit unnatural sex with her and due to which, physical condition of applicant became serious and thereafter, she was treated for the same. During this period, the applicant became pregnant and respondents No. 1 to 5 started to pressurize her for sex determination and used

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to say that if there may be a girl, then get aborted the same. When she refused to the same, the respondents beat her and also threatened her with dire consequences. The applicant narrated the entire incident to her parents, upon which her parents visited her matrimonial home and requested the respondents to not to harass their daughter, but of no avail. On dated 15.11.2009, the respondent no. 1 had taken the applicant to visit America on company tour, where he continuously pressurized the applicant for sex determination, but she flatly refused to the same. On 10.04.2010, she gave birth to a male child namely I with a major operation due to the injuries caused by the respondents. The respondents used to demand Rs. 20 lac from her parents at the ceremony of "Naamkaran" of the child and when she showed her inability to fulfill their demand, then the respondents treated her with cruelties. A Panchayat was called by her parents, wherein it was decided that she will live in Flat No. in Vaishali, Ghaziabad and it was also decided that the parents of applicant will give Rs. 15 Lacs cash for payment of said flat and the applicant will give her entire salary to her husband for payment of installment of said flat and accordingly, she gave her entire salary to the respondent no. 1 to pay the installment of the flat. The respondents used to pressurize her to bring Rs.15 lacs from her parents as settled in the Panchayat and when the applicant requested that there is retirement of her father and they will pay the said amount to the respondents as and when her

father will get his retirement benefits, but the respondents did not consider the same and on 08.07.2011 in the evening, the respondent no. 1 came to the house in drunken condition and mercilessly beat the applicant and threatened to kill the child, then the applicant started to shout to save her and her minor child. In the month of December 2012, the father of applicant was retired from his service and he gave Rs. 15 lacs to the respondents in the month of February 2013. Thereafter, the respondents pressurized the applicant to leave her job and therefore, she left her job. But respondent no. 1 used to misbehave with the applicant. The parents of applicant tried to reconcile the dispute, but the respondents had beaten her parents. On 07.11.2014, in the morning, the respondent no. 1 made a threatening call to the applicant and thereafter, she made a complaint to the police. Due to this the physical condition of mother of applicant became serious and she came to leave her mother at Faridabad. When at about 10:30 PM, she reached at her flat, she found that the lock of her flat was broken and all the articles were scattered and the documents and jewelery are missing. She again made a complaint with the police. Several panchayats were convened by the family members of applicant, but of no avail. It is further submitted that the respondent no. 1 working in Ericsson Indian Global Service Private Limited, MNC Company as Specialist-Support in Gurgaon and is earning Rs. 1, 40,000/- per month, whereas, the applicant has no independent source of income to maintain herself and her son. The

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applicant has prayed for separate rented accommodation and also prayed for interim maintenance.

3. On notice, reply filed by respondents, wherein it is submitted that the present application is not maintainable. It is submitted that the marriage of applicant and respondent no. 1 was solemnized on 17.06.2009, but it was simple and dowry less marriage. The respondent no. 1 himself purchased a flat prior one year to his marriage in his own name and out of his own earning. Since the very first day of marriage, the applicant expected to sell out the said flat and to shift to her parents house, but the respondent no. 1 was not ready for the same. One M., who is husband of elder sister of applicant has been residing at the parents house of applicant and the applicant also wanted to make respondent no. 1 as Ghar Jamai, but he was never ready for the same. It is further submitted that the brother of applicant namely is MBBS doctor and she in collusion with her brother prepared false medical documents regarding unnatural sex and beatings. The applicant always harassed and humiliated the respondents from the very beginning. The respondent no. 1 never pressurized the applicant for pre-natal gender checkup. The applicant had spent seven years in hostel alone and is was always desperate, over ambitious, felt proud in achieving things and treated relations as objects and medal of pride. The applicant no. 1 always harassed her husband and her family members. The parents of applicant with the help of

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influential people never tried to convince the respondents no. 2 and 3. It is submitted that she also earned from tuitions and worked in paramount IAS, PCS coaching centre, Badarpur, Delhi from 6:00 PM to 9:30 PM. Further, there is denial to the facts as averred in the application and a prayer for dismissal of the petition.

4. To prove her case, petitioner examined herself as AW1 and tendered her affidavit Exhibit. AW1/A and documents Copy of FIR Mark-A1, OPD Mark-A2, Assessment of Income Tax Mark-A3, Fee Receipt Mark-A4 to Mark-A10, Copy of transaction detail Mark-A11, Fee Receipt Mark-A12 Copy of Cheque Mark-A13, Computation of total income tax thereon Mark-A14, Copy of Adhar Card Mark-A15.

Thereafter, petitioner evidence was closed by court order dated 27.5.2019.

5. To rebut this, respondent has examined himself as RW-1 and also tendered documents:- Exhibit. R1 to Exhibit. R7 Photographs, Exhibit. R8 Appointment for suregery, Exhibit. R9 Pre- Approval Certificate, Exhibit. R10 Investigation report of Mahila Thana, Exhibit. R11 Statement of Maintenance Charge, Exhibit. R12 to Exhibit. P15 Copy of complaint Mark-Dxy/1 Statement from 1.1.2013 to 31.3.2013, Exhibit. Xy Statement of account, Exhibit. DA, Summary of Tax deducted at source, Exhibit. DB to Exhibit. DD Photographs, Exhibit. D2/1 Statement of cross-examination of

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Dr. * and also tendered documents Exhibit AX/1 to Exhibit AX/4, Mark-PX, Mark PX/2, Mark-PX/3 and Exhibit. PR to Exhibit. PR1.

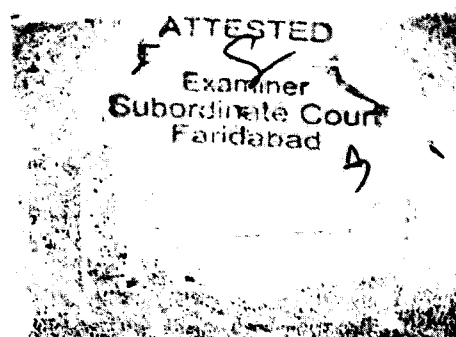
6. Thereafter, respondent closed his evidence.

7. The learned counsel for the petitioner has submitted that the domestic incident report as well as the evidence adduced by the applicant reflects in a very clear and telling manner that the applicant was subjected to the violence within the term of domestic violence as defined in section 3 of the Act. She has submitted that applicant was harassed and beaten by the respondents. She has submitted that respondent No.1 being husband of applicant is under obligation to maintain the applicant, but he is neglecting deliberately to fulfill the said obligation. She has submitted that instead of maintaining applicant the respondent No.1 inflicting physical, emotional and verbal abuse upon her.

8. On the other hand learned counsel for the respondent submitted that it is the petitioner who has left the society of the respondents willfully and without any reason. It was further argued that petitioner is quite able to maintain herself and therefore, she is also not liable for any maintenance or any relief from this Court.

9. I have heard learned counsel for the parties at length and has

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gone through the case file carefully and minutely. In the considered view of this Court, the petitioner is not entitled for any relief and she failed to prove any allegation regarding domestic violence upon the respondents for the following reasons:-

10. First of all, the petitioner has failed to prove Domestic violence at the hands of respondents to claim any remedy under the Act. Admittedly, her marriage with respondent No.1 was solemnized in the year 19.6.2009. As per her, the respondent no.1 and his family members were not satisfied with the dowry and they treated her for more dowry demand and used to give merciless beatings to the applicant for this from the very first day of the marriage. However, she has not mentioned any date, month or year of such dowry demand or beatings or any act of cruelty. There is no medical report available on the file to show that she was given beatings by respondent no.1 and his family members. First time she allegedly reported the matter on 6.11.2014 but no record has been submitted in this regard. Thereafter, only an FIR No. dated 30.4.2015 under Section 498-A, 406, 323, 506 and 377 of IPC in P.S. Central, Faridabad was moved i.e. after almost six years of alleged continuous cruelty. The reason for such delay has not been satisfactorily explained by the complainant. The delay of almost 6 years indicates towards manipulation and exaggeration of the story by the complainant.

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11. It has been mentioned that several Panchayats were held on their behalf due to which delay took place. However, not a single independent witness of alleged Panchayats had been examined by the complainant to corroborate her story and explain the delay. Therefore, delay of 6 years is fatal to the case of complainant.

12. As per the contents of the petition, on the next date of marriage, she was subjected to torture and therefore, it can be presumed that she has been telling all her dowry allegations to her parents. However, only his father appeared as AW-2 to support allegations of the complainant. He stated that he spent about 21 Lacs Rs in the marriage but in his cross-examination failed to account such a huge money and replied every questions asked by the Ld. Counsel for the respondents in vague manner that he has not knowledge about his monthly income or how his income used to come to him. Thereafter, he stated that Rs. 21 lacs were spent by his family but failed to name anyone who helped him in the marriage. He also failed to remember who contributed in the marriage of her daughter and how much contributed. In this manner, it is clear that this witness is not a reliable witness and tried to make excuses to account spending of Rs. 21 lacs in the marriage of her daughter. Therefore, in the absence of any independent witness, the testimony of the complainant

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remains uncorroborated.

13. Further, her allegations regarding unnatural sex has not been proved. The complainant has stressed upon committing unnatural sex by respondent no.1 very heavily in her complaint and the main reason for the domestic violence. In the complaint as well as in her testimony, she alleged that from the date of marriage, respondent no.1 used to commit unnatural sex with her and she had been admitted in the hospitals also and get herself treated. However, no medical record in this regard has been submitted. In her cross-examination, she stated that document Mark-A prepared by Dr. [redacted] is regarding the infection and private part due to unnatural sex. However, document Exhibit. D2/1 which is the statement of Dr. [redacted] in case FIR No. [redacted] dated [redacted] filed by the complainant, clearly shows that the complainant has stated false facts before the court. Dr. [redacted] stated that the patient (Complainant) came to her after marriage on [redacted] for treatment of urine infection. In July 2009, she became pregnant and in her custody, her delivery was conducted. In her cross-examination, she stated that she has not prepared any report regarding unnatural sex with the complainant as mentioning the FIR. She also stated that complainant [redacted] never admitted in her hospital regarding any problem by unnatural sex and if she has written in her complaint then it is a false statement. She further stated that the complainant never complaint to her for any problem of unnatural sex. In this

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manner, it is clear that the complainant has created a false story regarding the unnatural sex.

14. Similarly, the complainant has also deposed false facts regarding the alleged injuries inflicted by the respondents at the time of her delivery on her stomach due to which large operation was conducted. In her cross-examination the complainant clearly admitted that she has made allegations in her complaint and in her affidavit that large operation of her delivery was done due to injuries inflicted by the respondents but she has not submitted any document in this regard. Document Exhibit. D2/1, statement of Dr.

..... clearly shows that complainant was deposing false facts. She stated in her cross-examination that the delivery of '.....' was not done due to any physical injury and it can be happened with any patient. Therefore, the complainant was also deposing false facts in this regard. Further, she also stated that the complainant used to come to her along-with her husband. Complainant in her cross-examination admitted that all the expenses in her delivery got done by her husband through health insurance policy. In this manner, it is also clear that the respondent no.1 used to take care of her wife which is against the allegations of complainant.

15. Further, from the cross-examination of the complainant, it is also

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clear that the respondent no.1 took her to America with him and they stayed there quite a long time. Had the respondent no.1 committing domestic violence upon the complainant, he would not have taken the complainant with him to America. Photographs Exhibit. DC, which has been admitted by the complainant shows that they had been in America and enjoying his life as the complainant seems to be very happy in the photographs. Similarly, respondent no.1 also took her to Shimla when she returned from America for her interview for a job. The complainant has alleged that she was forcefully sent to India from America by the respondent no.1. This story seems to be not plausible as why thereafter respondent no.1 took her to Shimla for an interview. Photographs R1 to R7 and Exhibit. DB and Exhibit. DD are the photographs of Shimla where both complainant and respondent no.1 enjoyed their time and she seems to be quite happy in the photographs. Therefore, her allegations do not find any substantial strength before the evidences.

Further in her cross-examination, the complainant alleged that her Bhabi (Sister in law) had illegal relations with the respondent no.1 and they used to meet with each other quite often. However, this allegation has not been proved to be true. Therefore, these allegations without any basis which came first time upon the court file during her testimony, amounts to mental cruelty to the respondent.

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16. Further the complainant has failed to prove any MLR to prove that she had been given any injuries by the respondents as alleged by her in her complaint several times. She failed to explain the reason for the same.

17. Further in her cross-examination she has admitted that she can maintain herself as well as son even the respondent no.1 does not give the interim maintenance to her. She admitted that she is well-qualified and was doing job before marriage. In this manner, she cannot be said to be a helpless women having no source of income. She herself stated that she has helped the respondent no.1 several times monetarily and hence, she cannot be stated to be having of source of income.

18. In view of above discussion, it appears that both the complainant and respondent have their temperamental disputes which has been exaggerated by the complainant in the present petition. Apart from this petition, evidences on the record show that both the parties have filed several case upon each other which indicates that both are trying to pressurize each other.

19. In this manner, petitioner has failed to prove any allegations made by her in the petition regarding domestic violence at the hands of respondents

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and therefore, present petition is devoid of any merit and is hereby dismissed.

File be consigned to the record after due compliance

Announced in Open Court:

(Signature)
(Mohammad Sageer),
Judicial Magistrate Ist Class,
Faridabad.
UID No.

Note: Certified that all the 14 pages of this judgment have been duly signed by me.

(Signature)
Mohammad Sageer
Judicial Magistrate Ist Class,
Faridabad
UID No.

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