

IN THE COURT OF DR. RAKESH KUMAR: SPECIAL JUDGE
(CBI) (SOUTH): DISTRICT COURTS, SAKET
NEW DELHI

Criminal Appeal Number: 144/2018

Rita Gupta
W/o Late Krishan Kumar Gupta

..... Appellant

versus

1. The State (NCT of Delhi)
Through Additional Public Prosecutor

2. Diksha Gupta
W/o Harsh Gupta
D/o Subhash Gupta

..... Respondents

Date of institution of Revision	: 13.04.2018
Date of conclusion of arguments	: 24.11.2018
Date of order	: 24.11.2018

JUDGMENT

This appeal under section 29 of the Protection of Women from Domestic Violence Act, 2005 (in short 'the D.V. Act'), preferred by appellant Ms. Rita Gupta against respondents State and Smt. Diksha Gupta, is directed against order dated 07.10.2017, passed by the court of Learned

Metropolitan Magistrate (Mahila Court), South, Saket, New Delhi, whereby, in CC No. 7620/2017 entitled Diksha Gupta v. Harsh Gupta & Others, the Learned Metropolitan Magistrate summoned the appellant.

2. The circumstances giving rise to the appeal are that respondent no. 2 filed a complaint under section 12 of the D.V. Act against her husband and mother-in-law (appellant herein). The details of complaint are not relevant for the disposal of this application.

3. The Learned Magistrate on 07.10.2017, *inter alia*, observed as follows:-

"The averments in the application reflects sharing of domestic relationship by the aggrieved person with both the respondents. Further, there is sufficient material to summon the said respondents. Therefore, let notice of the present application be issued to both the respondents on filing of PF/RC/Speed Post/SHO concerned. Notice be affixed in case of refusal, non availability or found locked."

4. Feeling aggrieved of the impugned order, the applicant has made the present application with the following prayer: -

(a) Summon the Trial Court record of case titled as 'Diksha Gupta v. Harsh Gupta & Ors' numbered as CC No. 7620/2017 pending adjudication before the court of Ms. Mayuri Singh, Ld. MM, Mahila Court, Saket Court, New Delhi.

(b) Set aside the impugned order dated 07.10.2017 passed by the court of Ms. Mayuri Singh, Ld. MM, Mahila Court, Saket

Court, New Delhi to the extent of issuance of summons against the present appellant and drop the proceedings qua the present appellant; and

(c) Pass any other or such further order(s) as this Hon'ble Court may deem fit and proper.

5. I have heard counsel for the parties and have gone through the record of the complaint case no. 7620/2017 entitled Diksha Gupta v. Harsh Gupta and others, pending before the Learned Magistrate.

6. Having drawn my attention on photocopy of FIR No. 0209, dated 29.06.2017, under section 323/406/498-A IPC, PS Women Police Station Gurgaon, Learned counsel for the appellant submitted that the aggrieved had filed FIR on 29.06.2017 against her husband wherein all the allegations were made against the husband only and not against the mother-in-law. It is further stated that on the date of registration of FIR the aggrieved left the matrimonial house and since then she is residing with her parents. Learned counsel for the appellant has referred to the judgment in Sachin Sharma and Others v. Radhika Sharma Crl. Misc. No. M-31929 of 2009 (O&M) and contended that in this case in similar situation it has been held that where there was a dispute only between the aggrieved and her husband proceedings against in laws of aggrieved would nothing but

an abuse of process of law.

7. Per contra, the Learned counsel for the respondent no. 2 submitted that order has been passed rightly and appeal has been filed to linger on the case.

8. I have given my thoughtful consideration to the submissions made on behalf of the parties.

9. As noted above, this appeal has been preferred by Rita Gupta against order dated 07.10.2017 whereby the Learned Magistrate has summoned her in complaint case no. 7620/2017 entitled Diksha Gupta v. Harsh Gupta and others.

10. The aggrieved Diksha Gupta has filed a complaint no. 7620/2017 against her husband Harsh Gupta and mother-in-law Rita Gupta. The Learned Magistrate has summoned both the respondents in the said complaint case. It is noteworthy here that the aggrieved had also filed FIR No. 0209, dated 29.06.2017, under section 323/406/498-A IPC, PS Women Police Station Gurgaon, against her husband Harsh Gupta. A perusal of entire allegations made by the aggrieved in the FIR reveals that all these allegations have been made against the husband only. There was no allegation made by

the aggrieved against her mother-in-law, (the appellant herein). It has been contended on behalf of the appellant that since the date of FIR the aggrieved has been staying with her parents and had already left the matrimonial home and which fact has not been disputed on behalf of respondent no. 2.

11. It has been held by Hon'ble Punjab & Haryana High Court in Sachin Sharma's case (supra) as follows:-

“Respondent has left the matrimonial home on account of trouble caused by her husband. Husband of the respondent i.e. Sachin Sharma died on 12.12.2006. A perusal of Annexure P-7 reveals that the petition filed by the respondent under Section 125 Cr.P.C. was allowed by the Trial Court vide order dated 15.07.2009 and it was ordered that she was entitled to receive 3000/- per month as maintenance. The complaint under the Act was filed in April 2009. Thus, similar allegations levelled by the respondent in FIR under section 498-A IPC were duly inquired by the police and it was found that petitioner no. 2 and 3 were innocent. It transpired during police enquiry that dispute was only between the respondent and her husband. Petitioner no. 2 and 3 were already taking care of their mentally sick daughter. In these circumstances, continuation of criminal proceedings against petitioner no. 2 and 3 would be nothing but an abuse of process of law.”

12. The facts of Sachin Sharma's case (supra) were that a complaint was made against the husband and in-laws, the allegations of which were found by the police to be false. Thereafter, the complainant filed the D.V. Act complaint case. In the instant case, the complainant had filed FIR No. 0209 dated 29.06.2017, against her husband only. No allegations

were made against the mother-in-law in the said FIR. After registration of FIR she left the matrimonial home. Thereafter, the aggrieved filed the D.V. Act complaint. In the light of judgment in Sachin Sharma's case (supra), the D.V. Act complaint raising some allegations against the mother-in-law which were not there in the FIR, is nothing but an abuse of process of law.

13. In view of the above discussion, the impugned order dated 07.10.2017, passed by Learned Trial Court to the extent of summoning of the appellant, is set aside.

14. File be consigned to the Record Room. The record of CC No. 7620/2017 entitled Diksha Gupta v. Harsh Gupta & Others, called from the court of the Learned Magistrate be sent back alongwith a copy of this order.

Pronounced in the open court
on 24th November 2018

(DR. RAKESH KUMAR)
Special Judge (PC Act) (CBI)
South District, Saket Courts,
New Delhi

RAKESH
KUMAR

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