

IN THE COURT OF SHRI V.K. BANSAL
ADDL. SESSIONS JUDGE
NEW DELHI

IN RE: Criminal Revision No. 196/07

Shivani Kabra
w/o Sh Shaleen Kabra
r/o A-142. 3rd Floor
Lajpat Nagar-I,
New Delhi Revisionist

VERSUS

1. Shaleen Kabra (Husband) S/o Sh Ram Prasad
2. Ram Prasad (Father-in-law)
3. Smt Leelawati (Mother-in-law) W/o Sh Ram Prasad
All r/o D-II/64 Pandara Road,
New Delhi.
4. Lata Soni (sister-in-law)
s/o Sh Gopi Wallabh Soni
R/o Erera Colony, Bhopal
(M.P)
5. The State (NCT of Delhi) Respondents.

O R D E R

The present revision petition has been preferred against the order dated 09.10.2007 whereby the court has directed both the parties including the revisionist herein to file affidavit in evidence and put the case for cross examination for 13.11.2007.

2. Notice of the revision was given to the respondents. Trial court record was requisitioned.
3. The facts in brief are that the revisionist herein filed an application under the Protection of Woman From Domestic Violence Act, 2005. On that application notice to respondent was given. Interim order was passed on 08.06.2007 and thereafter the present order to lead evidence and come for cross examination was passed.
4. Ld counsel for the revisionist submitted that in the present case there is no procedure prescribed under the Act that the Ld Trial court shall record the evidence and also conduct the cross examination. Ld counsel submitted that the Act was enacted to provide a remedy in Civil Law for Protection of Woman victim of Domestic Violence and to prevent the occurrence of Domestic Violence in the Society. The Law also provides that the application is to be decided within the period of 60 days from the date of first hearing. Ld counsel submitted that in case the matter is fixed for evidence then it cannot be decided within the mandatory period of 60 days. Even otherwise, in the present case the respondent in reply to the application of the revisionist has not denied the infliction of injuries on the body of the revisionist and he has categorically refused the entry of the revisionist in the house. As the respondent is not disputing the infliction of injuries, therefore, there is no need to ask for the parties to lead evidence and also come forward for cross examination. Ld counsel submitted that the Ld Trial court has erred in Law as well as the facts of the case for asking the parties to lead evidence and to come for cross examination. The order is not sustainable as now the only relief which remains to be adjudicated is the relief of maintenance, custody of Istri Dhan and other house hold goods. In that respect affidavits of both the parties are already on record and the matter may be adjudicated on the basis of the same. There is no need to lead evidence on these points. It is

prayed that keeping in view all these facts the order be set aside and the ld Trial court be directed to decide the matter on the basis of the affidavits already available on the file.

5. Ld counsel for the respondents submitted that for reaching to just conclusion in the case it is necessary that the court shall take evidence. In the present case the revisionist has filed her own affidavit. Respondent has also filed his own affidavit. To ascertain the veracity of the assertion made in the affidavits and the truthfulness of the parties it is necessary that they be put to the test of cross examination and the Ld Trial court has rightly taken the decision and asked the parties to lead evidence and come for cross examination. It is prayed that there is no illegality in the order and the revision be dismissed.

6. After hearing the arguments and going through the record, I am of the opinion that it is the duty and responsibility of every court to adjudicate the matter after taking evidence and according fare opportunity to both the parties to plead their own case. In the present case the revisionist moved an application under Protection of Woman from Domestic Violence Act, 2005 leveling allegations against the respondent. Respondent had taken his own plea in this regard and the interim order had already been passed on the basis of pleadings. Now to come to the just conclusion about the allegations and counter allegations it is necessary that the parties be given opportunity to lead their evidence and also to come in the witness box and face the cross examination. In my opinion, the ld Trial court by asking the parties to appear for cross examination had only taken a step for bringing on record the truth and to reach to the just conclusion, therefore, I don't find any merit in the revision, same is dismissed. Trial court record along with the copy of this order be sent back. File of revision petition be consigned to record room.

Announced in open court (V.K. BANSAL)

Dated: 07.12.2007 ADDL. SESSIONS JUDGE

NEW DELHI

IN THE HIGH COURT OF DELHI AT NEW DELHI
SHIVANI KABRA
Vs.
STATE & ORS
Advocate (s) : PRAMOD GUPTA,
Date of Disposal : Wednesday, January 30, 2008
Category : CRIMINAL REVISIONS AND BAIL APPLICATIONS
IN THE HIGH COURT OF DELHI AT NEW DELHI
30.01.2008
Present: Mr.Pramod Gupta, Advocate for the Petitioner.
Crl.M.C.323/2008 and Crl. M.A.1186/2008

The petitioner/wife was married to respondent no.2/husband in accordance with Hindu rites on 14.02.1994. It is the allegation of the petitioner that the parents of respondent no.2/husband were demanding dowry from the beginning and the same was given by the parents of the petitioner/wife. There are allegations of cruelty made against the respondent no.2/husband and his family members being respondent nos. 3 to 5.

The petitioner filed an application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 ('the said Act' for short) on 24.04.2007 claiming relief under different provisions of the said Act including Sections 18, 19, 20, 21 and 22 of the said Act.

The learned MM passed an order on 08.06.2007 as regards the relief claimed by the petitioner under Sections 17 and 19 of the said Act in respect of the residence and shared household and directed the respondent no.2/husband to pay to the petitioner/wife a sum of Rs. 10,000/- per month towards expenses for her accommodation and amenities. The relief claimed in respect of the custody of the children was settled by the learned Addl.Sessions Judge during the course of hearing of the revision petition.

The grievance of the petitioner/wife is in respect of the remaining pending issues, the learned MM passed an order dated 09.10.2007 directing the parties to file their affidavits by way of evidence and posted the matter for cross examination of the petitioner /complainant (wife) on 13.11.2007. Hence, the present petition.

A perusal of the Order dated 09.10.2007 of the learned MM shows that the respondent no.2/husband sought an opportunity to cross examine the petitioner/complainant(wife) and the learned MM was of the view that under the provisions Section 28 of the said Act, the Court has to follow the procedure laid down in the Code of Criminal Procedure, 1973 ('the said Code' for short) and further the Court can lay down its own procedure for disposal of the application.

Considering the allegation levelled by the petitioner/complainant (wife), the learned MM was of the view that the respondents, respondent nos.2 to 5 herein, should be given an opportunity to cross examine the petitioner/complainant (wife) and they should further be entitled to lead evidence.

The contentions advanced by learned counsel for the petitioner/wife against the said Order have been examined by the learned Addl. Sessions Judge in the impugned order dated 07.12.2007. In fact, the same submissions have been made today.

It is the plea of the learned counsel for the petitioner that there is no procedure prescribed under the said Act for recording of evidence and to conduct cross examination. The further plea advanced by the learned counsel for the petitioner, which was also raised before the Trial Courts, is that the only reliefs which remain to be adjudicated are in respect of maintenance, stridhan and other household goods for which affidavits have been filed by the parties.

This plea was contested by the counsel for the respondent nos.2 to 5, being the husband of the petitioner and her in-laws, before the learned Addl.Sessions Judge on the ground that it was the case of an affidavit filed by one party against the affidavit of the other party and thus to ascertain the veracity of the averments made in the affidavits, the same should go through the test of cross examination. The learned Addl.Sessions Judge held that it is the duty of the court to make an endeavour to get to the truth of the matter and in view of the allegations and counter allegations it was necessary that the parties be given an opportunity to lead their evidence and also to enter the witness box and face the cross examination.

“28.Procedure

- (1) Save as otherwise provided in this Act, all 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, 1973 (2 of 1974).
- (2) Nothing in sub-section (1) shall prevent the court from laying down its own procedure for disposal of an application under section 12 or under sub-section (2) of section 23.”

A reading of the aforesaid clause shows that the proceedings are to be governed by the Code of Criminal Procedure, 1973, but this would not prevent the Court from laying down its own procedure for disposal of an application under Section 12 of the said Act. Thus, wide amplitude has been given to the Court taking into consideration the nature of the legislation, which is to protect the women.

The statement of objects and reasons of the said Act shows that domestic violence is undoubtedly a human right issue and serious deterrent to development and thus to protect the rights under Articles 14, 15 and 21 of the Constitution of India, the law has been enacted. It certainly cannot be the plea of the learned counsel for the petitioner that the Court does not have the right to get to the bottom of the matter if the Trial Court, in its wisdom, in the given facts of the case where there are two affidavits of the opposite parties, finds that the cross examination of the deponents would assist the Court in coming to the right conclusion. Such a course of action can hardly be faulted. Not only has the Trial Court exercised this power, but the revision against the same has also been dismissed and this is the third round initiated by the petitioner.

It is not a case of the Trial Court holding a detailed trial, as alleged by the petitioner/wife, but trying to find the veracity of the averments made in the affidavits of the two parties.

I am thus of the considered view that there is no ground for this Court to exercise its inherent jurisdiction under Section 482 of the said Code.

Dismissed.

JANUARY 30, 2008 SANJAY KISHAN KAUL, J.