

(2010) 08 P&H CK 0417

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Ajayta

APPELLANT

Vs

Harinder Singh

RESPONDENT

Date of Decision: Aug. 12, 2010

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 401
- Protection of Women From Domestic Violence Act, 2005 - Section 12, 17, 18, 19, 20

Hon'ble Judges: Sabina, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Sabina, J.

This petition has been filed u/s 401 of the Code of Criminal Procedure challenging order dated 23.9.2009 passed by the Additional Sessions Judge, Panchkula, whereby order dated 7.8.2009 passed by the Judicial Magistrate, Ist Class, Panchkula in an application u/s 23 read with Section 19 of the Protection of Women from Domestic Violence Act, 2005 (for short "the Act") has been set aside.

2. Brief facts of the case, as noticed by the learned Additional Sessions Judge, in para Nos. 2 and 3 of the impugned order, read as under:

It is yet another love marriage gone sour. The parties were married on 22.4.1998 at Mumbai and their marriage was got registered there. Later, families of both the parties gave their consent to the marriage and a marriage function was held in Chandigarh. Two girls child were born out of this wedlock on 7.8.1999 an 18.11.2004 who are named as Jayotika and Simran respectively. However, the parties ran out of luck and eventually the complainant filed a complaint under Sections 12, 18, 19 and 20 of the Act alleging harassment, domestic violence etc. by her husband. She also filed an affidavit in support of her complaint.

Along with the complaint, she filed an application u/s 23 of the Act for grant of ad-interim monetary relief to her to the tune of Rs. 50,000/- per month. It was alleged that her husband was earning not less than Rs. One lac per month and hence he was capable of paying Rs. 35,000/- per month to her. On these premises, the complainant sought a sum of Rs. 50,000/- as interim monetary relief. She supported her application as well with her affidavit.

3. Learned Counsel for the petitioner has submitted that the trial Court had rightly allowed the petitioner to reside in the shared household, whereas, learned Appellate Court had erred in directing the petitioner to hand over the possession to her mother-in-law.

4. Learned Counsel for the respondents, on the other hand, has submitted that the house in question was owned by Raj Rani-respondent No. 2. It has come to her on the basis of Will after the death of her husband. Hence, the same could not be described as shared accommodation.

5. Learned Counsel for the respondents has further submitted that Harmender Singh-respondent No. 1 and the petitioner had been residing in a rented accommodation after their marriage and had never resided in the house of Raj Rani.

6. After hearing Learned Counsel for the parties, I am of the opinion that the present petition deserves to be dismissed.

7. The Apex Court in *S.R. Batra and Anr. v. Smt. Taruna Batra* 2007 (1) RCR (Criminal) 403, in para 17 and 18, has held as under:

There is no such law in India, like the British Matrimonial Homes Act, 1967 and in any case, the rights which may be available under any law can only be as against the husband and not against the father-in-law.

Here, the house in question belongs to the mother-in-law of Smt. Taruna Batra and it does not belong to her husband Amit Batra. Hence, Smt. Taruna Batra cannot claim any right to live in the said house.

8. The said view is reiterated in *Vimlaben Ajitbhai Patel v. Vatslaben Ashokbhai Patel and Ors.* 2008 (3) CCC 570 (SC).

9. Section 17 of the Protection of Women from Domestic Violence Act, 2005 reads as under:

Right to reside in a shared household: (1) Notwithstanding anything contained in any other law for the time being in force, every woman in a domestic relationship shall have the right to reside in the shared household, whether or not she has any right, title or beneficial interest in the same.

(2) The aggrieved person shall not be evicted or excluded from the shared household or any part of it by the respondent save in accordance with the

procedure established by law.

10. There is nothing on record to suggest that the house in question does not belong to respondent No. 2 Raj Rani. In these circumstances, in view of the decision of the Apex Court in S.R. Batra's case (supra), learned Additional Sessions Judge has rightly held that the complainant cannot claim any right of residence in the property of her mother-in-law. Moreover, a woman has a right to stay in the shared household. But in the present case, there is nothing on record to suggest that the petitioner was already residing in the house in question. Rather the case of the respondent is that the petitioner had entered into the house of her mother-in-law under police protection. The Appellate Court has further ordered that appropriate directions, after hearing the parties, be issued to the appellant to provide suitable residence to the complainant.

11. Hence, this revision petition is dismissed.