(2012) ACR 2459 : (2012) 6 ADJ 759 : (2012) CriLJ 4423 : (2013) 1 Crimes 245 : (2013) 1 RCR(Civil) 410

Allahabad High Court

Case No: Criminal Revision No. 384 of 2010

Nishant Sharma and Others		APPELLANT
	Vs	
State of U.P. and Others		RESPONDENT

Date of Decision: May 4, 2012

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 125
- Dowry Prohibition Act, 1961 - Section 3, 4
- Penal Code, 1860 (IPC) - Section 323, 498A, 504, 506
- Protection of Women From Domestic Violence Act, 2005 - Section 12, 17, 18, 19, 2(f)

Citation: (2012) ACR 2459 : (2012) 6 ADJ 759 : (2012) CriLJ 4423 : (2013) 1 Crimes 245 : (2013) 1 RCR(Civil) 410

Hon'ble Judges: Ramesh Sinha, J

Bench: Single Bench

Advocate: I.K. Mishra and Chetan Chatterjee, for the Appellant; P.S. Pundir and A.G.A., for the Respondent

Final Decision: Dismissed

Judgement

Hon''ble Ramesh Sinha, J.

Heard Sri Chetan Chatterjee, learned counsel for the revisionists, Sri P.S. Pundir, learned counsel for the opposite party No. 2 and learned A.G.A. for the State. This criminal revision has been preferred against the order dated 19.12.2009 passed by Additional District and Sessions Judge, Court No. 10, Saharanpur in Criminal Appeal No. 96 of 2009, Smt. Ashu Sharma v. State of U.P. and others, u/s 23 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as the Act) by which the lower appellate Court has set aside the order dated 19.9.2009, passed by the Chief Judicial

Magistrate, Saharanpur in Case No. 75 of 2008, rejecting the application dated 24.6.2008, filed by opposite party No. 2 u/s 23 of the Act, Police Station Kotwali Nagar, District Saharanpur, directing the revisionist to reside in the house of opposite party No. 2.

2. Brief facts of the case are that the revisionist No. 1 is the husband of opposite party No. 2, who were married in accordance with Hindu Rights and Tradition on 19.5.2002. From the said wedlock a male child, namely, Kaustubh Sharma, who at present is aged about 3 years and 4 months. The relationship between revisionist No. 1, Nishant Sharma and opposite party No. 2, Smt. Anshu Sharma become strained. Due to the conduct of revisionist No. 1 and his family members, the opposite party No. 2 was compelled to leave the house of the revisionists. After the opposite party No. 2 left her matrimonial house, there were several litigations between opposite party No. 2 and revisionist No. 1 such as under Sections 498A, 323, 504 and 506, I.P.C. and 3/4 D.P. Act. A petition u/s 125, Cr.P.C. was also filed by opposite party No. 2 against the revisionist No. 1. The revisionist No. 1 had also filed a suit for divorce bearing Divorce Petition No. 117 of 2006 against opposite party No. 2.

3. On 24.6.2008, application No. 75 of 2008 under Sections 19 and 37 (2) alongwith an application u/s 23 (2) of the Act read with Sections 12, 17, 18, 19, 20 and 22 of the Act was filed by opposite party No. 2 against the revisionists in the Court of Chief Judicial Magistrate, Saharanpur. On the said application, the revisionists also filed their objections on 8.3.2009. The learned Magistrate rejected the application of the opposite party No. 2 u/s 23 of the Act by which she has prayed that the revisionist No. 2 be directed to allow her to live in house No. 18, New Madhav Nagar, Saharanpur and no interference could be made by the revisionist vide order dated 19.9.2009 on the ground that the opposite party No. 2 after the marriage was living with her husband and thereafter she returned from her husband''s house was living at her parental house, hence she had no right to live alongwith his minor son in the house which is owned by revisionist No. 2 from his own resources, hence it is not in the interest of justice to grant her any interim/ex parte relief.

4. Feeling aggrieved by the order dated 19.9.2009 passed by the learned Magistrate, the opposite party No. 2 preferred an appeal before the Additional Session Judge, Court No. 10, Saharanpur which was allowed by the Session Judge vide order dated 19.12.2009 and set aside the order dated 19.9.2009 and further directed that the opposite party No. 2 and her son Kaustaubh be permitted to live in house No. 18, New Madhava Nagar and further the revisionists were restrained from interfering in the peaceful living of opposite party No. 2 and her minor son in the said house.

5. On 24.12.2009, the opposite party No. 2 filed an application stating that the police of the concerned police station may be directed to get the opposite party No. 2 in the possession of the properly of the father of the revisionist No. 1 situated at New Madhava Nagar, Police Station Kotwali Nagar, District Saharanpur in pursuance of the order dated 19.12.2009. On 28.1.2010, the Judicial Magistrate, Saharanpur on the application dated

24.12.2009 filed by opposite party No. 2, directed the Station Officer of police station Kotwali Nagar, Saharanpur to ensure the possession of opposite party No. 2 and her minor son in house No. 18, New Madhav Nagar, District Saharanpur so that they may reside there in pursuance of the order passed by the appellate Court on 9.12.2009.

6. Aggrieved by the order dated 19.12.2009 passed by the appellate Court on 28.1.2010, the present revision has been filed by the revisionists.

It has been contended by the learned counsel for the revisionists that the house in question i.e. House No. 80 situated in New Madhav Nagar, Saharanpur is not the house of revisionist No. 1, Nishant Sharma, who is husband of opposite party No. 2, as the said house belongs to revisionist No. 2, Rajnish Kant Sharma, father of revisionist No. 1, who has built the said house from his own resources and revisionist No. 1 has no concern with the said house as he is living in New Delhi separately. It has further been contended by the learned counsel for the revisionists that revisionist No. 2, Rajnish Kant Sharma, father of revisionist No. 1, Nishant Sharma, who is the husband of opposite party No. 2 are themselves living in a rented house and not in the house in question hence the order passed by the lower appellate Court is liable to be set aside.

7. On the other hand, Sri P.S. Pundir, learned counsel for the opposite party No. 2 has argued that the order passed by the lower appellate Court and the order passed by the learned Chief Judicial Magistrate on 28.1.2010 in pursuance of which the opposite party No. 2 and her minor son have been in the possession of the said house and are living there in pursuance of the order passed by the lower appellate Court u/s 23 (1) of the Act, is completely just and legal in the eye of law. It is then urged by the opposite party No. 2 that the family of revisionist No. 1 is a joint family and after the marriage the revisionist No. 1 and opposite party No. 2 wife used to live in the house in question i.e. House No. 18, New Madhav Nagar and further the opposite party No. 2 also come to live in the said house with her husband at regular intervals on the festivals also, hence she is entitled to live in the said house as it also belongs to revisionist No. 1, her husband.

8. Having considered the submissions advanced by the learned counsel for the parties, I am of the opinion that the revisionist No. 1 lives in a joint family alongwith father revisionist No. 2 and being a joint family the wife of revisionist No. 1 and her minor son are also entitled to live in the said house as ordered by the appellate Court vide its order dated 19.12.2009. Section 2 (f)of the Act which defines the "domestic relationship" is reproduced hereunder :

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.

Section 17 of the Act which provides right to reside in a share hold house is reproduced hereunder :

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.

From a perusal of the definition of "domestic relationship" it is absolutely clear that the revisionist No. 1 alongwith his wife opposite party No. 2 as per material available on record had lived together in the said house in a joint family alongwith her husband revisionist No. 2 after the marriage and during festivals etc., hence in view of Section 17 of the Act, the opposite party No. 2 has a right to reside in a share household which also belong to her husband, revisionist No. 1 alongwith his father revisionist No. 2 who is a family member living together as joint family.

Learned counsel for the revisionist has relied upon the decisions of the Apex Court in the case of S.R. Batra v. Tarun Batra, 2006-LAWS (SC)-12-11.

From a perusal of the said judgment, it is apparent that the facts of the case which was decided by the Apex Court is distinguishable from the facts of the present case. Moreover, the Apex Court in the said judgment has held that the right of resident''s wife in the share household would only mean the house belonging to them or taken on rent by the husband or the house of the joint family of which the husband is a member. Here in the present case as per the judgment of the Apex Court also it is evident that the revisionist No. 1 is a member of a joint family of revisionist No. 2, who is the father of revisionist No. 1 and as such it cannot be said that the house in question does not belongs to revisionist No. 1. Thus the wife is also entitled to live in the said house being a joint family of which her husband is also a member.

In view of the above, I am of the opinion that the lower appellate has allowed the appeal of opposite party No. 2 with a well reasoned order and has rightly set aside the order of Chief Judicial Magistrate and directed that the opposite party No. 2 be allowed to live in the house in question being a joint family house of revisionist No. 2 of which her husband is also a member. The impugned order passed by the lower appellate Court and the order dated 28.1.2010 passed by the Judicial Magistrate for executing the order dated 19.12.2009 for putting the opposite party No. 2 in the possession of the house in question does not suffer from any manifest error of law.

The revision lacks merit and is accordingly dismissed.