

IN THE COURT OF SHRI PRITAM SINGH, METROPOLITAN MAGISTRATE
PATIALA HOUSE COUTRS, NEW DELHI

C.C.1373/1

Mrs. Sushmita Sarkar

Vs

SMr. Swarup Sarkar

10-07-2007

By this order I shall decide whether the Complaint is entitled for interim protection order and interim maintenance for herself and her son and re-possession her matrimonial house.

The brief facts in the complaint are that the complainant got married with respondent on 01-07-2002 and since then the complainant was not treated properly by the respondent. The respondent demanding dowry from the parents of the complaint. The respondent never took the complaint outside saying that she is not a good match for him and feel shameful in front of others. The respondent insisted the complainant not have any child for at least five years of their marriage and he threatened that if she give birth to any child then she will be throw out form the matrimonial home. It is also alleged that the respondent have extra-marital affair with some other girl. Finally the complainant having no other option, left kolkata with her parents on 8-10-2004, after informing the police. It is prayed that respondent be restrained from committing any domestic violence. It is further prayed that respondent is directed to pay maintenance to the complainant Rs.30000/- for herself and her son and Rs.20000/- for litigation.

Ld. Counsel for complainant during arguments also prayed that complaint be restored her possession in her matrimonial home. Ld. Counsel for the complainant relied upon(1993) 3 Supreme Court cases 4 and (1994) 4 Supreme court Cases 690.

In reply the respondent has denied all the allegations made in the complaint. It is objected that the complaint is not maintainable as the complaint has left the matrimonial home in October,2004 and the protection of Women from Domestic Violence Act,2005 came in force in October,2006 and as such the act has not retrospective effect. It is stated in the reply that the complainant had left with her own free will as she informed the police about this. It is further stated that the complainant had aborted her first child without the consent of the respondent and a criminal case was filed against the respondent for same.

It is denied that respondent had ever threatened the complainant or her parents. It is specifically stated that on 12-12-2006 the complainant moved an application for exemption in the criminal case stating that she was not well therefore the question of threatening does not arise.

Arguments heard. Record perused and considered. After going through the entire record I am of the considered view that at this stage prima-facie there are no material to show that the compliant was subjected Domestic Violence, as the complainant had left her matrimonial home at her own choice. The information which was given to police on 4-10-2004 by the complainant , she has not made any allegations against the respondent of any kind . The allegations that the complainant was threatened by the respondent on 22-12-2006 and did not allow her to appear in the court has also created doubt as in Criminal case no.1058/1 titled “ Swaroop Sarkar verses Preti Saran bag” an application for exemption form personnel appearance of complainant moved on 22-12-2006.

If the complainant was threatened then why this fact was not mentioned in the application for exemptions from personal appearance of complainant. So far the question of maintenance is concerned, it is admitted fact that in a petition U/s 125 CRPC the respondent was ordered to pay a sum of Rs.7500/- per month to the complainant and Rs.5000/- to her minor child by the Chief Judicial Magistrate, Barsat, Kolkatta vide order dated 25-07-2005, as the complaint has already got the order of maintenance there fore I am of the view that no further order of maintenance can be made as the amount Rs,12500/- is sufficient for maintenance of the complainant and her son. So far the restoration of the possession in the matrimonial home is concerned as the complainant has left the home with her own free will therefore I do not find any ground for restoration of possession in her matrimonial home. The authorities, which are relied upon by the Counsel of the complainant, are not applicable to the facts of the present case. I am of the view that U/s 19 of the Act no such power has been vested in the magistrate to order to repossession of the matrimonial home in favor of the complainant. Hence the prayer/relief of interim maintenance, interim protection order and repossession of matrimonial home sought by the complainant are dismissed.

-Sd-

MM, New Delhi

10-07-2007