

**IN THE COURT OF SH. RAKESH KUMAR
ADDL. SESSIONS JUDGE-04 (NORTH) : DELHI**

CA No.05/08

1. Kapil Rastogi
S/o Sh. Subhash Chand Rastogi,
2. Smt. Shakuntala Rastogi
W/o Sh.Subhash Chand Rastogi

Both residents of
H. No.551, Jwala Nagar,
Shahdara, Delhi.

.....Appellants.

VERSUS

1. State (NCT of Delhi) & Others
2. Smt. Urvashi
W/o Shri Kapil Rastogi
D/o Sh. Shri Krishan Chaturvedi
R/o 127/1, DCM Railway Colony,
Delhi.

.....Respondents.

J U D G M E N T

1. The instant appeal U/s 29 of the Protection of Women from Domestic Violence Act, 2005 is for impugning the order dated 21.08.2008 passed by Ld. MM/Delhi in Criminal Case no.228/06/08 titled as Urvashi Vs. Kapil Rastogi, whereby the Ld. Magistrate has issued notice to the appellants on an application filed by the respondent no.2 herein U/s 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as the Act).
2. Brief facts of the case are that the respondent Urvashi has filed one application U/s 12 of the Protection of Women from Domestic Violence

Act, 2005 against the appellants, upon which the Ld. Magistrate vide order dated 21.08.2008 has issued notice to the petitioners. It has been averred in the application that the respondent Urvashi was married with appellant no.1 on 24.01.2007 at Delhi. After the marriage she was brought to her matrimonial home at house no.551, Jwala Nagar Shahdara. After a few days of marriage the appellant no.1 started beating and abusing her after having liquor. The appellant no.2 also encouraged him for all these things. Hence the respondent Urvashi was subjected to torture by the hand of respondents right from the beginning of her marriage. Some time she was beaten up so badly that she was to take the help of doctor but despite of her ill health, the appellants never got her treated to an appropriate doctor. The appellant no.1 oftenly pressurized her to bring Rs.5,000/- and in the event of her inability to do so she was badly beaten. The respondent had already brought money so many times from her parents and this way she has given more than Rs.1,50,000/- to the appellants. There was no improvement in the appellant no.1. Even at the time of pregnancy she was not only beaten badly but she was forced to abort against her will. On 08.07.2007 she was beaten so badly that she became unconscious. On 09.07.2007 her brother came to her matrimonial home and she went at parental home with him. After four months treatment at her parental home she was recovered. During this period appellant no.1 abused and threatened her with dire consequences on mobile phone. She made a complaint at Sidhi Pura police post PS Desh Bandhu Gupta Road. The respondent Urvashi is an asthmatic patient and a vegetarian. She was forced by the appellant to have non vegetarian food

with liquor. The appellant no.1 threatened even to kill the brother and father of respondent Urvashi.

3. The aforementioned act of filing of application by the respondent Urvashi and issuance of notice by the court against the petitioner, has been assailed by the petitioners on the following grounds:-

(i).In terms of Section 2 (q) of the Act, the appellant no.2 herein namely Smt. Shakuntala Rastogi deserved to be discharged by the court as she does not cover under the definition of respondent.

Section 2 (q) of the Act reads as under:

“Respondent means any adult male person, who is or has been in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act.”

(i).The appellant no.2 is residing separately from her husband i.e. father of appellant no.1 for the last 27 years at her parental home alongwith appellant no.1. She is aged about 60 years and suffering from various diseases. After joining the matrimonial home the respondent no.1 started pressurizing appellant no.1 to live with her separately leaving behind his old aged sick mother, the appellant no.2. The appellant no.1 did not agree to the same and on this the appellant no.2 became violent and gave threatening to the appellants. The appellant no.1 filed complaint to the Commissioner of Police with copies to other police authorities.

(ii).The marriage of appellant no.1 and respondent no.2 was based

on love affairs of more than three years. Hence the question of demand of any dowry or taking of any dowry by the appellant no.1 does not arise.

(iii).The respondent no.2 was not subjected to any cruelty. The E Mails received by respondent no.2 from appellant no.1 during the period from 30.07.2007 to 04.10.2007 speak the truth. There is no reference of cruelty in the same.

(iv).All the stridhan and day to day belongings of respondent no.1 had already been returned to her before **Delhi Commission for Women**. The respondent no.2 has no right, title or interest in the accommodation at Delhi as the same is neither in his name nor the same is his joint property. The respondent no.2 has filed the complaint with the sole aim of extortion of money from the appellants. Appellant no.1 gave all love and respect to respondent no.2 but she failed to perform her duty as wife. The complaint under the Act has been filed after more than 13 months of leaving matrimonial home by respondent no.2. Hence no domestic violence has been committed against her. The house in which the appellant no.1 is residing belongs to his mother and hence the respondent no.2 is not entitled to the relief of residents.

4. I have carefully heard the rival submissions of the counsels for the parties. I have also perused the entire material placed on record particularly the impugned order, the contents of the appeal specially the grounds taken therein as well as the record summoned from the Trial

Court.

5. As per submissions of Ld. counsel for the appellants, the present appeal which has been filed u/s 29 of the Act is perfectly maintainable and the impugned order is hit by the provisions of Section 2 (q) of the Act which provides that for obtaining any relief under the Act an application can be filed or a proceedings can be initiated against only adult male person and on such application or under such proceedings the protection order can be passed. Obviously, those orders can be passed only against the male persons. Hence it is clear that the application U/s 12 of the Act which has filed by the respondent no.2 against appellant no.2, who is not an adult male person, is not maintainable. It is also claimed that the Magistrate has issued the notice before taking the cognizance and the same is not the valid course of action. The appeal has been filed within the period of limitation.
6. Per contra, it is claimed by Ld. counsel for the respondents that the appeal as filed by the appellants is not sustainable as there is no illegality or infirmity in the impugned order passed by the Ld. Trial Court, whereby the appellants have only been summoned by the Trial Court and the appellant can very well appear and present their case before the Trial Court. It is just a notice to the appellants to come before the court and there is no illegality in the order. Under the provisions prescribed in Section 28 (2) of the Act, the Magistrate is empowered to lay down its own procedure and the impugned order has been passed after calling the report from the Protection Officer and perusing the same. The impugned order has been passed only on the application and the same is not a complaint and as such the appeal as filed by the

appellants has no force.

7. After giving due thoughts to the rival submissions of the counsels for the parties I have come to the considered opinion that there is substance in the appeal to the extent that the impugned order is not sustainable qua the appellant no.2, who is not an adult male person as per definition of respondent provided under Section 2(q) of the Act. However, the objections as regards to the issuance of notice prior to taking of cognizance by the Ld. Trial Court has no force as under the provisions of Section 28 (2) of the Act, the Magistrate is empowered to lay down its own procedure.

Section 12 of the Act provides that an application (not a complaint) for seeking one or more reliefs under the Act can be filed. On perusal of Section 18 to 22 of the Act, it appears that the reliefs under these Sections can be passed on the application under Section 12 of the Act. The word complaint as appeared in the definition of respondent under Section 2 (q) of the Act has not been defined anywhere in the Act. Although it is not provided that the definition of complaint can be considered the same as provided under the Cr. P. C but at the same time it is also not prohibited. In view of this, the definition of complaint can appropriately be seen in Cr. P. C which goes as under:-

“2 (d) ‘Complaint’ means any allegation made orally or in writing to a Magistrate, with a view to his taking action on this code, that some person, whether known or known, has committed an offence, but does not include a police report.

8. It is clear by the definition that a complaint as provided in Cr. P. C can only be for an offence. Only two offences have been mentioned in the Act and those are (i) Under Section 31 and (ii) Under Section 33. It appears that this word complaint appeared in the definition of respondent has been used for initiating proceedings for these two offences and an aggrieved wife or female living in a relationship in the nature of a marriage has been given a right to file a complaint against a relative of a husband or a male partner. This word complaint can not be considered beyond the scope of main provisions of this section which has been defined in first part of Section 2 (q) i.e. for any relief under this Act. As provided in Section 31 of the Act, a complaint can be filed against a person who has not complied with protection order or interim protection order. Thus it is clear by the definition of respondent that for obtaining any relief under this Act an application can be filed or a proceedings can be initiated against only adult male person and on such application or under such proceedings, the protection order can be passed. Obviously, those order will also be passed only against the adult male person. As provided under Section 31 of the Act, non compliance of a protection order or an interim protection order has been made punishable and as such it can be said that the complaint for this offence can only be filed against such adult male person/respondent who has not complied with the protection order. Hence, it is clear that the application under Section 12 of the Act which has been filed by the respondent against appellant no.2, who is not adult male person, is not maintainable. In view of all, as discussed herein above, the appeal deserves to be partly allowed, consequently, it is partly allowed. The

proceedings against appellant no.2 i.e. Smt. Shakuntala Rastogi is set aside. However, the Ld. Trial Court shall continue the proceedings against appellant no.1 Kapil Rastogi as per law.

9. TCR alongwith the copy of judgment be sent back to the Ld. Trial Court.
10. Appellant no.1 is directed to appear before the Ld. Trial Court on the date fixed there i.e. 06.02.2009.
11. The appeal file be consigned to Record Room.

(Announced in the open
court today on 07.01.2009)

(RAKESH KUMAR)
ASJ-04 (NORTH)/DELHI