

PBBT010086032019



Presented on : 08-07-2019
Registered on : 08-07-2019
Decided on : 11-03-2024
Duration : 4 years, 8 months, 3 days

IN THE COURT OF
Additional District and Sessions Judge
AT Bathinda, Bathinda
(Presided Over by Sh. Baljinder Singh Sra)

CRA/339/2019

Damanjot Kaur wife of Harmeet Singh; daughter of Beant Singh, resident of Village Bhagta Bhai Ka, Tehsil Phul, District Bathinda.

... Appellant.

Versus

1. Harmeet Singh son of Jagjit Singh son of Kapoor Singh;
2. Jagjit Singh son of Kapoor Singh;
3. Jaswant Kaur wife of Jagjit Singh;
4. Gurpreet Kaur daughter of Jagjit Singh;
All residents of H.No.20919, Gali No.13, Ajit Road, Bathinda.
5. Ishwinder Kaur daughter of Jagjit Singh now wife of Jashanmeet Singh, resident of Jawaharke Road, Mansa.
6. Davinder Kaur daughter of Jagjit Singh now wife of Kulvir Singh, resident of Green Avenue, Multania Road, Bathinda.
7. Gurmeet Singh son of Jang Singh, resident of H.No.20918, Gali No.13, Ajit Road, Bathinda.

.....Respondents

Criminal appeal against order dated 01.06.2019 passed by the court of Smt.Navjit Pal Kaur, PCS, Judicial Magistrate Ist Class, Bathinda in CIS No.COMA 860 2015 in the application under Section 12 of Protection of Women from Domestic Violence Act, 2005.

Present:- Sh. R.R. Khattar, counsel for appellant.
Sh. Amritpal Singh, counsel for respondent No.1.

Baljinder S. Sra,
JSC Bathinda.

Remaining respondents exparte.

PBBT010091822019



Presented on : 19-07-2019
Registered on : 20-07-2019
Decided on : 11-03-2024
Duration : 4 years, 7 months, 23 days

**IN THE COURT OF
Additional District and Sessions Judge
AT Bathinda, Bathinda
(Presided Over by Sh. Baljinder Singh Sra)**

CRA/361/2019

Harmeet Singh aged about 38 years son of Jagjit Singh son of Kapoor Singh resident of H.No.20919, Gali No.13, Ajit Road, Bathinda.

... Appellant.

Versus

1. Damanjot Kaur wife of Harmeet Singh; daughter of Beant Singh, resident of Village Bhagta Bhai Ka, Tehsil Phul, District Bathinda.

.....Respondent.

2. Jagjit Singh son of Kapoor Singh;
3. Jaswant Kaur wife of Jagjit Singh son of Kapoor Singh;
4. Gurpreet Kaur daughter of Jagjit Singh son of Kapoor Singh;
All residents of H.No.20919, Gali No.13, Ajit Road, Bathinda.
5. Ishwinder Kaur daughter of Jagjit Singh now wife of Jashmeet Singh, resident of Jawaharke Road, Mansa.
6. Davinder Kaur daughter of Jagjit Singh now wife of Kulvir Singh, resident of Green Avenue, Multania Road, Bathinda.
7. Gurmeet Singh son of Jang Singh, resident of H.No.20918, Gali No.13, Ajit Road, Bathinda.

.....Proforma Respondents.

**Criminal appeal against order dated
01.06.2019 passed by the court of
Smt.Navjit Pal Kaur, PCS, Judicial
Magistrate Ist Class, Bathinda in CIS
No.COMA 860 2015 in the application under**

Baljinder S. Sra,
JSC Bathinda.

Section 12 of Protection of Women from Domestic Violence Act, 2005.

Present: Sh. Amritpal Singh, counsel for appellant.
Sh. R.R. Khattar, counsel for respondent.

JUDGMENT

This judgment of mine shall dispose off two appeals preferred by the appellants against common impugned order dated 01.06.2019 passed by the court of Smt.Navjit Pal Kaur, PCS, Judicial Magistrate Ist Class, Bathinda in an application under Section 12 of Protection of Women from Domestic Violence Act, 2005 (In short, ‘the Act’) vide which learned JMIC has awarded an amount of Rs.8,000/- per month as maintenance to the wife and her child and a sum of Rs.5,000/- as one time compensation. Appeal CIS No.CRA 339 2019 has been preferred by Damanjot Kaur seeking enhancement of the maintenance amount awarded to her by the learned JMIC and appeal CIS No.CRA 361 2019 has been preferred by Harmeet Singh, the husband, seeking setting aside of the impugned order dated 01.06.2019.

2. Notice of the appeals was served upon respondents and in response thereto their counsels have put in appearance on behalf of respective respondents. Record of the trial court received.

3. The nomenclature of the parties as assigned to them in the trial court has been retained for the purpose of convenience. The inter-se relationship of the parties is as follows:- Harmeet Singh is the husband, Jagjit Singh is the father-in-law, Jaswant Kaur is the mother-in-law, Gurpreet Kaur, Ishwinder Kaur and Davinder Kaur are the sister-in-laws

Baljinder S. Sra,
JSC Bathinda.

(Nanad) of Damanjot Kaur respectively. Gurmeet Singh is the maternal uncle of husband Harmeet Singh.

4. Record Perused. Heard.

5. The brief facts of the case are that Damanjot Kaur preferred a petition under Section 12 of the Act, inter alia, claiming various reliefs against her husband Harmeet Singh and other members of his family. As per the averments, the marriage of Damanjot Kaur, was solemnized with Harmeet Singh on 18.11.2012 at Shergill Palace, Bhuchro Khurd, District Bathinda in accordance with Sikh Rites and Ceremonies. Both the parties co-habited together as husband and wife by setting up in the matrimonial home at the house of husband. A son was born on 02.06.2014 who is presently in the custody of the wife. It is alleged that she has done M.Sc., B.Ed, Post Graduate Diploma in Forensic Science and Criminology. She is the only child of her parents. The marriage was arranged on the basis of an advertisement in the English Newspaper. On 18.05.2012, a ring ceremony was performed and a number of articles including gold ornaments were made over to Harmeet Singh and other members of his family on their demand and desire. The marriage was solemnized on 18.11.2012 at Shergill Palace, Bhuchro Khurd, District Bathinda. A huge amount was expended on the marriage. Later on, a demand of Verna Car was raised and she was harassed and humiliated for not meeting out the demand. Even her gold ornaments were taken over from her by her husband and his family. She gave birth to a child on 02.06.2014 at Kapila Hospital, Bathinda and the delivery expenses were borne by her parents. A

number of articles were also made over subsequent to the marriage on different festive occasions but the respondents remain dissatisfied. A demand of Rs.5 lacs and a car was raised and on account of its non-fulfillment, she was subjected to extreme acts of domestic violence. A panchayat was also convened by her father, but the respondents did not relent. She along with her minor son was expelled from the matrimonial home on 16.06.2014. She also lodged a criminal case under Section 498-A IPC etc. against Harmeet Singh and his family.

6. Notice of the application was issued to the respondents who traversed the contentions of the applicant-wife by filing reply.

7. In support of her case, the applicant-wife Damanjot Kaur examined herself as AW-1, Beant Singh, her father as AW-2 and Sukhdev Singh as AW-3.

8. In rebuttal, respondents have examined Harmeet Singh as RW-1 and Jaswant Kaur, mother of respondent-husband Harmeet Singh, as RW-2.

9. Learned JMJC on appraisal of the evidence on record, granted the following reliefs to the applicant:-

- i. Harmeet Singh was directed to pay a sum of Rs.8,000/- per month to Damanjot Kaur and her son from the date of application.
- ii. Harmeet Singh was also directed to pay compensation for a sum of Rs.5,000/- to Damanjot Kaur.

10. Feeling aggrieved against the aforesaid order, both the parties have preferred separate appeals.

11. I have heard learned counsel for the parties and perused the case file thoroughly.

12. It transpires from the record that the factum of marriage between the parties and the birth of a son is admitted between the parties. As per the case set up by Damanjot Kaur, she was subjected to extreme acts of cruelty after the marriage resulting into her expulsion from the matrimonial home. It is further admitted fact that Damanjot Kaur along with her minor son is residing separately from Harmeet Singh.

13. In order to prove the domestic violence, she examined herself as AW-1 reiterating her allegations in her affidavit Ex.AW1/A. In cross-examination, she admits that she is working as a teacher in a private school and getting a salary of Rs.7,000/- per month. However, at the time of her cross-examination in the court she asserts to be drawing a salary of Rs.4,500/- per month working as assistant of examination in a school. She denies that she was never maltreated by her husband and his family during her stay in the matrimonial home. She further examined her father Beant Singh as AW-2 who also tendered into evidence his duly sworn affidavit Ex.AW2/A asserting the aforesaid facts.

14. Harmeet Singh examined himself as RW-1 and tendered into evidence his duly sworn affidavit Ex.RW1/A reiterating his averments made in his reply. In cross-examination, he states that he is serving as a MBBS doctor with the government. He states that he is working under Punjab Health Department since 2015 on regular basis. He states that initially in his affidavit dated 01.09.2015 submitted with his employer

department, he had declared himself to be unmarried, however, he corrected the mistake and furnished fresh affidavit with his employer. He further admits that he is not ready to keep applicant as his wife due to litany of litigation pending between the parties. He further admits that Damanjot Kaur was rehabilitated at the intervention of DSP intervening on application moved by Damanjot Kaur against him and his family under Section 498-A IPC. He further admits that after residing for 42 days, he was taken by the police and after some days, an FIR No.18 dated 20.04.2015 under Sections 406, 498-A, 109 IPC PS Women Cell, Bathinda was registered against him and his family.

15. So far so good, learned counsel for Harmeet Singh has filed an application in the appeal and placed on record certified copy of judgment and decree dated 08.03.2022 passed by Smt. Ranjeet Kaur, learned Principal Judge, Family Court, Bathinda, certified copy of judgment dated 07.01.2023 passed by Smt. Navreet Kaur, learned JMIC, Bathinda, certified copy of order dated 13.03.2020 passed by Sh. Raj Kumar Singla, learned Principal Judge, Family Court, Camp at Phul and certified copies of statements of Damanjit Kaur, wife and Harmeet Singh, husband dated 13.03.2020. The said application has been allowed by separate zimni order dated 11.03.2024.

16. Judgment dated 07.01.2023 pertains to FIR No.18 dated 20.04.2015 under Sections 406, 498-A IPC PS Women Cell, Bathinda in which Harmeet Singh and her mother Jaswant Kaur, facing trial for the offence under Section 498-A IPC, were acquitted. Judgment and decree

dated 08.03.2022 pertains to the divorce petition preferred by Harmeet Singh against Damanjot Kaur. It was contested between the parties. Learned Principal Judge, Family Court, Bathinda vide aforesaid judgment dissolved the marriage granting divorce to Harmeet Singh. The divorce has been granted on the ground of cruelty.

17. Learned counsel for appellant Harmeet Singh has also placed on record copy of the order dated 13.03.2020 in petition under Section 125 Cr.P.C. preferred by Damanjot Kaur against Harmeet Singh. It was disposed of on the basis of statements/admissions made by the parties. A sum of Rs.3,500/- per month as maintenance was made payable to the wife and Rs.2,500/- to the minor child.

18. Learned counsel for Harmeet Singh contends that in view of the finding recorded by learned JMJC in a criminal case and learned Family Court in divorce petition, his appeal is liable to be accepted and the maintenance awarded to the wife and the minor child is liable to be set aside.

19. On the other hand, learned counsel for Damanjot Kaur contends that he has filed an appeal against both the orders/judgments. In this context, he contends that he has filed criminal appeal CIS No.CRA 153-2023 against the judgment of acquittal of Harmeet Singh and his mother from the case and appeal FAO No.1577 of 2022 has been filed by her in the Hon'ble High Court against the judgment of Family Court dated 08.03.2022. He further contends that both the appeals are pending and notice has been issued to the opposite parties.

20. Be that as it may, it is admitted position between the parties that at the time of dissolution of the marriage by learned Principal Judge, Family Court, Bathinda, no alimony in terms of Section 25 of the Hindu Marriage Act, 1955 has been granted to the wife. It is further a matter of record that Harmeet Singh himself has suffered a statement in application under Section 125 Cr.P.C. before the court of Sh. Raj Kumar Singla, learned Principal Judge, Family Court, Phul that he would pay a sum of Rs.3,500/- to the wife and Rs.2,500/- to the minor child as maintenance. In the absence of award of any permanent alimony by the Family Court, the right of the wife to seek maintenance is not eclipsed. Had the permanent alimony been assessed and awarded by the Family Court to the wife, the things would have been different. Similarly, the minor son is also entitled to maintenance from the father and wife alone can not be saddled with the responsibility of raising up the son. In ***Chand Dhawan v. Jawaharlal Dhawan*** 1993CriLJ2930, the Supreme court held that claim to permanent maintenance or alimony is based on the supposition that either her marital status has been strained or affected by passing a decree for restitution of conjugal rights or judicial separation in favour or against her, or her marriage stands dissolved by a decree of nullity or divorce, with or without her consent. Thus when her marital status is to be affected or disrupted the court does so by passing a decree for or against her. On or at the time of the happening of that event, the court being seisin of the matter, invokes its ancillary or incidental power to grant permanent alimony. Not only that, the court retains the jurisdiction at subsequent

stages to fulfill this incidental or ancillary obligation when moved by an application on that behalf by a party entitled to relief. The court further retains the power to change or alter the order in view of the changed circumstances.

In ***Vishwanath vs. Sarla Vishwanath Agrawal, AIR 2012 SC 2586***, the Supreme court while fixing an alimony of Rs 50 lacs observed that permanent alimony is to be granted taking into consideration the social status, the conduct of the parties, the way of living of the spouse and such other ancillary aspects. Similarly, the Supreme Court in the matter of ***U. Sree v. U. Srinivas, (2013) 2 SCC 114*** held at paragraph 33 as under:

"33.....We have already opined that the husband has made out a case for divorce by proving mental cruelty. As a decree is passed, the wife is entitled to permanent alimony for her sustenance. Be it stated, while granting permanent alimony, no arithmetic formula can be adopted as there cannot be mathematical exactitude. It shall depend upon the status of the parties, their respective social needs, the financial capacity of the husband and other obligations. In Vinny Parmvir Parmar v. Parmvir Parmar (SCC p. 116, para 12) while dealing with the concept of permanent alimony, this Court has observed that while granting permanent alimony, the Court is required to take note of the fact that the amount of maintenance fixed for the wife should be such as she can live in reasonable comfort considering her status and the mode of life she was used to when she lived with her husband. At the same time, the amount so fixed cannot be excessive or affect the living condition of the other party."

21. In the aforesaid view of the matter, an award of consolidated amount of Rs.8,000/- per month granted to the wife as well as minor child as maintenance, is not on the higher side. It is further trite to state that the needs of a growing child grows with age. The minor son is now studying

in 4th standard. There is no perversity or infirmity in the impugned order dated 01.06.2019.

22. In the aforesaid view of the matter the order dated 01.06.2019 is upheld and both the criminal appeals stand dismissed. Copy of the judgment be placed on the file of ld. trial court and same be remitted. Copy of judgment be also placed on the record of CRA 361 2019 titled as “Harmeet Singh Vs. Damanjot Kaur etc.” Both the appeal files be consigned to the record room.

Pronounced in open Court.
11th day of March, 2024

(Baljinder Singh Sra)
Judge, Special Court-cum-
Additional Sessions Judge,
Bathinda.UID No.PB0515

Jatinder Singh
Stenographer-II

Baljinder S. Sra,
JSC Bathinda.