



ORDER BELOW EXH.NO.5
Shwetali vs. Devendranath

This is an application under section 23 of the Protection of Women from Domestic Violence Act, 2005 (for short 'the D.V.Act').

2] On 26/01/2006 the marriage between the applicant no.1 and respondent no.1 was solemnized at Vashi, Navi Mumbai. Applicant no.2 and 3 are their children. The opponent no.2 is the mother of the opponent no.1. The marriage was arranged through Shadi.com website. Opponents have represented that they are Marwari/North Indians. The applicant no.1 was assured that she can follow her rituals as she is believer in the God. At the time of fixing marriage, it was represented that the opponent no.1 was employed. However, he was unemployed. The family of the applicant spent Rs.22 Lakh for the marriage. They have given various types of jeweleries as Stridhan.

3] Prior to the marriage the applicant was working in TCS Mumbai. Her father-in-law was working with NPCIL. They were residing at Tarapur. After the marriage acts and attitude of opponents were changed. The applicant no.1 was shocked and surprised for the change. On 28/01/2006 there was reception at Tarapur. At that time the applicant no.1 was not allowed to meet her parents. Her parents were not allowed to stand besides her. Opponents have asked her that she has to prove that parental family is now no more important for her.

4] Thereafter, she was confined in bedroom. The opponent no.1 has forced her to express her knowledge about Mantras Chanted during marriage ceremony. She was harassed on one or other reason. She was taunted and insulted by opponents for not providing dowry as per their exception. She was tolerating the humiliation for better

tomorrow. Opponent no.2 kept the opponent no.1 busy and did not allow the applicant no.1 to have her own space with opponent no.1. The opponent no.1 was engrossed in Iskon Organization. He had taken educational gap for acquiring spiritual knowledge. The opponent no.1 told her that he wanted to have Iskon Devotee and village girl as his wife. But his parents have hurriedly solemnized his marriage in fear that he would be a Brahmachari.

5] There was lot of difference between culture, habit and taste of both families. Opponents were from Bihar. They were not Indians. The opponent no.1 has admitted that he has no interest in physical relationship. He believes that the sole purpose of marriage is procreation of children only. He had no affection with the applicant. In the month of February 2006 the opponent no.1 left for USA. However, he has not spent any time alone with the applicant no.1. She was continuously taunted and insulted for dowry. She was forced to conceive only a boy.

6] She got job at USA. On 17/04/2006 the applicant went to USA in hope of peaceful marital life. For few months the opponent no.1 behaved normally. Thereafter, he has forced her to become Iskon follower. He was claiming himself to be God. He was asking the applicant to follow every rule he says. Lot of restrictions in respect of food, music, clothes, entertainment and friends were imposed. She was also restricted to drink coffee / tea etc. She was insisted to prepare everything at home, even though she was working lady. Her social life was also restricted. She was not allowed to follow Navratri, Ganpati, Diwali etc. She was mentally tortured and insulted by abusive words. She was forced to celebrate festivals of Iskon. Her brother used to visit her house.

7] Her brother and his wife are also insulted by the

opponent no.1. They were also forced to join Iskon. On their refusal opponent no.1 became rude. Despite humiliation she was following her matrimonial duties. The opponent no.1 was not contributing in household expenses. The opponent no.1 expected the applicant to be available for sex at anytime he desires. He was causing pain to the applicant no.1 or his own pleasure. Opponent has also caused sexual violence and physical abuse to the applicant in most cruel manner. She had no personal life. She was insisted to listen only Iskon Bhajans. She was not allowed to watch television. Newspaper was not subscribed. He was keeping sexual relations only with intention to conceive. He was believer in astrology. He was giving lectures on Iskon and the applicant was forced to listen said lectures.

8] In March 2009 they visited India for marriage of her brother. Their Air Ticket was gifted by her father. They were gifted jewelery of Rs.1 Lakh. But opponents were unsatisfied with the gift. She was abused on that count. Thereafter, she was pregnant but nothing changed. Opponents have continued to torture her. She was made work tracelessly. She was forced to visit Iskon Temple. She was compelled to become Iskon Bhakt. In February 2010 she was pregnant of five months. Even though she was tired of working week, day in and day out opponents forced her to visit Iskon get together. She was begging mercy. However, she was forced to spent five hours weekly at Iskon Temple. She suffered bleeding issue. In spite of her suffering she was continued with harassment. The applicant expressed her willingness to visit her friends house, so that she could relax. The opponent no.1 was annoyed he broke open the door and push the applicant no.1 on bed. He asked her to go back India forever.

9] On 12/06/2010 the applicant gave birth to a female child. No one from the opponent's family were happy. Her parents

came to USA for taking care of the baby. However, they were insulted and subjected to Iskon rules.

10] The opponent no.1 has joined Rath Yatra in New York. He was not informing for his attending such meetings. She had to left her job for taking care of her child. But she was forced to continue earnings. The opponent no.1 was insulting her saying that she could grow in the job by using her body.

11] Due to expiry of visa of opponent no.1 had to return India. However, he wanted that the applicant should earn in US dollar. In India they resided at Powai, Mumbai. Opponent had continued her harassment. The father of the opponent tried to persuade his mind. Due to this he restricted the applicant from visiting the house of his father. Thereafter, her father-in-law stopped supporting her. Opponents have compelled the applicant to prepare time table of her work. She was forced to do each and every work. She was not allowed to appoint maid because as per Shastras woman is meant for household work and manage kids and serve husband etc. Opponent no.2 was harassing her as she was not earning. She was insisted to conceive second baby.

12] In April/May 2013 opponents have demanded the applicant to bring a sum of Rs.50 Lakhs from her father for purchase of house at Pune. The house was purchased on loan. Opponents insisted her father to clear the loan. Her father transferred Rs.19 Lakhs from his account to the said loan account. However, opponents were not happy.

13] Thereafter, she conceived for second time. She was again compelled to listen Iskon Bhajans and lectures with restless working. On the occasion of birthday of opponent no.1 on 02/09/2013, he arranged birthday party. She was eight months pregnant. She was

compelled to cook everything at home only. She requested to take her friends out for celebration. But she was insulted by the opponent no.1. She was not sent to her parents house. Thereafter, she was dropped at her parental house at Vashi due to high palpitation problem. Her mother was insulted when she came for her help. She was not allowed to be taken to her parents house for delivery. She was kept away till 04:00 a.m. on 24 and 26th September, 2013.

14] On 28/09/2013 she gave birth to a male child. The opponent left her alone. Thereafter, she was discharged. She was told that her parents should not visit her house to see the baby. On 05/10/2013 her parents were visited her house. They were insulted and asked to take their daughter back permanently. Opponent has not taken any care of his children. In November 2013 the applicant no.1 has rejoined TCS. Thereafter, she was also harassed and insulted. The opponent no.1 is dedicated follower of Harekrishna. He stated the applicant that she should not eat outside food. They were creating negative mind set of their children towards the applicant and worshipping God. The applicant no.1 was also harassed in front their children. On 08/03/2016 the applicant was humiliated as lunch was delayed. He threw food leaving kids hungry. She was also humiliated as she took her children for Dandiya. Since the day of their marriage she was continuously physically assaulted, insulted and humiliated. She was also humiliated on being fact. She was forced to sign on papers related to furniture business. She was used as ATM Machine. She was also humiliated by calling her characterless.

15] It became unbearable for the applicant to bear continuous physical as well as mental abuse. On 02/12/2019 she left her matrimonial house on the pretext of going to the office. The opponent has treated her uncivilized manner. On 05/12/2019 she was harassed

to sign bank slips regarding transfer of her entire saving balance. He has called her uncle Sheel Jain and send e-mails to harass her. Her all articles are with the opponent. She apprehends its misappropriation.

16] The applicant is working lady. Her salary is Rs.1,50,000/-. She has no place of abode in Navi Mumbai. She is residing with her parents. Applicant no.2 and 3 have taken admission at School at Navi Mumbai. The opponent is working with Deutsche Bank as I.T. Manager. He is earning Rs.4 Lakhs per month. Opponent no.1 is the owner of a car and some flats. He is drawing additional income of Rs.42,000/- per month. He is earning Rs.7 Lakhs from additional projects. In all he is earning Rs.5 Lakhs per month. Therefore, she has claimed interim maintenance @ Rs.1 Lakh for herself and Rs.75,000/-per month each for applicant no.2 and 3.

OPPONENTS' CASE

17] Opponents have admitted relationship and marital status. However, they have denied all the allegations in the application. They have claimed that during cohabitation there were no allegations regarding dowry and violence. The applicant no.1 was allowed all her liberties and employment of her choice. They traveled to ten countries. He has filed photographs on record. She was gifted smart phones. They acquired three properties in Wakad, Hinjawadi and Panvel in joint names. They have PPF and Sukanya account in names of applicants no.2 and 3. The applicant no.1 quit job on her own and came back to India. She under influence of her parents started job in November 2013. She maintained her exclusive account in HDFC bank. She never contributed to EMI. She saved Rs.40 Lakhs which shows that opponents were not behind money. Opponent no.2 handed over her ornaments to the applicant to keep in locker. The applicant no.1

had forcefully taken custody of applicant no.2 and 3. At the time of leaving matrimonial house she took all jeweleries and keys of lockers. Mother of the applicant no.1 told respondent no.2 that applicant no.1 is not interest to receive any call from the respondent. They were shocked. They went to the house of the father of the applicant no.1. However, door was not opened. The respondent no.1 was not allowed to talk with applicant no.1. Their children were crying. They tried to open the door. But they were restricted. They patiently wait for two hours on road. The son of their neighbour Amit informed that applicant no.1 is no more interested in matrimonial ties due to difference of thought process.

18] On 23/12/2019 the respondent no.1 received letter dated 14/12/2019 from Women Cell, C.B.D. Belapur, Navi Mumbai. Respondent no.1 was shocked and surprised to see baseless allegations against him. The applicant no.1 has stolen the car of respondent no.1. He was called for mediation. It was unsuccessful. On 14/01/2020 applicant visited his house along with colleague and police men. She collected her all educational certificates, clothes, jeweleries, tablets and shoes of children. She left only HP Laptop, electric cooker and some toys. She promised the respondent no.1 to allow meet him to her children. A writing was executed at Wakad Police Station regarding exchange of articles between parties. Thereafter, crime was registered against him. He approached to the honourable Sessions Court, Thane for anticipatory bail.

19] On 13/03/2020 the applicant visited Wakad Police Station. Locker was opened in presence of both parties. Keys of locker are still with the applicant. All ornaments in the locker were missing. The respondent no.1 has filed report for misappropriation of gold. Anticipatory bail application of the applicant was rejected by the

honourable Sessions Court, Pune. She has operated the locker even after leaving the matrimonial house. FIR shows that her father has spent only 4 lakhs in the marriage. There was no jewelry in the marriage. Applicant no.1 has used artificial jewelery.

20] In USA very few can afford maid. So it was decided to share household work. There was no restriction on food. They used to visit hotels and parties regularly. There is no question of not allowing worship. He is of religious nature. Applicant no.1 never shown any interest in religious practices. She has confessed this fact in her diary. Respondent no.1 has baked cake for their marriage anniversary. Her father enjoyed playing billiards with respondent no.1. Several pictures were taken together. Respondent no.1 is not member of any organization. There is no question of forcing the applicant. She was frequently taken to movies. Respondent no.1 was very happy in the marriage ceremony of her brother. There was never demand for dowry. Respondent no.1 was not aware of transfer of Rs.19 Lakhs to the loan account. He has denied incidents dated 05/12/2019.

21] The applicant no.1 had written few pages in her diary around 2017 as confession of her own mistakes. She has summarized how well respondent no.1 has been able to spread love and affection in the entire family. She has confessed that she did not love anyone in the family and in fact even destroyed the entire family due to her own bad behaviour by allowing interference of her parents. He has denied incidents of insult. He has denied each and every incidents stated in application. He has claimed that the applicant has suppressed her income. Both are well educated and are in the same profession. She is earning Rs.50,000/- per month from her investments. She has purposely not produced income tax papers. She is in possession of jewelery worth more than Rs.1,35,00,000/-. Her income is more than

3 Lakhs per month. Therefore, she is not entitled for any maintenance. Hence, he has prayed for dismissal of the application.

22] I have heard both sides. Both sides have argued in consonance with their application and say respectively. I have also perused affidavits of both sides regarding assets and liabilities. By considering rival submissions, pleadings and documents placed on record following points arise for my determination. And I have recorded my findings thereon with reasons as under.

<u>Sr. No.</u>	<u>POINTS</u>	<u>FINDINGS</u>
1.	Whether the applicant prima facie establish that she was subjected to domestic violence by respondents ?	Yes.
2.	Whether applicants are entitled to interim maintenance as claimed?	Partly affirmative.
3.	Whether applicants are entitled to possession of her stridhan?	At the time final hearing
4.	Whether the applicant is entitled to injunction restraining respondents from alienating their properties?	At the time final hearing
5.	What order ?	As per final order.

23] In order to establish her claims the applicant has placed on record photo copy of wedding card, wedding photographs, bills pertaining to change of glass, screen shot of face book page, bank statement, N.C.R. dated 07/12/2019, copy of complaint dated 09/12/2019, complaint lodged to Women Cell, copy of e-mail sent by opponent no.1, copy of statement of Yes Bank, copy of Index-II and photo shoot society board. Whereas the opponent has relied on photographs of enjoyment together, payment receipt dated 14/03/2018, account statements of bank and PPF in names of applicant no.2 and 3, order of anticipatory bail applications, copy of

FIR no.246/2020 at Wakad Police Station, copy of additional statement, copy of bank locker register, diary writing of applicant, photo of applicant worshipping, photographs of parents of applicant enjoying at USA, receipt of television purchase, baby diary of applicant, pictures of marriage of the brother of the applicant, statement of IDBI Bank, complaint to Women Cell, copy of FIR No.83/2020, e-mails exchanged prior to marriage, newspaper cuttings of Times of India, picture of applicant gifting Bhagwat Geeta to her mother, other photographs, sonography reports and copy of shop application.

REASONS

AS TO POINT NO.1

24] The applicant has claimed that her marriage was solemnized on 26/01/2006 at Navi Mumbai. She has two children. It is pertinent to note that the fact of marriage and relationships between the parties is not in dispute. The applicant has claimed that she was subjected to domestic violence by respondents. She has claimed that she was subjected to mental as well as physical harassment by respondents. She was given insulting treatment. She was assaulted by the respondent no.1 from time to time. The respondent no.2 was instigating the behaviour of the respondent no.1. The applicant was assaulted by the respondent no.1 on various reasons. The respondent no.1 was devotee of Harekrishna. He was forcing her to follow Harekrishna. She was not allowed to express her views. She was not allowed to follow worship of Gods.

25] On the other hand respondent have admitted relationship. However, he has denied all allegations in the application. Respondents have come up with case that there is undue interference

of the parents of the applicant.

26] In the present case the applicant has narrated many incidences of domestic violence. Her application is supported by affidavit. Acts alleged by the applicant falls into definition of the domestic violence. Considering the application, affidavit and documents placed on record. I have no hesitation to held that the applicant has prima facie established that she has subject to domestic violence. As a result, I answered point no.1 in the affirmative.

AS TO POINT NO.2

27] As per applicant the opponent no.1 is working with Deutsche Bank as I.T. Manager. He is earning Rs.4 Lakhs per month. Opponent no.1 is the owner of a car and some flats. He is drawing additional income of Rs.42,000/- per month. He is earning Rs.7 Lakhs from additional projects. In all he is earning Rs.5 Lakhs per month. There are no dependents on respondent no.1. The applicant has claimed that she along with her children is residing in the house of her parents. The respondent no.1 has not made any arrangement for their maintenance.

28] On the other hand respondent has claimed that the applicant is residing in her parents house. She is earning Rs.50,000/- per month from her investments. She has purposely not produced income tax papers. She is in possession of jewelery wroth more than Rs.1,35,00,000/-. Her income is more than 3 Lakhs per month. Therefore, she is not entitled for any maintenance. It is pertinent to note that the fact that the applicant is serving is not denied by her. On the contrary she has submitted that she is earning salary of Rs.1,50,000/- per month.

29] Respondents have relied on the decision of the

honourable Supreme Court of India in **Padmaja Sharma vs. Ratanlal Sharma in Civil Appeal No.2462/1999**, the judgment of the honourable Rajasthan High Court in **Dinesh Kumar and others vs. Smt. Shobha Chouvan in S.B. Criminal Revision Petition No.1055/2012**, the honourable Calcutta High Court in **Somdatt Chatterjee vs. Anindya Chatterjee in C.O.No.1772/2016**, the judgment of the honourable Supreme Court in **Rajesh vs. Neha in Criminal Appeal No.730/2020**.

30] On the other hand the applicant has relied on the decision of the honourable Supreme Court of India in **Chaturbhuji vs. Sitabai decided on 27/11/2007**, the judgment of the honourable Jharkhand High Court in **Ujjal Pramanik vs. Sabita Rani Pramanik**, the judgment of the honourable Delhi High Court in **Manju Sharma vs. Bipin in Criminal Revision Petition No.103/2015**, the judgment of the honourable Supreme Court in **Megha Khandelwal vs. Rajat Khandelwal in SLP No.6422 of 2018**, the judgment of the honourable Supreme Court in **Manish Jain vs. Akanksha Jain decided on 30/03/2017**, the judgment of the honourable Delhi High Court in **Bharat Hegade vs. Saroj Hegade decided on 24/04/2007**, the judgment of the honourable Supreme Court in **Reema Salkan vs Sumersingh Salkan in Criminal Appeal No.1220 of 2018**, the judgment of the honourable Supreme Court in **Jasbirkaur Sehgal vs The District Judge Dehradun decided on 27/08/1997** and the judgment of the honourable Supreme Court in **Shamima Farooqui vs. Shahid Khan in Criminal Appeal No.564 of 2015**.

31] Considering law laid down in above cases it is settled that any person having sufficient means neglects or refuses to maintain his wife or children unable to maintain themselves is liable to pay

maintenance to the wife or children. It may be further noted that wife having sufficient means to maintain herself is not entitled to maintenance. In case where both parents are earning or having income they are liable to pay maintenance to their children in proportion of their income.

32] In the case on hand the applicant no.1 is earning lady. She is earning about Rs.1 Lakh. On the other hand record shows that the respondent no.1 is drawing salary of Rs.2,50,000/-. The applicant no.1 has claimed that the respondent no.1 is earning Rs.5 Lakh per month. Considering this aspect It is seen that both applicant no.1 and respondent no.1 are earning. As the applicant no.1 is earning sufficient amount she is not entitled to interim maintenance. As far as their two children are concerned, they are residing with the applicant. The applicant is maintaining them out of her income. However, being father the respondent no.1 is also duty bound to maintain his children. It is seen that his income is more than Rs.2,50,000/-. It is settled that children should enjoy the status which they have they would have enjoyed at their father's house. Considering day-to-day expenses, school expenses and other expenses applicant no.2 and 3 are entitled to maintenance of Rs.50,000/- each per month from the respondent no.1. As a result, I have answered point no.2 accordingly.

AS TO POINT NOS.3 TO 5

33] The applicant has sought reliefs for protection order, order restraining respondents from alienating any property or assets, bank lockers and stridhan. She has prayed for residence order. She has further prayed for restraining respondents from alienating matrimonial house or any other immovable standing in their name.

34] The respondent has denied all the prayers. He has denied

all allegations in the application. However, it is to be noted that for deciding above prayers there should adjudication on merits. Therefore, said prayers are required to be decided at the time of final adjudication.

AS TO POINT NO.6

35] As discussed above point no.1 is prima facie established and as I have answered point no.2 in partly affirmative, applicants are entitled to reliefs in that behalf. As far as the interim maintenance is concerned, applicant no.2 and 3 are entitled to interim maintenance of Rs.50,000/- each per month. Consequently, I pass following order:

ORDER

- 1) Application is partly allowed.
- 2) Respondents shall not subject applicants to any kind domestic violence till the final decision of this application.
- 3) Respondent no.1 shall pay interim maintenance of Rs.50,000/-each to applicants no.2 and 3 per month from the date of the application.

Vashi, Navi Mumbai.
Date : 18/02/2022.

(Vikas D. Bade)
Judicial Magistrate, First Class,
Court No.4, Vashi Navi Mumbai.