

UPAL010117692022**In the Court of Addl Sessions Judge Court no.9, Aligarh.****Present: Sunil Singh H.J.S**

In the matter of

Criminal Appeal no. 132 of 2022

1. Smt Kanta w/o Sh. Karan Singh aged 65 yrs
2. Rajat Kumar s/o Sh Karan Singh aged 28 yrs
r/o Krishna Bagh Colony, Tedi Bagia, PS. Etmadaula, Agra.
3. Hitesh w/o Ashok Kumar age 37 yrs
4. Ashok Kumar s/o Sunheri lal aged 45 yrs
r/o village Charaula, PS Sadabad, Hathras
5. Maya Devi w/o Vishal aged 32 yrs Devri Road , PS Sadar, Agra
6. Jaishree w/o Mohan Singh
7. Mohan Singh s/o Sh Iswari Prasad aged 50 yrs
r/o Tedi Bagia , Agra

..... Appellant**Vs.**

1. Anita d/o Syodan Singh aged 40 yrs r/o Bhedeshi, PS Gandhi Park, Aligarh
2. State of U.P.

.... Respondent

JUDGEMENT

1. This Criminal appeal U/s 29 of the Protection of Women from Domestic Violence Act, 2005, is preferred by the appellants, calling in question the propriety and legality of the Judgment and order dated 02-09-2022, so rendered by learned Civil Judge(JD) FTC, in case No. 2168/2015. Whereby the learned trial Court directed the appellants – (i) not to do the domestic violence upon the victim

(ii) the appellant no.1 is directed to provide a residential accomodation to the respondent no.1

(iii) the appellant are directed to return the stridhan and in default of same 4 lac rupees be given.

(iv) the appellant no.1 is directed to pay a sum of Rupees 5,000/- to the OP no.1 and rs 4,000/- to her daughter .

(v) the appellants were directed to pay a sum of rs 2 lac towards mental and emotional sufferings as a result of domestic violence.

2. The respondent in this case presented a petition before the learned trial court Addl Chief Judicial Magistrate, Aligarh under Section 12,18,19,20 & 22 of the Protection of Women from Domestic Violence Act, 2005, with assertion that she got married with the Amit Kumar who is s/o of appellant no.1 on 14-2-2014 and it was social marriage and it was conducted as per Hindu rites and custom, in which a sum of Rs 20 lacs were spent, who died in road accident on 3-12-2014 and a daughter was begotted from the marriage on 30-1-2015. the respondent has alleged in her complaint that the appellants were consistently torturing her stridhan be returned and maintainance be awarded.

3. The OP/ appellant have filed their objection in which htey have dienied that No reply was fil theed by OP Appellant as the

matter proceeded ex parte against them. The OP no.2 had filed domestic violence case against the her mother in law, brother in law and his wife, sister in laws and her husband . Thus there was no domestic violence committed by the appellants and they should be discharged of the their liability. The appellant has submitted that the order passed by the Id trial Court is illegal, incorrect and improper and is liable to be set aside to bring ends of justice.

4. The Respondent/ applicant have submitted that the appeal is not maintainable as the appellant has not been able to shown any illegality committed by the Id trial court in passing the order dated 02-09-2022 and it was passed after following due process of law. Thus the appeal has no merits and liable to be dismissed.

5. Heard the Id counsels of the Appellant and Respondent and perused the lower courts record. After careful perusal of the record it is pertinent to note that this appeal is preferred by the appellant against the order of the Id trial court on 02-09-2022. It is found from the record that during the course of trial aggrieved party adduced evidence of three witnesses including herself as PW-1, Pankaj Kumar as PW-2 and PW-3 Sangram Singh. No evidence was edduced from the side of appellant.

6. In defence only one witness was given as DW-1 but the witness did not turn up in court despite ample opportunities afforded to him. Thereafter, the learned trial Court upon perusal of record and upon hearing the parties having found merit rendered the impugned Judgment and order with directions as alluded above and the appellant being highly aggrieved and dissatisfied with the afore-said Judgment and Order dated 2-09-2022. passed in DV. Case No. 163/2014 b2168/2015 by the learned trial Court, preferred this appeal.

7. According to the appellant, the learned trial Court committed serious error in law as well as in facts while disposing the case in the manner as reflected in the judgment and it is not based on evidence on record and hence, same are palpably wrong and illegal and it is liable to be set aside. It is further contended that the learned trial Court misconstrued, mis-interpreted and mis-appreciated the evidence on records and misunderstanding of facts and on the basis of the same, the learned trial Court arrived at an erroneous findings resulting serious miscarriage of justice and as such same is liable to set aside. It is further contended that the learned trial Court overlooked the serious infirmities of the pleadings and evidence adduce by the aggrieved party and her witnesses and the learned trial Court illegally and erroneously passed the aforesaid impugned Judgment. It is further contended that in criminal proceeding the onus always lies on the prosecution to prove the case beyond doubt. The learned trial Court has committed manifest error of law by lying on presumptive evidence which are nowhere in the records. It is also contended that the credibility of the witness on the point of living together of the aggrieved party and the appellant are entirely untrustworthy in as much as the aggrieved party admitted in examination in-examination that the respondent is living at for several year. On this point I have found that this proceeding U/s 12 of the Protection of Women from Domestic Violence Act, cannot be presumed as criminal proceeding ; in a criminal proceeding duty is upon the prosecution to prove the case beyond all reasonable doubt. The aggrieved party has sought relief under this section may be disposed on the presumptive evidence. Proceeding further, the appellant has further asserted in the appeal memo that the learned trial Court misunderstood the evidence on record and the domestic incidents report, which is a part of evidence shows no offence of domestic violence was committed by the appellant as alleged by the aggrieved party in her complaint petition. It was

argued that that allegations of violence always committed by the aggrieved party towards the appellant and the learned trial Court failed to consider this aspect of facts causing miscarriage of justice and as such the impugned judgment is liable to be set aside and quashed.

8. At the final hearing of the appeal, the learned Counsel for the appellant has submitted that the learned trial Court has failed to assess properly the incident of domestic violence as the incident report was not even submitted by the DPO. So, now we have to see if the learned trial Court failed to consider the domestic violence. From the evidence edduced by the complainant it is found that the aggrieved party was ever treated badly by the appellant and still the stridhan is not returned to her. Even in the verbal and emotional abuse column, the aggrieved party also remained silent. However, the aggrieved party stated that she lived in her fathers house ever since 3-12-2014 and the appellants were staying separately in a different house. But the ld lower court has held If it is so, then the claim of the aggrieved party that she was subjected to cruelty as she was ill treated by the OP cannot be completely ruled out.

9. Indisputably the opposite party no.2 is wife of the appellant no.1's son who died in a accident. The Trial Court has recorded finding that opposite party no.2 is unable to maintain herself and her daughter. The opposite party no.2 did not get any financial assistance either from the OP or anyone else. The appellant was responsible for the delay in deciding the application. The aim of the **Domestic Violence Act** 2005 is to reduce and prevent violence in domestic relationships by recognising that domestic violence in all its forms is unacceptable behaviour, and by making sure there is effective legal protection for victims of domestic violence. The courts must be guided by this aim whenever they are exercising a

power under the Act to protect the recurrence of domestic violence in the society especially within the family by her husband or his relatives. The Act empowers the Magistrate to pass protection order in favour of aggrieved person.

An aggrieved person is defined in section. 2-

(a) "aggrieved person" means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent;

(f) "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;

(s) "shared household" means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household.

10. In this case the aggrieved party examined herself and she has also examined two other PWs. In her evidence, she has supported her case on all fronts. According to her, her marriage was solemnized with the appellant no.1's son Amit on 14-12-2014 as per Hindu religious customs. Thereafter, both the spouses started leading their conjugal life together at the house matrimonial house and after 3-12-2014 when her husband died the appellants started to inflict both mental and physical torture upon her frequently. This part of evidence of the aggrieved party was strongly objected by the learned Counsel for the appellant. According to him, he and as such, she is not entitled to get relief under this Act as the

date of incident which the applicant has shown is 3-12-2014. However, upon going through the materials in the case record, it is found that in this case attract Section 2 (a) of Protection of Women from Domestic violence. As there is no denial to the fact that the son of appellant no.1 was married to the OP no.2 Smt Anita and there was domestic relation in between the parties. Moreover, that point is affirmed and reaffirmed by the PWs and that they resided together in a shared house hold for a considerable period i.e from 14-12-2014-3-12-2014. The respondent/appellant and aggrieved party have resided together as from the said fact, infliction of domestic violence is not denied by the respondent/appellant and respondent/appellant side did not cross-examine the PW-3 nor the Dw-1 was examined .

11. In view of the above, I have found that the Ld. Court below has not assessed the evidence on record in right perspective as there was no opportunity afforded to the appellant to cross examine the witness edduced by the Respondent nor his witness was examined, but on careful perusal it appears that the appellants have voluntarily not cross examined the witness edduced by the complaint and as a result the oportunity was closed by the ld trial court. Thus the impugned order not being ex parte order can not be held to be passed not merits but the ld trial court has erred in assuming the cost of stridhan, especially when she has not submitted any reciept regarding payments.moreover she has failed to show the income of the appellant no.1, the mother in law, who herself is a widow, she do not have any regular source of income, how she can give monthly maintainace to victim and and her daughter. Moreover the stridhan is concerned she be permitted to live in the matrimonial house itself and use the same the appellants are restrained to disturb her from living in the matrimonial house. So the trial court has erred in awarding monthly maintainace to the respondent, when her own income is

not certain, Thus the appeal is partially allowed and the impugned order is set aside.

12. In the result, this criminal appeal is partially allowed and the Ld trial Court's order is modified to the extend that she be given a furnished room with round the clock basic amenities to her and her daughter, and she be granted Rs 25,000/- as compensation to her. Send back the L.C.R. immediately.

Order

The Criminal Appeal no. 132/2022 as filed by the Appellant is partly allowed. The order of ld. trial court dated 2-9-2022 is modified to the extend that -

- 1.** the appellants are directed not to repeat the incident of domestic violence to her in future.
- 2.** the appellant are directed to provide a furnished room with a toilet consisting of basic ammenities(electricity, water) and seperate entry if available to her in the matrimonial house within a month.
- 3.** she is awarded a sum of Rs 40,000/-(Forty Thousand only) as compensation of mental and physical harrasment which she will recieve from the appellants within one month.

let a copy of this order be sent to the concerned court for compliance.

Date : 28-7-2023

(Sunil Singh)
Addl Sessions Judge
Court no. 9
Aligarh.

This Judgment, signed and dated is pronounced in open court today.

Date : 28-7-2023

(Sunil Singh)
Addl Sessions Judge
Court no. 9
Aligarh.