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**IN THE HIGH COURT OF MADHYA  
PRADESH  
AT INDORE  
BEFORE**

**HON'BLE SHRI JUSTICE PREM NARAYAN SINGH**

**ON THE 19<sup>th</sup> OF JULY, 2023**

**CRIMINAL REVISION No. 325 of 2021**

**BETWEEN:-**

**MANOHAR LAL JAIN S/O LATE SHRI  
MANGILAL JAIN OCCUPATION: BUSINESS**

**1. RAJESH JWELLERS, GATE NO 7, PMC 206  
MALWANI, MALAD WEST  
(MAHARASHTRA)**

**2. NILESH JAIN S/O MANOHAR LAL JAIN  
RAJESH JWELLERS, GATE NO 7, PMC 206  
MALWANI, MALAD WEST  
(MAHARASHTRA)**

**.....PETITIONER**

***(BY SHRI MITESH JAIN, ADVOCATE)***

**AND**

**SMT URMILA W/O LATE SHRI BABULAL  
JAIN, AGED ABOUT 45 YEARS,  
OCCUPATION: HOUSE WIFE 111/2, MALVIYA  
NAGAR, OPP. BAJRANG TEMPLE (MADHYA  
PRADESH)**

**.....RESPONDENTS**

***(BY SHRI ANISH ASHAPURE, ADVOCATE)***

*This revision coming on for orders this day, the court passed the following:*

**ORDER**

Being crestfallen by order dated 07.09.2020 passed by learned 3<sup>rd</sup> Additional Sessions Judge, Indore in Criminal Appeal No. 301/2016, whereby the learned Additional Sessions Judge reversed the order dated 16.02.2016 passed by Judicial Magistrate First Class in MJCR No.18680/2015 and awarded an amount of Rs.7,000/- as maintenance per month from the date of filing of the application i.e. 12.05.2015.

2. It emerged as the undisputed facts that marriage was solemnized between Late Shri Babulal Jain and respondent/non-applicant-Urmila on 19.02.1994 and after 7 months Shri Babulal Jain had expired on 19.09.1994. The petitioner No. 1 -Manoharlal Jain is brother of Late Shri Babulal Jain and brother-in-law (*Jeth*) of the respondent/non-applicant and petitioner No. 2 is son of Shri Manoharlal Jain and nephew (*bhajita*) of Late Shri Babulal Jain as well.

3. The case of respondent in a nutshell is that the respondent/non-applicant alongwith her daughter resided with the petitioners/applicants at the residence situated in Mumbai. It is alleged that in the year 2006, the petitioners/applicants started damaging the social reputation of respondent/non-applicant and her daughter by making false allegations upon them. The petitioners/applicants had sold the flat of respondent/non-applicant situated at Mahad, Mumbai and also grabbed the money received from insurance of her husband. It is further alleged that the respondent/non-applicant was residing in Mumbai in a rented house on the instructions of her father-in-law. Thereafter, she came to Indore and resided alongwith her daughter, wherein, Rs.10,000/- was used to be paid by the petitioners/applicants per month for household expenses. Afterwards, in the month of November, 2012, the

petitioners/applicants took respondent's daughter in Mumbai. Thereafter, tortured her mentally and physically as well and left her Indore after two months.

4. It is further alleged that the respondent/non-applicant is residing in Indore with her maternal relatives. The daughter of the respondent/non-applicant has completed the age of 18 years and she is unable to complete her education and settle her marriage. It is also submitted that the petitioners/applicants have a jewellery shop in main area and luxurious bungalow at prime location in Mumbai. They have houses and more properties at Bhada (Rajasthan), hence the respondent/non-applicant is also liable to live in accordance with status of petitioners/applicants, thus, it is requested that Rs.45,000/- per month be awarded for maintenance of the respondent/non-applicant and for her daughter's higher education.

5. In reply, the petitioners/applicants, while denying the contentions made by the respondent, has submitted that respondent/non-applicant herself is running a private institute and is earning of Rs.1,00,000/- per month from the institute. The daughter of the respondent is a major and is able to maintain herself and competent to take higher education. The respondent/non-applicant has gold ornaments of 600 grams of weight and till November, 2012 she obtained Rs.10,000/- per month from her father-in-law.

6. Having considered the averments of petitioners/applicants and reply of respondent/non-applicant, learned Judicial Magistrate First Class, Indore has dismissed the application filed by the respondent/non-applicant expressing the opinion that the respondent/non-applicant is not entitled to get any maintenance from her brother-in-law i.e. petitioner/non-applicant No. 1, she is entitled to

take maintenance only from her father-in-law. As the father-in-law of the respondent/non-applicant had already expired, she cannot claim for maintenance under the provisions of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred as "D.V. Act,").

7. The respondent/non-applicant filed an appeal before the Additional Sessions Judge, Indore challenging the aforesaid order of Judicial Magistrate First Class wherein learned Additional Sessions Judge by setting aside the order dated 16.02.2016 passed by Judicial Magistrate First Class, adjudicated that respondent is entitled for Rs.7,000/- per month as maintenance from the petitioners/applicants from the date of filing of application i.e. 12.05.2015 till the final disposal of the case.

8. Being aggrieved by the aforesaid order, this petition has been preferred before this Court on the ground that that the respondent/non-applicant left the house of the petitioners/applicants in the year 2010 and thereafter, she started living separately in Indore whereas, the application for domestic violence has been filed in the year 2015. This fact shows that the respondent/non-applicant has no domestic relation with the petitioners/applicants for a period of five years. It is further demurred that when the respondent/non-applicant started residing separately from the petitioners/applicants, i.e. before 2015, it is significant that no allegation has been levelled against the petitioners and no complaint has been made against the petitioners/applicants. That apart, the respondent/non-applicant herself is an educated lady and she is eligible to earn for her livelihood, hence, on these grounds the impugned order is liable to be set aside.

9. The respondent/non-applicant in her reply vehemently expostulated that violence does not mean that it can be done only by

way of physical violence, it can be mental, social or economical violence also. Since the petitioners/applicants have grabbed the insurance money of Late Shri Babulal Jain, husband of the respondent/non-applicant and amount of maintenance which they used to pay was stopped after the year 2012, she was entitled for maintenance from the petitioners. Therefore, this petition being debarred by law, deserves to be dismissed.

10. Shri Mitesh Jain, learned counsel for the petitioners has mainly contended that since the domestic relationship between respondent and petitioners is not surviving, entitlement for maintenance under the Protection of Women from Domestic Violence Act, cannot be maintained. In this regard, the definition of domestic relationship enunciated under Section 2(f) is worth referring here as under :-

*(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;*

11. In view of the aforesaid definition, since the petitioners are coming in relationship with respondent and before 2006, they lived together in a shared household, the stand regarding non existence of domestic relationship is found without leg. On this aspect, the law laid down by Hon'ble Supreme Court in judgment rendered in **Prabha**

*Tyagi Vs. Kamlesh Devi [AIR 2022 SC 2331]*, is condign to quote here:-

52. ....

"(ii) Whether it is mandatory for the aggrieved person to reside with those persons against whom the allegations have been levied at the point of commission of violence?"

It is held that **it is not mandatory** for the aggrieved person, when she is related by consanguinity, marriage or through a relationship in the nature of marriage, adoption or are family members living together as a joint family, to actually reside with those persons against whom the allegations have been levelled at the time of commission of domestic violence. **If a woman has the right to reside in the shared household** under Section 17 of the D.V. Act and such a woman becomes an aggrieved person or victim of domestic violence, she can seek reliefs under the provisions of D.V. Act including enforcement of her right to live in a shared household.

(iii) Whether there should be a subsisting domestic relationship between the aggrieved person and the person against whom the relief is claimed?"

It is held that there should be a subsisting domestic relationship between the aggrieved person and the person against whom the relief is claimed vis-à-vis allegation of domestic violence. However, **it is not necessary that at the time of filing of an application by an aggrieved person, the domestic relationship should be subsisting.** In other words, even if an aggrieved person is not in a domestic relationship with the respondent in a shared household at the time of filing of an application under Section 12 of the D.V. Act but has **at any point of time lived so or had the right to live** and has been subjected to domestic violence or is later subjected to domestic violence on account of the domestic relationship, is entitled to file an application under Section 12 of the D.V. Act.

12. In view of aforesaid law, aggrieved persons/respondent would come in the said definition of domestic relationship because she has right to reside in a shared household under Section 17 of the Domestic Violence Act. It is also held that it is not necessary that at the time of filing of application by a aggrieved person, domestic relationship should subsist. In this case, it is undisputed that the respondent is sister-in-law of petitioner No. 1, therefore, she has relationship with petitioners. She would be regarded in domestic relationship with petitioners.

13. The question of domestic violence has also been raised before this Court. In this regard, the definition clause mandates that domestic violence has the same meaning as assigned in Section 3. As per Section 3 of D.V. Act, domestic violence includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse. On this aspect, IV<sup>th</sup> Clause of explanation added with Section 3 of D.V. Act, is also worth to be produced here :-

(iv) "Economic abuse" includes :-

(a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, house hold necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared house hold and maintenance;

(b) disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic

relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person; and  
(c) prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.

14. Prima-facie, it is established from the record that respondent was compelled to live separately. It is admitted fact that earlier Rs.10,000/- was being given to the respondent per month as maintenance and now it is stopped since the year 2012. As per allegations made by the respondent, the petitioners had also deprived her for getting insurance money of her husband after his death. As such the fact of economic abuse is prima-facie evinced in favour of respondent. In this regard, the law laid down by Hon'ble Supreme Court in judgment *Saraswatty Vs. Babu [2014(3) SCC 712]* provides the guidelines. Hon'ble Supreme Court has also held that the conduct of parties even prior to commencement of Domestic Violence Act, 2005 can be taken into consideration while passing the order under the provisions of Domestic Violence Act. Under these guidelines, it can be ascertained that since the respondent was subjected to domestic violence before the year 2015, she can not be debarred from getting protection under D.V. Act, 2005 in later years. Therefore, the contentions that the applicants have not filed application just and after her separation from domestic family, is also not found substantiated.

15. In upshot of the aforesaid discussion in entirety, the order of learned Appellate Court, with regard to allowing Rs.7,000/- per month as interim maintenance, is found immaculate and in accordance with



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propriety, correctness and legality. Hence, this petition being sans merit is dismissed and impugned order is hereby affirmed.

**(PREM NARAYAN SINGH)**  
**JUDGE**

Vindesh