

**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR****ORDER**

S.B. CRIMINAL REVISION PETITION NO. 1483/2011

HANS RAJ VS. SMT. DWARIKA & OTHERS.

DATE OF ORDER : 02.04.2013

HON'BLE MR. JUSTICE NARENDRA KUMAR JAIN-II

Mr. B.R. Vashishtha on behalf of Mr. Prahlad Sharma, for the petitioner.

Heard learned counsel for the petitioner.

2. This revision petition under Section 397 read with Section 401 Cr.P.C. has been filed against the judgment and order dated 18.07.2011 passed by Sessions Judge, Tonk (hereinafter referred to as 'the Appellate Court') in Criminal Appeal No. 28/2010, whereby the Appellate Court has dismissed the appeal filed by the petitioner-husband and upheld the order dated 27.05.2010 passed by Additional Chief Judicial Magistrate, Newai(Tonk) (hereinafter referred to as 'the Trial Court'), granting interim maintenance of Rs. 500/- per month each to Respondent No. 1 to 3 and Rs. 750/- towards rent per month, total Rs. 2,250/-.

3. The concise facts of the case are that Respondents No. 1 to 3 filed a complaint under Section 12 of The Protection of Women from Domestic Violence Act, 2005(hereinafter referred to as 'the Act of 2005') against the petitioner and five others, Respondents No. 4 to 8 herein. It was averred in the

complaint that the complainants are wife and sons of the petitioner, but they have been dispossessed from their legal properties, the petitioner has also committed domestic violence with the complainants, therefore, protection as provided under the Act of 2005 may be granted. An application under Section 23 of the Act of 2005 was also filed by the complainants with the complaint regarding interim order/maintenance, mentioning therein that complainants having best hopes of the success in the original complaint, but it will take time, therefore, according to the provisions of Section 23 of the Act of 2005, the complainants are entitled to get the interim maintenance to the tune of Rs. 5,000/- per month alongwith Rent Rs. 750/- per month.

4. The petitioner filed reply to the above application before the Trial Court denying the averments made by Respondents No. 1 to 3/complainants. It was mentioned in the reply that the complainants have filed original complaint only on the basis of false averments, it was also submitted that the complainants were living in the rented house together with petitioner, because there is no ancestral house in the village Vanasthali, therefore, there is no question to dispossess the complainants. It was also mentioned in the reply that the petitioner himself is maintaining complainants according to his income, therefore, no maintenance can be granted separately.

5. Learned Trial Court after hearing arguments of the parties, vide order dated 27.05.2010 allowed the prayer for

interim maintenance and directed the petitioner to pay the interim maintenance as mentioned hereinabove. Being aggrieved with the order passed by the learned Trial Court, the petitioner preferred appeal under Section 29 of the Act of 2005 before the learned Appellate Court. Learned Appellate Court after considering the arguments of the parties, vide judgment and order dated 18.07.2011, dismissed the appeal filed by the petitioner and upheld the order dated 27.05.2010 passed by the learned Trial Court. Feeling aggrieved with the judgment and order dated 18.07.2011 passed by the learned Appellate Court and the order dated 27.05.2010 passed by the learned Trial Court, the petitioner has preferred instant revision petition.

6. Learned counsel for the petitioner submitted that the judgments and orders passed by both the Courts below are contrary to the provisions of law as well as facts of the present case. While passing the impugned judgments and orders, learned both the Courts below have not considered important aspect of the matter that the complainants are residing with the petitioner and he is very well maintaining them and there is no occasion to pass the interim order in favour of the complainants. Learned counsel for the petitioner further contended that both the Courts below have not considered another important aspect of the matter that the complainant/Respondent No. 1 is living in adultery, which is sole foundation of the present case, in such situation, spouse who is living in adultery is not entitled to get the maintenance

from her husband, but the learned both the Courts below have arbitrarily ignored this important fact. It is further contended that both the Courts below committed serious illegality in not considering the legal requirement that prior passing any order relating to the provisions of the Act of 2005, report of the protection officer is necessary and mandatory for ascertaining trustworthiness of the averments and allegations of the complaint, but in the instant case no such report has been submitted by the protection officer. It is therefore, prayed that both the judgments and orders passed by the Court below deserves to be quashed and set aside.

7. Having considered the submissions advanced by learned counsel for the petitioner and perused the material placed on record, I am of the considered opinion that the learned Trial Court was absolutely right in passing the order dated 27.05.2010 and the learned Appellate Court was also justified in upholding the same, as it was only an interlocutory/interim order, which will merge into the final order.

8. Resultantly, the revision petition, being devoid of merits, is hereby dismissed. Stay application also stands dismissed.

(NARENDRA KUMAR JAIN-II),J.

Manoj.

"All corrections made in the judgment/order have been incorporated in the judgment/order being emailed."

MANOJ NARWANI
JUNIOR PERSONAL ASSISTANT.