

got married with [REDACTED] who is the sole respondent before this Court and was respondent no. 1 before the Trial Court on 19.04.2007. Three children were born out of this wedlock, who are still minors. The grievance of the appellant is that she was never treated with any respect and affection by her husband and in-laws at her matrimonial house. According to her, soon after the marriage she was harassed and tortured for more dowry. It is the case of the appellant that she was not allowed to even work professionally after the marriage, even though she was professionally qualified to work as a teacher at that time. The appellant was aggrieved by the conduct of her husband and other in-laws, who did not take care of even her basic necessities and rather gave beatings to her on several occasions. There are detail allegations as to how the appellant was deprived even use of water and air conditioner in her matrimonial house. Due to the conduct of the in-laws and her husband, the appellant was compelled to leave her matrimonial house on 09.08.2019 and she started living with her parents. Since the said date, her husband has never provided any maintenance to her and she is totally dependent on her parents for all her needs.

2. On the other hand in the joint written statement filed by the husband and other in-laws before the trial Court only the factum of marriage and birth of three children is admitted. All the allegations which the appellant made regarding violence and cruelty have been denied. In fact it is their case that because of the cruel conduct of the appellant, the respondent was forced to file a divorce petition against her which is pending disposal in the concerned family court. It is their case that the appellant herein, in fact wrote sexually explicit love letter to her own brother-in-law (brother of her husband), which shows her immoral conduct unbecoming of a wife and a mother. It is denied by the respondent husband that the complainant was ever compelled to leave the

matrimonial house and it is his averment that the appellant has always lived in the matrimonial home only. Further, it is the case of the respondent husband that he alone is taking care of his three minor children and looking after all their expenses and needs.

3. After perusing the complaint u/s. 12 of Prevention of Woman from Domestic Violence Act (PWDV Act), the reply thereto and the documents filed, the learned trial Court passed the Impugned Order holding that the appellant is not entitled to any interim maintenance. Aggrieved of this order, the appellant has now approached this Court praying that she is indeed entitled to interim maintenance from her husband and therefore the impugned order must be set aside. On the other hand learned counsel for the respondent has argued that the impugned order has been correctly passed and is a well reasoned one, which should not be interfered with.

4. The relevant portion of the impugned order is reproduced below :-

“In the opinion of this Court, there is no ground to grant interim maintenance to the complainant at this stage. This is so because admittedly the children are in joint custody and are being taken care of by respondent no. 1 in the matrimonial home. Moreover, since the complainant is residing in the matrimonial home, it is difficult to believe that no expenses are being paid by respondent no. 1 for her sustenance. Thus, there is no ground to grant interim maintenance to the complainant. It is also pertinent to note that the complainant is well qualified and holds an MBA and B.Ed. Degree and also a diploma in Art and Craft and hence, in a position to earn a living for herself.

In view of the reasons mentioned in the aforesaid paragraphs, the application for interim maintenance stands dismissed.”

This Court is unable to agree with the above said findings and the reasoning behind it as given in the impugned order. Thus, for

reasons discussed in detail below in the paragraphs that follow, the impugned order is set aside.

5. The trial Court has basically denied any interim maintenance to the appellant herein on the ground that since she is residing in the matrimonial house, it is difficult to believe that no expenses are being paid for her sustenance. Admittedly, the husband and the wife were residing in the same household at the time of passing of the Impugned Order. However, the trial Court was wrong in coming to the conclusion that merely because the aggrieved person before it was residing in her matrimonial house, she is not entitled to any maintenance. The appellant has made specific allegations of domestic violence in her complaint u/s. 12 of the PWDV Act before the trial Court. In fact an FIR has also been registered upon allegations of cruelty as made by the complainant wife to the concerned police authorities. The Domestic Incident Report (DIR) filed by the protection officer also corroborates the complaint of the appellant. As is usually the case, such instances of domestic violence as are narrated by the appellant before the trial Court, in her complaint, took place within the four walls of house and in support of her grievance, the complainant can only rely on the averments made in her complaint and cannot place much material on record to substantiate her averment at the initial stage. However, in view of this court, considering the detailed allegations as made in the complaint U/s 12 of the PWDV Act, there is sufficient material to give rise to at least a prima facie assumption that the appellant was treated with domestic violence.

6. In fact the income affidavit of the income/expense affidavit of the respondent as filed before the trial court also supports the allegation of the appellant regarding no maintenance being paid to her and no money being spent by her husband for her daily needs. This is so as while the complainant has specifically alleged that her husband does not take care of even her basic needs and in the detailed income affidavit filed by the respondent husband he has also nowhere mentioned the expenses incurred by him in maintaining his wife while the husband has detailed

the expenses incurred by him for maintaining his children, he is completely silent on the aspect of money spent in taking care of her wife. Thus it supports the case of the appellant that indeed the respondent is not maintaining her. Further, in the income affidavit the respondent has admitted that his wife has not been working since a long time and is totally dependent upon him for her maintenance as per his own income affidavit. Interestingly despite this admission, he has not quantified and mentioned any amount, he is spending on the maintenance of his wife. To quote from the income affidavit *“My wife, parents and school going three children are dependent upon me as my wife is not working”* and *“the other dependents have no income, however, the wife claims to be very rich due to her parental economic status”*. These facts alone are sufficient to grant interim maintenance to the complainant.

7. Admittedly at the time of passing of the impugned order, the appellant was residing in the matrimonial house and therefore, she had no rental expenses and did not have any obligation to pay any electricity/water expenses etc. However, still a wife is entitled to at least a minimum amount from her husband for her daily needs of food, toiletries, groceries, clothing etc. The Trial Court erred in assuming that since the lady is residing in the matrimonial house, it is unbelievable that her husband is not paying her any maintenance or not taking care of her necessities. It is a common scenario in several households in our society where a victim of domestic violence is deprived of basic necessities and not a rupee is given to her to meet her daily needs, even though she resides in the same house. Merely because the respondent no. 1 is bearing the expenses of education and diet etc. of his children, no presumption can be made that he must also be maintaining his wife. Had that been the situation, there would have been no occasion for the wife to approach the trial Court and the police authorities with her grievances and the husband would have atleast somewhere mentioned how much he is spending every month to maintain his wife.

8. Whether or not the complainant will be able to establish her

allegation after adducing evidence is another aspect. However, at the initial stage, before the trial even began, there was no occasion for the trial court to raise a presumption against the appellant. Needless to say, the wife is entitled to a maintenance amount in consonance with the earnings of her husband, other necessary expenses of husband and other dependents on the husband.

9. Also the trial Court did not apply the correct legal position and reasoning while holding that since the appellant is an M.A., B.Ed., so she is also capable of earning a decent salary and taking care of her own financial needs. Thus, she is not entitled to any maintenance. It is a settled law that the capacity to earn is totally different from the actual earnings. A middle aged woman, a mother of 3, who has accused her husband and in laws of threatening her with domestic violence, can not be denied maintenance on the ground that many years ago she had procured a B.A. and B.Ed. Degree. The complainant has specifically alleged in her complaint u/s. 12 of PWDV Act that despite her degree, she was not allowed to work by her husband and in laws ever since her marriage. The respondent husband never placed on record any material before the trial Court to show any earning of his wife since the date of marriage. He has not mentioned anywhere in his reply to the complainant u/s. 12 of PWDV Act or in his income affidavit what amount was ever earned by the complainant after marriage, who her employer was and for how many days she had so worked? If, indeed the wife had ever earned a decent amount for herself, the husband should have at least mentioned some details of the said earning and employment but the respondent is silent on this aspect. This only grants more credibility to the version of complainant that she has never worked after her marriage. Indeed the couple has three minor children aged around 11 (eleven) years, 09 (nine) years and 7 (seven) years. Thus, as is usually a practice in many Indian households, an educated woman despite her qualification may not be allowed to join any regular employment to take care of her young children born in quick succession and to attend to the needs of her

husband and family.

10. Considering the admitted income of the respondent husband in the present case, while the appellant cannot be found entitled to any lavish life style, however, this does not mean that she is not entitled to even a single penny as her maintenance. Thus, considering the admitted income of the respondent husband, which is around Rs. [REDACTED] (Rupees [REDACTED] only) per working day (which amounts to around Rs. [REDACTED] - (Rupees [REDACTED] only) per month, the appellant is found entitled to an interim maintenance amount of Rs. [REDACTED] - ([REDACTED] only) per month towards her daily expenses of food, medicines, toiletries and such like needs. This amount has been arrived at after taking into account the fact that the respondent husband is also maintaining his three school going children and the complainant does not require any amount towards her residential needs as the appellant is residing in her matrimonial house as was admitted by the counsel for the appellant before the trial court on 26.03.2021.

11. The respondent no. 1 is hereby directed to pay a sum of Rs. [REDACTED] - ([REDACTED]) as interim maintenance to the appellant till the disposal of the complaint u/s. 12 of PWDV Act before the trial Court. This amount is to be paid from the date of filing of the complaint before the trial Court. Arrears be cleared within twelve months. A long time is given for clearing the arrears considering the salary of the respondent and his legal obligation towards maintaining his three children also.

Appeal is accordingly allowed. Copy of the order be sent to the Ld. Trial Court with the trial Court record.

Appeal file be consigned to Record Room after due compliance.

Announced in Open Court on
06.01.2022.

(Monika Saroha)
Special Judge (NDPS)/ASJ (south)
Saket Courts, New Delhi