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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C)7818/2008**

RAM LAKHAN SINGH

..... Petitioner

Through: Nemo.

Versus

UOI & ANR

..... Respondents

Through: Mr.Sachin Datta, Adv. with Ms.Ritika
Jhurani, Advs.

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Judgment Reserved on: November 11, 2013

Judgment Pronounced on: December 02, 2013

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE MANMOHAN

JUDGMENT

CHIEF JUSTICE:

1. In the present writ petition, the petitioner, who is the father-in-law of the 2nd respondent, has approached this Court seeking two reliefs- one is to declare Section 27(1) of the Protection of Women from Domestic Violence Act, 2005 (for short 'the DV Act'), as ultra vires Article 21 of the Constitution of India, and secondly to quash the proceedings under Section 12 of the D.V.Act, in complaint No. 22487/2008 pending in the Court of Shri Sanjeev Kumar M.M. New Delhi.

2. The specific case of the petitioner is that his son was married to the 2nd respondent in a ceremony that took place at Mumbai on 05.12.2007. After the marriage, both of them resided in the matrimonial house at

Dahisar, Mumbai. She stayed at the matrimonial house for a very limited time, as disputes arose between the parties, she left for her parents house. It is alleged that on 13.12.2007, she lodged a false and fabricated complaint at Mumbai vide FIR No.386/07 under Sections 498-A and 406 I.P.C. read with Section 34 I.P.C., against the petitioner and his son, who were arrested and later released on bail. The 2nd respondent filed an application seeking cancellation of bail, which was dismissed by the learned Assistant Sessions Judge on 27.12.2007. After dismissal of that application, the respondent preferred the present complaint under Section 12 of the D.V. Act before the learned ACMM New Delhi on 01.03.2008. It is the grievance of the petitioner that though the 2nd respondent's parents are permanent residents of Noida, U.P., she has filed the complaint at Delhi on the ground that she enrolled herself at Bharatiya Vidhya Bhawan, Kasturba Gandhi Marg, New Delhi, in a part-time diploma course of four months duration in French language. Incidentally, this part time course ended on 30.05.2008. Initially, the learned ACMM did not entertain the complaint as the entire cause of action had taken place at Mumbai, but finally complaint was taken on file by the Magistrate on 31.03.2008. On 13.05.2008, the complaint given by the complainant under Sections 498-A and 406 I.P.C. read with Section 34 I.P.C. was dismissed.

3. Basing on the above factual matrix, the present writ petition is filed on the following grounds:

- 1) Section 27(1) of the DV Act regarding jurisdiction of the Courts is ultra vires Article 21 of the Constitution and not in consonance with Section 36 of the DV Act and Section 177 Cr.P.C.

- 2) Neither the impugned Section nor the Cr.P.C. or any other parallel statute or the General Clauses Act defines the term “temporary residence”. The term is vague and creates an uncanalised power of invoking the jurisdiction of the criminal courts.
- 3) Section 27(1) of the DV Act cannot be used by the complainant for forum shopping, when the alleged accused has already been discharged from proceedings under Sections 498-A and 406 I.P.C.
- 4) Section 27(1) of the DV Act violates the fundamental rights of the petitioner enshrined in the Constitution of India.
- 5) As per Section 36 of the DV Act, the Act shall be in addition to and not in derogation of the provisions of any other law in force for the time being.

4. Hence, the petitioner contended that even though no cause of action had taken place at Delhi and when the whole cause of action had taken place at Mumbai, the respondent only with an intention to harass the petitioner has filed the complaint at Delhi taking advantage of “temporary residence”, as specified in Section 27(1)(a) of the D.V. Act, which is nothing but a pure abuse of process of law, contrary to Article 21 of the Constitution of India, and violates the fundamental rights guaranteed to the petitioner under the constitution.

5. The matter was listed on 29.10.2013, 06.11.2013 and 11.12.2013, but none appeared for the writ petitioner. Hence, we have proceeded to hear the arguments of the learned counsel for the respondent Central Government and the 2nd respondent. The Standing Counsel for the respondent Central

Government has placed his written submissions on record. The learned counsel for the Central Government has relied on the judgments of this Court as well as the Apex Court and submitted that the temporary residence as envisaged under the D.V.Act is such residence where an aggrieved person is compelled to take shelter or compelled to take up job or do some business. In view of domestic violence perpetuated on her, she either been turned out of the matrimonial home or has to leave the matrimonial home.

6. In view of the submissions made by the learned counsel and after perusing the material available on record, the issues that fall for consideration before this Court are-

- 1) Whether Section 27(1) of the Protection of Women from Domestic Violence Act 2005, is unconstitutional?
- 2) Whether the court at Delhi has jurisdiction to entertain the complaint filed by the 2nd respondent?

7. Before we proceed to deal with the constitutionality of Section 27(1) of the D.V.Act, we deem it appropriate to discuss the circumstances that led to the enactment of the D.V. Act and the gamut and scope of the Act.

8. Women constitute about one half of the global population, but they are placed at a disadvantageous positions due to gender bias. As Justice Ramaswamy has observed “self sacrifice and self denial are their nobility and fortitude and yet they have been subjected to all inequities, indignities, inequality and discrimination.”

9. The concept of equality between male and female was almost unknown to us before the enactment of the Indian constitution. The status of women in India has undergone several changes over the few decades. Post

independence constitution incorporated several articles to ensure gender equality. Article 14 of the Constitution guarantees equality before law and equal protection of law to any person within the territory of India. Article 15(1) of the Constitution mandates that the State shall not discriminate against any citizen on grounds of religion, race, caste, sex, place of birth or any of them. However, Article 15(3) makes an exception to the rule against discrimination as provided under Article 15(1) and confers a discretionary power on the State to make special provisions for women and children because it recognizes that women in India have been socially and economically handicapped for centuries and therefore so as to bring effective equality between men and women, taking into consideration how the women are subjected to harassment in several forms, the Parliament has enacted several laws, like the Dowry Prohibition Act 1961, The Commission of Sati Prevention Act 1987, Section 498-A was incorporated in the Indian Penal Code, Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act 1994 was passed which came into force on 01.01.1996.

10. However, in spite of enactment of several laws, the equality guaranteed by the Constitution appears to be only a myth to millions of women for whom life is stalked with various kinds of violence. It was observed that the least visible form of abuse is domestic violence which remains the most widespread and results in the death of several women every year. Though the criminal remedy is available for domestic violence perpetuated on women, under different Sections of Indian Penal Code, the civil law does not address the issue. The Parliament felt it appropriate to have a separate enactment to address the issues arising out of domestic

violence and enacted the Protection of Women from Domestic Violence Act, 2005.

11. If we look at the objectives and reasons of the Act, it says that domestic violence is undoubtedly a human rights issue and serious deterrent to development. The Vienna acord of 1994 and the Beijing Declaration and the Platform for Action (1995) have acknowledged this. As the criminal law does not however address this phenomenon in its entirety, the Protection of Women from Domestic Violence Act 2005 has been enacted under the Act. As per the Act, “aggrieved person” is only a lady. Section 2 provides the definitions. According to 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”. The definition contained in Section 2(a) clearly demonstrates that the purport of the act is to take care of the grievances of the women exclusively. As per Section 12 of the Act, the aggrieved person can make an application to the Protection Officer seeking one or more reliefs under the Act. As per Section 16, basing on the necessity, proceedings may be conducted in-camera. Section 17 gives right to the aggrieved person to reside in a shared household and she cannot be evicted from the shared household without following due process of law. Under Section 18, Magistrate is empowered to pass protection orders wherein the Magistrate has been given powers to pass orders against the respondent from entering into the place of employment or any other place, restraining the respondent from contacting the aggrieved person, restraining the respondent from alienating the assets and other things without the leave of the Magistrate. Section 19 provides for residence orders wherein the respondent is restrained

from dispossessing the aggrieved person from the shared household though she has no legal or equitable interest in the shared household. The magistrate can direct the respondent or his relatives to remove themselves from the household or entering into the household, and the Magistrate, if necessary, can direct the officer-in-charge of the police station to assist in implementation of the order and even the Magistrate can direct the property of Sthreedhana to be returned. Section 20 deals with monetary reliefs, Section 21 deals with custody orders. Section 26 provides that any relief provided under Sections 18, 19, 20, 21 and 22 may be sought in any legal proceedings before a civil court or a criminal court, affecting the aggrieved person and the respondent whether such proceedings are initiated before or after the commencement of this Act, and further as per proviso to Section 26(2) of the D.V.Act, any relief referred into sub-section (1) may be sought for in addition to and along with any other relief that the aggrieved person may seek in such suit or legal proceedings before a civil or criminal court.

12. When we look at the provisions of the Act, it is crystal clear that the legislation is a beneficial legislation intended to cater the needs of women who are subjected to domestic violence. The DV Act does not provide for punishment to the offender. We can term such legislations as remedial statutes. Remedial statutes are enacted keeping in mind the welfare and benefit of social justice. Such remedial statutes need to be interpreted in a very liberal way. A bare perusal of the Act shows that the Act provides some new remedies to the women along with the existing rights and simultaneously they are permitted to pursue other remedies available under the Act. The whole purport of the Act is to safeguard the women from the gender based violence.

13. It is well settled that the Acts providing protective discrimination of women are constitutionally valid and have been upheld on the touchstone of Article 15(3) of the Constitution.

14. Now, we would like to look at Section 27 of the D.V.Act, which according to the petitioner is unconstitutional. Section 27(1) reads as under:

“27- Jurisdiction;

(1) The Court of Judicial Magistrate of the First Class or the Metropolitan Magistrate, as the case may be, with the local limits of which-

(a) The person aggrieved permanently or temporarily resides or carries on business or is employed or

(b) The respondent resides or carries on business or is employed or

(c) The cause of action has arisen.

shall be the competent court to grant a protection order and other orders under this Act and to try offences under this Act.

15. According to the petitioner, Section 27(1) of the D.V.Act is unconstitutional as the term used in the Section “temporary residence” is vague and creates an uncanalised power of invoking the jurisdiction of the criminal courts and violates fundamental rights of the petitioner enshrined in the Constitution of India and contrary to Section 36 of the Act.

16. In the backdrop of the above discussed objectives and reasons of the legislature in enacting the Act, we would like to deal how the provisions of beneficial legislation has to be construed.

17. The Hon’ble Apex Court in **M/s. Grasim Indus Limited vs. Collector of Customs** reported in **2002(4) SCC 297** has observed that

“No words or expression used in any statute can be said to be redundant or superfluous. In matters of interpretation, one should not concentrate too much on one word and pay too little attention to other words. No provisions in the Statute and no word in any section can be construed in isolation. Every provision and every word must be looked at generally and in the context in which it is used. It is said that every statute is an edict of the legislature. The elementary principle of interpreting any word while considering a statute is to gather the mens or sententia legis of the legislature. Where the words are clear and there is no obscurity and there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the Court to take upon itself the task of amending or altering the statutory provision. Whenever the language is clear, the intention of the legislature is to be gathered from the language used. While doing so, what has been said in the statute and also what has not been said to be noted. The construction which requires for it is support or addition or substitution of words or which results in rejection of words has to be avoided.

18. In IT Commissioner Bangalore vs. J.H. Gotla reported in 1985 AIR 1698, the Hon’ble Apex Court has taken the view that:

“Where the plain interpretation of a statutory provision provides a manifestly unjust result which could never have been intended by the legislature, the court might modify the language used by the legislature so as to achieve the intention of the legislature and to produce a rational construction. The task of interpretation of a statutory provision is an attempt to discover the intention of the legislature from the language used. It is necessary to remember that language is at best an imperfect instrument for the expression of human intention. It is well to remember the warning administered by Judge Leard Hand that one should not make a fortress out of dictionary but remember that statutes anyways have some purpose of object to accomplish and sympathetic and imaginable discovery is the surest guide to their meaning”.

19. The Hon'ble Apex Court in **Workmen of American Express International Banking Corporation vs. Manager of American Express International Banking Corporation** reported in (1985) IILLJ 539 SC observed that:

“The principles of statutory construction are well settled. Words occurring in statutes of liberal import such as social welfare legislation and human rights legislation are not put in procrustean beds or shrunk to Lilliputian dimensions. In construing these legislations the imposture of literal construction must be avoided and the prodigality of its misapplication must be recognized and reduced. Judge ought to be more concerned with the “colour” and “content” and the context of such statutes. In the same opinion, Lord Wilber Force pointed out that law is not to be left behind in some island of literal interpretation but is to enquire beyond the language un-isolated from the matrix of facts which they are set, the law is not to be interpreted on internal linguistic considerations.

20. The Hon'ble Apex Court in **Doypack Systems P Ltd. Vs. Union of India** reported in 1988 (2) SCC 299 held that

“It has to be reiterated that the object of interpretation of a statute is to discover the intention of Parliament as expressed in the Act. The dominant purpose in construing a statute is to ascertain the intention of the legislature as expressed in the statute, considering it as a whole and in its context that intention and therefore the meaning of the statute is primarily to be sought in the words used in the statute itself which must, if they are plain and unambiguous, be applied as they stand.”

21. In the light of the judgments of the Apex Court, when we look at the provisions of the D.V. Act, it appears that the statute is enacted with an object to cure some immediate mischief and to bring into effect social reform by ameliorating the conditions of women and to provide immediate

relief for the grievances in the form of compensation, residence, protection and other orders.

22. If we look at Section 26 of the Act, the aggrieved person is permitted to pursue other reliefs along with the reliefs provided under the Act, and it makes very clear the intention of the legislature. While looking at or interpreting each and every provision of the Act, we have to look at the intention of the legislature. In the process, we have to look at what has been said and what has not been said to be noted. In the cases of violence against women under the D.V. Act, the moment she files a complaint, she is thrown out of the house and in several cases, there is threat and there is no security to the lady at the matrimonial place and she forced to flee to safety. In such cases the victim of domestic violence finds shelter in the parents house, in certain cases, parents won't be able to support the lady basing on several reasons and the lady is forced to live at some other place in search of employment or to pursue some course which will fetch her a job, so that she will have the financial independence. In such a scenario, if the Section specifically says that to claim "temporary residence", the lady has to stay in a particular place for a specified period, in majority of the cases, women have to prefer a complaint at the place where the husband resides, where she has no safety and protection in several cases. If the interpretation of the petitioner is taken to be correct, such interpretation would defeat the legislative intent behind the enactment of the Act and it would render the provisions nugatory. In construing the provisions of the Act, the Court has to bear in mind that it is a beneficial piece of social welfare legislation aimed at promoting and securing the wellbeing of the aggrieved persons and the Court will not adopt a narrow interpretation which will have the effect of

defeating the very object and purpose of the Act. It must be interpreted in the spirit in which the same has been enacted. The legislature in its wisdom thought it appropriate not to specify the time limit for claiming “temporary residence”, in view of the practical problems that will be faced by the aggrieved person, and it is not for this Court to take up the task of interpreting the section, when the words and intention of the legislature is very much clear. We are of the considered opinion that Section 27(1) of the D.V. Act is not unconstitutional and the same is in consonance with the objectives and reasons for which the Act has been enacted and the provision is not contrary to the fundamental rights guaranteed under the Constitution of India and further we are of the view that a beneficial legislation is intended to achieve a much greater purpose and the very purpose of enacting such law would be frustrated if stringent rules of construction are applied. What is a “temporary residence” depends and varies from the facts and circumstances of each case and there cannot be any straight jacket formula. At the same time, we cannot lose sight of the fact that certain legislations which were enacted for the benefit of a particular sect of people are exploited or taken undue advantage of. In such cases, courts have to be very careful and see that there is no room left for exploitation.

23. Now, we would like to deal with the second issue whether the Court at Delhi has got jurisdiction to entertain the complaint filed by the 2nd respondent. It is the specific case of the petitioner that no part of cause of action has taken place at Delhi and only for the purpose of Forum shopping she invoked the jurisdiction by saying that she is pursuing the course. It is the case of the 2nd respondent that after she left her matrimonial house at Bombay, she has been staying at Delhi along with her cousin and she is not

residing with her parents at Gurgaon, and she is unable to shift to her own flat as the son of the petitioner is not providing her with any maintenance even after passage of year and four months after the marriage. It is an admitted fact that the respondent was pursuing her course at Delhi, and nothing has been placed on record to show that she is not residing at Delhi, except stating that her course is only for a period of four months. We are afraid we cannot agree with the reasoning of the petitioner and we are of the view that the complaint is maintainable and the courts at Delhi have jurisdiction in view of Section 27(1)(b) of the Act.

24. Hence, in view of the above discussion, we are of the considered opinion that Section 27(1) of the Act is neither ultra vires Article 21 of the Constitution of India, nor it is violative of fundamental rights guaranteed under the Constitution or contrary to any provisions of other acts, and the Courts at Delhi have got jurisdiction to entertain the complaint filed by the 2nd respondent. The writ petition is devoid of merits and is accordingly dismissed leaving the parties to bear their own costs.

(CHIEF JUSTICE)

**(MANMOHAN)
JUDGE**

DECEMBER 02, 2013

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