

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO. 98 OF 2014

Chhaya Barjatya,	...	Applicant.
vs.		
Rahul Barjatya & Anr.	...	Respondents

Ms. Veena Gowda a/w Ms. Sarah Kapadia a/w Ms. Ssaunya
Brajmohan for the applicant.
Mr. Babhjeel Jawhar a/w Ms. Bhakti Deshpande a/w Sajit Marshal i/b.
Haresh Mehta & Co. for respondent No.1.
Ms. A.A.Mane, APP, for the State.

CORAM:SMT.SADHANA S.JADHAV,J.
ORDER RESERVED ON 29.9.2015
ORDER PRONCEED ON : 26.10.2015

P.C.

The applicant herein questions the correctness and validity of the order dated 10.12.2013 passed by the learned Sessions Court, thereby directing the learned Magistrate to decide afresh.

2. The applicant herein got married to the respondent on 23.1.1997 at Jaipur, Rajasthan. The couple is blessed with one son and a daughter, who are aged about 12 and 6 respectively. The applicant was meted with mental and physical cruelty at the hands of

the respondent No.1. She was constrained to withdraw herself from the shared household in Gurgaon along with her children on 9.5.2012. The maternal house of the applicant is at Mumbai. Since she had no shelter elsewhere, she had to stay with her parents. On 12.5.2012, the applicant filed an application before the Court of the Metropolitan Magistrate at Mumbai under Section 12 along with an application under Section 23(2) of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as “the Domestic Violence Act”). The learned Magistrate was pleased to issue notice to the respondent herein and the matter was posted on 21.5.2012.

3. On the scheduled date, the respondent had not appeared. The applicant intended to admit the children in a school at Mumbai and, therefore, filed an application seeking directions that she was entitled to receive the School Transfer Certificate. The matter was then posted to 28.5.2012. On the given date, the respondent had appeared through an Advocate. The respondents had filed their reply denying all the allegations levelled against them. The matter was then adjourned to 4.6.2012. On the given date, the interim application was to be decided. However, the respondent had solicited mediation

proceedings. The respondent had refused to give school transfer certificate on the ground that he had not met his children. The matter was adjourned to 15.6.2012.

4. On 14.6.2012, the Advocate for the respondent had informed the Metropolitan Magistrate that the proceedings had been stayed by the Hon'ble Supreme Court and hence the matter was adjourned to 8.8.2012. The applicant had received the orders passed by the Supreme Court. It was revealed that the respondent herein had filed a petition seeking transfer of the proceedings to the Court of a Magistrate at Gurgaon. The petition, filed before the Hon'ble Supreme Court seeking transfer of the proceedings under the provisions of the Domestic Violence Act, was dismissed by the Hon'ble Apex Court on 1.2.2013.

“Heard learned counsel for the parties to the lis.
We are of the view that no case is made out for
transfer of the case from Mumbai to Gurgaon.”

5. After dismissal of the transfer petition, the learned Magistrate, seeking to amend the reply filed by the respondent and raising a preliminary objection in respect of the jurisdiction of the Metropolitan Magistrate to decide the petition under the provisions of the Domestic Violence Act. The learned Magistrate had heard the

respective counsel and by an order dated 23.7.2013, had partly allowed the application i.e. the application seeking permission to amend the reply was allowed. The learned Magistrate had held that the Court had jurisdiction to entertain an application filed by the present applicant under the provisions of the Domestic Violence Act. It was the contention of the respondent that couple had never resided in a shared household at Mumbai. That the applicant had neither permanently or temporarily resided within the jurisdiction of the Court. It was also contended that the applicant herein had abandoned her shared household on 9.5.2012 at Gurgaon and the petition under the Domestic Violence Act was filed on 12.5.2012.

6. Being aggrieved by the said order, the respondent herein had filed an appeal before the Sessions Court, which was registered as Appeal No.453 of 2013. The learned Sessions Judge vide order dated 10.12.2013 was pleased to allow the appeal. The impugned order was quashed and set aside and the matter was remitted to the Court of Metropolitan Magistrate with a direction that he shall consider the application afresh by giving full opportunity to both the parties to put forward their respective contentions along with oral and documentary

evidence. Hence, this Revision.

7. The learned counsel for the petitioner has rightly submitted that by filing a transfer petition before the Hon'ble Apex Court, the respondent herein had challenged the jurisdiction of the Court at Mumbai to try the proceedings under the provisions of the Domestic Violence Act, 2005. All the submissions made by the respondent were considered and then the Hon'ble Apex Court had dismissed the petition by holding that there is no ground for transfer. The learned counsel rightly submits that in view of this, there was no question of considering the issue of jurisdiction at Mumbai. The learned Magistrate had rightly rejected the application challenging the jurisdiction. The learned Sessions Court ought not to have remitted the matter for reconsideration as there was no reason for interference with the order passed by the learned Magistrate.

8. This Court has perused the Petition filed before the Hon'ble Apex Court seeking transfer of the proceedings from Mumbai to Gurgaon and has also perused the Petition filed before the Addl. Metropolitan Magistrate at Gurgaon challenging the jurisdiction of the

Court. In para 12 of the petition before the Hon'ble Apex Court, the petitioner had specifically urged that the parents of the respondent-wife owned a property in Jaipur and in a year more than six months the parents of the respondent-wife reside at Jaipur **apart from Mumbai**. In para 17, it was urged that the said Court (Metropolitan Magistrate, 40th Court, Gurgaon, Mumbai) at the outset, does not have jurisdiction to try the case since the minor children are ordinarily residents of Mumbai and are permanent residents of Gurgaon, amenable to the jurisdiction of Courts at Gurgaon. In ground (A), it was urged as follows :-

“all the allegations levelled therein pertain to the alleged perpetration of domestic violence upon the respondent wife by the petitioners at Gurgaon wherein the respondent wife by the petitioners at “Gurgaon wherein the respondent wife has been living for the last 15 years from the date of her marriage from 23.1.1997 to 9.5.2012 i.e. the date on which she left to Mumbai from Gurgaon and abducted the children without the consent of their natural guardian i.e. the petitioner No.1 father. Admittedly the domestic violence case was filed in Mumbai on 12.5.2012 and in the entire complaint, there is not even a single incident of violence or any kind of demand having been made upon the respondent wife by the petitioners at Mumbai. All the allegations as alleged in the complaint have occurred within the territorial jurisdiction of the Courts at Gurgaon and as such courts at Mumbai have no jurisdiction to deal with the said matter and the same ought to be transferred to a competent court at Gurgaon.”

9. In Ground (B), the same contentions are reiterated i.e.

“A perusal of the complaint at its face value would show that the offences alleged cannot be said to have been committed wholly or partly within the local jurisdiction of the Magistrate's court at Mumbai.”

10. Perused the application filed before the Metropolitan Magistrate, 40th Court, Girgaon, challenging the jurisdiction. In Ground No.(G), it is contended “That on 1/2/2013, the Transfer petition filed by the respondent No.1 husband was dismissed by the Hon'ble Supreme Court since the mediation between the parties had failed.” Apparently, this was an incorrect statement made to the Court since the Hon'ble Apex Court had only considered the ground of transfer and had specifically observed that upon hearing the counsel, no case for transfer is made out.

11. The applicant challenged the jurisdiction in ground (ii). It is urged as follows :-

“Admittedly, the complainant, along with the minor children as well as the respondent No.1 were permanent residents of Gurgaon and the same can be clearly evidenced by the passports and various other documents which would eventually prove beyond a reasonable doubt that the complainant was residing at the said house after

their marriage i.e. 23.1.1997. Both the children were brought up in the said house at Gurgaon and have been studying in their respective schools in Delhi and Gurgaon.”

It is further contended that “As such since the parties were permanently residing within the territorial jurisdiction of Gurgaon courts till 9th May, 2012, the invocation of the jurisdiction of Mumbai Courts on 12/5/2012 by the petitioner/wife is called for and the complainant has failed to specify as to how the Mumbai courts have jurisdiction to deal with and entertain the present petition under the provisions of the D.V. Act. As such, no cause of action pertaining to the marriage and custody of having accrued within territorial limits of this Court, this Hon'ble Court should try and conclude the present application. It is specifically averred in ground No.3 :-

“That the entire gamut of facts, as pleaded and averred by the complainant in her complaint alleging perpetration of domestic violence, have admittedly, been alleged to have occurred in Gurgaon and in the entire complaint and the affidavit accompanying the complaint there is not a single incident which has occurred within the territorial jurisdiction of Mumbai Courts so as to confer jurisdiction of Mumbai Courts so as to confer jurisdiction upon the Mumbai courts to try and entertain the present petition.”

12. In ground No.3, it is also alleged that “the alleged acts of

perpetration for physical and mental violence and specific incident of 2011-2012 also pertain to an incident occurred in Gurgaon and pursuant thereto, the so-called procured medical report also pertain to a Hospital of Gurgaon and in order to prove the said allegations, the complainant shall have to summon the witnesses who are available within the territorial jurisdiction of Gurgaon Courts.” In the the petition before the Supreme Court it is contended that the respondent wife has been staying in her matrimonial home at Gurgaon for the last 15 years and the allegations pertaining to the alleged torture on 20.1.2012 has also occurred at Gurgaon and the complainant wife also got herself medically examined from a government hospital at Gurgaon on 20.1.2012 and the entire cause of action if any for filing the complaint of domestic violence has accrued within the jurisdiction of the courts at Gurgaon.

13. It is also pertinent to note that grounds (D) and (E) in the petition before the Hon'ble Apex Court are *pari materia* the same as urged in the Ground (iv) in the application before the Metropolitan Magistrate.

14. The learned counsel for the petitioner rightly submits that the Hon'ble Apex Court had determined the issue of jurisdiction and there is

no occasion for the respondent to raise the same issues before the Metropolitan Magistrate. That the learned Sessions Court has not taken into consideration that the contention raised by the petitioner were negatived by the Hon'ble Apex Court and hence ought not to have remanded the matter for reconsideration.

15. The learned counsel for the respondent submits that the petitioner was neither residing permanently nor temporarily at Mumbai and therefore the Courts at Mumbai had no jurisdiction to proceed with the proceedings under the provisions of the Domestic Violence Act. This Court is of the opinion that since the issue was decided before the Hon'ble Apex Court there is no question of reconsidering the same issue by this Court.

16. As against this, the learned counsel for the petitioner has drawn attention of this Court to Section 27(1)(a) of the Protection of Women from Domestic Violence Act, 2005 which reads thus :-

“27. Jurisdiction (1) The Court of judicial Magistrate of the first class or the Metropolitan Magistrate, as the case may be, within 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 carried on business or is employed; or

*© 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.”*

The statute is a welfare legislation. The petitioner had to leave the house under special circumstances. She cannot be expected to go to Gurgaon and file a petition as her children are studying at Bombay. Since the statute contemplates protection orders, it is clear that when the complainant is deprived of shelter in her matrimonial house and when she has to take shelter elsewhere, she cannot go to the same place, to invoke the jurisdiction of the concerned Court. It is neither that she has to file the petition where she resides. It is a matter of record that at present the children are staying in Mumbai and are residing with the petitioner and hence the Court at Mumbai would have jurisdiction to proceed with the proceedings under the provisions of the Domestic Violence Act.

17. This Court cannot be oblivious of the fact that although the complaint under the provisions of Domestic Violence Act is filed by the petitioner on 12.5.2012, the application seeking interim

relief has not been heard for more than 1-1/2 years.

18. The learned Magistrate had rightly considered that Section 27 of the Act nowhere provides days of residence required for permanent or temporary residence. In a natural course, woman would go back to her parents house after she has gone through the trauma of domestic violence. Section 27(1) of the Act specifically confers jurisdiction upon the Magistrate under whose jurisdiction the place of temporary residence of the aggrieved woman exists. It is because of the legislative intent to provide relief to the woman without causing undue technical and procedural hardship. In view of this, there was no question of remanding the matter for reconsideration.

Section 28 sub-clause (2) of Domestic Violence Act contemplates as under :-

“28. Procedure (1) – Save as otherwise provided in this Act, all proceedings under sections 12, 18, 19, 20, 21, 22 and 23 and offences under section 31 shall be governed by the provisions of the Code of Criminal Procedure, 1973 (2 of 1974)

(2) Nothing in sub-section (1) shall prevent the Court from laying down its own procedure for disposal of an application under section 12 or under sub-section (2) of section 23.”

Due to the pendency of the application challenging the jurisdiction, the interim reliefs have not been granted. The provisions in Section 28 sub-clause (1) of the Domestic Violence Act can be read in consonance with the Section 9 of the Civil Procedure Code. Section 9A sub-clause (2) contemplates as follows :-

“9A(2) Notwithstanding anything contained in sub-section (1), at the hearing of any such application, the Court may grant such interim relief as it may consider necessary, pending determination by it of the preliminary issue as to the jurisdiction.”

The learned counsel for the respondent has placed reliance upon the Judgment of this Court (Coram A.P.Bhangale , J.) in the case of **Advocate Ramesh & Anr. vs. State of Maharashtra & Ors. III (2011) DMC 850**, wherein this Court had remanded the matter to the Court of Judicial Magistrate, First Class to consider the application afresh by giving full opportunity to the parties concerned to put forward their respective contentions along with oral and documentary

evidence in support of their rival contentions and to decide the application challenging the jurisdiction of the Court to entertain and try the proceedings. The said citation would have no bearing in the present case since in the present case, the respondent herein had approached the Hon'ble Apex Court seeking transfer of the matter from Mumbai to Gurgaon on the ground that the Court at Mumbai has no jurisdiction to try the petition filed by the petitioner. The said petition has been dismissed by the Hon'ble Apex Court and the same issues cannot be reconsidered by a Judicial Magistrate, First Class.

19. In view of the above observations, the impugned order passed by the Addl. Sessions Judge dated 10.12.2013 remanding the matter for considering the application challenging the jurisdiction afresh deserves to be quashed and set aside as it amounts to abuse of process of law.

ORDER

(i) The Petition is allowed.

(ii) The order dated 10.12.2013 passed in Appeal No.453 of 2010 by Ad-hoc Addl. Sessions Judge, Greater Bombay, is hereby quashed and set aside.

(iii) The Metropolitan Magistrate, 40th Court, Girgaon, Mumbai, shall proceed with the matter and decide the application seeking interim relief within three weeks from the date of receipt of this order.

(iv) Needless to say that the interim relief granted vide order dated 21.3.2014 stands vacated.

(v) The learned Magistrate need not consider the issue of jurisdiction afresh as the order dated 23.7.2013 passed in C.C. No.250/SS/2012 is confirmed.

Rule is made absolute in the above terms. Application stands disposed of.

(SMT. SADHANA S.JADHAV,J.)