

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 110 OF 2016

Rajiv Agarwal	..	Petitioner
vs.		
Mrs. Mala Agarwal & Anr.	..	Respondents

Mr. Abhijeet Rane for Petitioner.
Mr. Sushil Shukla for Respondent No. 1.

CORAM : M. S. SONAK, J.
DATE: 29 JANUARY 2016

P.C :

1] The challenge in this petition is to the orders dated 27 August 2015 and 15 October 2015 made by the JMFC and the Sessions Judge dismissing the petitioner's application questioning the maintainability of proceedings instituted by the respondent under the provisions of Protection of Women from Domestic Violence Act, 2005 (said Act).

2] Mr. Rane, the learned counsel for the petitioner has submitted that the petitioner has produced material on record which establishes that the respondent was already married to some other person, on the date when the marriage between the petitioner and the respondent was solemnized. He submits that the factum of the previous and existing marriage was suppressed by the respondent. Relying upon the provisions contained in the Hindu Marriage Act, 1956, Mr. Rane submitted that the marriage between the petitioner

and the respondent, was a nullity in the eyes of law. He pointed out that the petitioner has already instituted a petition for annulment before the Competent Court of law at Allahabad and the same is pending. In view of all these circumstances, Mr. Rane submitted that a petition instituted by the respondent under the said Act, claiming that she is the wife of the petitioner and seeking maintenance not only for herself but also for her son from said first marriage, is not at all maintainable and the same was required to be rejected as not maintainable. He submitted that the impugned orders are in excess of jurisdiction and the JMFC, in entertaining the respondent's complaint is purporting to usurp jurisdiction, when he in fact, lacks the same.

3] Having heard the learned counsel for the parties and perused the record, in my judgment, there is no case made out to interfere with the impugned orders. There is a difference between an objection on the ground of maintainability of the proceedings and an objection on the merits of the matter. In order to sustain an objection on the grounds of maintainability, the objector, has to make out a case that the Authority lacks jurisdiction to entertain a matter of this nature or that there is some statutory bar to the respondent instituting proceedings of this nature. In this case, the petitioner has not been able to make out any case on the aspect of maintainability of the proceedings.

4] Under the said Act, an '*aggrieved person*' as defined under Section 2(a) can maintain a petition. The expression '*aggrieved person*' means any women 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 expression '*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 a marriage, adoption or are family members living together as a joint family. The expression '*domestic violence*' has been statutorily defined under Section 3 of the said Act.

5] If the complaint made by the respondent in the present case is perused, then, it cannot be said that the respondent is not '*aggrieved person*' within meaning assigned to this expression under Section 2(a) of the said Act or for that matter that the respondent and the petitioner were never in '*domestic relationship*' as defined under Section 2(f) of the said Act. The question as to whether the marriage between the petitioner and the respondent is legal or not, the question as to whether the marriage was solemnized between the parties on basis of some misstatement or misrepresentation by the respondent are all matters that go to the merits of the cause, but not matters which strike at the very

maintainability of proceedings. Ultimately, the parties will lead evidence or place appropriate material before the Authorities and it is for the Court to decide the complaint made by the respondent on its own merits and in accordance with law. However, considering the nature of the complaint, it cannot be said that the same was not at all maintainable and, therefore, the same had to be rejected at the threshold.

6] Accordingly, this is not a case where the impugned orders can be said to have been made in excess of jurisdiction. There is no case made out to exercise supervisory jurisdiction under Article 227 of the Constitution of India. This petition is dismissed. There shall be no order as to costs.

7] It is made clear that this Court has not expressed any opinion on the merits of the disputes *inter se* between the parties. The observations, if any, are only in the context of determining maintainability. Therefore, all contentions of all parties are left open.

8] All concerned to act on basis of authenticated copy of this order.

(M. S. SONAK, J.)