

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL WRIT PETITION NO. 2173 OF 2012

Gafoor Hasan Chougule

.....Petitioner

V/s.

Jannatbai Bee Gafoor Chougule and another

....Respondents

Mr. Samir Suryawanshi Advocate for Petitioner.

Mr. R. G. Shinde Advocate for Respondent no. 1.

Ms. A. T. Jhaveri APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : JUNE 21, 2016.

PC :

Heard.

- 2) Rule. Rule made returnable forthwith with the consent of the parties.
- 3) Petitioner herein happens to be Respondent in Mis. Application No. 48 of 2010 wherein complainant i.e. present Respondent has initiated proceedings against him under the provisions of Protection of Women from Domestic Violence Act, 2005 (Hereinafter referred as "The said act").
- 4) It is a matter of record that Petitioner was married to the Respondent on 20/12/1972. Parties were married under Mohammedan Law. It is contended in the complaint that the complainant was subjected to cruelty and ill-treatment

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right from the day of marriage. That they lived as husband and wife for a period of 10 years. It is contended that even after 10 years of marriage, Petitioner continued to have illicit relations with another woman. That respondent/complainant was set ablaze and she had sustained about 85% burn injuries. That the Petitioner had not permitted the Respondent and her daughter to enter into the house. Respondent was constrained to file an application under section 125 of Code of Criminal Procedure, 1973. She was granted maintenance of Rs. 105/- per month. Petitioner did not pay maintenance. Respondent/complainant was constrained to work as house maid and had undertaken other jobs. Respondent/complainant was constrained to leave the house in the year 1982. Subsequently on 15/03/2010, she filed complaint under section 12, 18 etc of the said Act. Petitioner has filed his say before learned Court. Learned Magistrate had taken into consideration that the said Act was enacted in the year 2005 and no retrospective effect could be given to the said Act. It is also observed that complainant could not prove the allegations of domestic violence which was committed 20 years prior to filing of the complaint and hence, had dismissed the complaint.

5) Being aggrieved by the said order, Respondent/complainant had approached court of Sessions at Pune while following Criminal Appeal No. 456 of 2010. Learned Sessions Court had considered the complaint and the affidavit. Learned Revisional Court had rightly considered that the said Act is a social legislation for the benefits of derelict or weaker section of the society women. The approach of the Court must not be hyper-technical. Such proceeding cannot be clubbed with civil or criminal proceeding. Learned Sessions Court vide Judgment and Order dated 22/02/2012 had partly allowed the appeal. Learned Sessions Court had directed the Petitioner to pay Rs. 1500/- p.m. towards maintenance to the complainant from the date of the application i.e. from 07/03/2010. Learned Revisional Court had rejected her claim under section 18 & 19 of the said Act.

6) Being aggrieved by the said Judgment and Order of the Appellate Court, Petitioner has filed present criminal writ petition on 18/05/2012. It is admitted position that Petitioner has not deposited a single farthing towards maintenance of the Respondent. Petition was dismissed for want of prosecution by an order dated 15/07/2013 and was restored on 02/09/2013 by this Court. Thereafter, matter was adjourned from time to time at the request

of learned counsel for the Petitioner. By an order dated 18/01/2014, this Court had considered the matter on merits and in the peculiar facts and circumstances of the present case, the impugned order dated 22/02/2012 was stayed till the next date. Interim relief was extended from time to time. On 20/11/2014 Petition was again dismissed for want of prosecution and was restored to its original status on 12/02/2016.

7) The main contention of learned counsel for the Petitioner is that the Act was enacted in the year 2005. No retrospective effect can be given. It is also contended that complainant/respondent has not been able to establish that she was subjected to cruelty and ill-treatment or domestic violence when she resided with the Petitioner 10 years prior to filing of the writ petition.

8) In the case of **Saraswathy V/s Babu [2014 (3) Supreme Court Cases 712]** the Hon'ble Apex Court has held as follows:

“23. The other issue that whether the conduct of the parties even prior to the commencement of the DVA, 2005 could be taken into consideration while passing an order under Section 18, 19 and 20 fell for consideration before this Court in *V. D. Bhanot V. Savita Bhanot*. In the said case, this Court held as follows: (SCC pp. 186-87, para 12)

“12. We agree with the view expressed by the High Court that in looking into a complaint under Section 12 of the DVA, 2005, the conduct of the parties even prior to the coming into force of the DVA, could be taken into consideration while passing an order

under Sections 18, 19 and 20 thereof. In our view, the Delhi High Court has also rightly held that even if a wife, who had shared a household in the past, but was no longer doing so when the Act came into force, would still be entitled to the protection of the DVA, 2005”.

24. We are of the view that the act of the respondent husband squarely comes within the ambit of Section 3 of the DVA, 2005, which defines “domestic violence” in wide terms. The High Court made an apparent error in holding that the conduct of the parties prior to the coming into force of the DVA, 2005 cannot be taken into consideration while passing an order.”

9) Section 2 (f) of the Protection of Women from Domestic Violence Act, 2005 reads as follows:

“2 (f) “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 marriage, adoption or are family members living together as a joint family”.

10) Section 2 (a) of Protection of Women from Domestic Violence Act, 2005 defines “Aggrieved person” as follows:

“ 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”.

11) In view of this, it can be said that application under the provisions of the said Act was maintainable. Revisional Court has rightly allowed the appeal.

12) Learned counsel for the Respondent submits that Respondent has filed execution proceedings. Non-bailable warrant was also issued against the petitioner, however, in view of the fact that proceedings are stayed by this Court vide order dated 18/01/2014 execution petition could not proceed. This Court holds that application under the provisions of Protection of Women from Domestic Violence Act, 2005 were maintainable. There was no occasion for complainant to establish or substantiate her contentions. It is a benevolent legislation for the protection of women who have been ignored, neglected and deserted by her husband or any person in consanguinity. Hence, petition deserves to be dismissed. Hence, following order.

(i) Writ petition is dismissed.

(ii) Rule is discharged.

13) Needless to say that interim order passed in favour of the petitioner vide order dated 18/01/2014 stands vacated.

14) Office to communicate this order to the concerned court, forthwith.

(SMT. SADHANA S. JADHAV, J.)