

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 3069 OF 2015

Mr. Prashant Pandit Salve & Ors.	...	Petitioners
vs.		
Mrs. Suvarna Prashant Salve & Ors.	...	Respondents

Mr. Ganesh Bhujbal, Advocate for the petitioners.
Mr. R.S.Gamare, Advocate for respondent No.1.
Ms. A.T.Jhaveri, APP, for the State.

CORAM: RAVINDRA V.GHUGE, J.
DATE : 11th July, 2016.

P.C.

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The Petitioners submit that by virtue of the prayers put forth below paragraph 9 of the Petition, they are challenging the proceedings in C.C. No.625/M/2014 pending before the Metropolitan Magistrate, 25th Court, Mazgaon, Mumbai, and pray for quashing of the proceedings. In the cause title of the Petition, it is indicated that

the order dated 8.6.2015 passed below Exhibit 5 in the said proceedings has been subjected to a challenge.

3. The Petitioners have put forth two grounds in this Petition. Firstly, that under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (for short, “the D.V. Act”), a complaint may be considered by the Magistrate and an order can be passed on such application only after the Magistrate takes into consideration any report regarding a domestic incident received by him from the Protection Officer or the Service Provider. Section 2(n) of the D.V. Act defines a “Protection Officer” to mean an officer appointed by the State Government under sub-section (1) of Section 8. Section 2(r) defines a “service provider” meaning an entity registered under sub-section (1) of Section 10 of the D.V. Act.

4. The second ground put forth by the Petitioners is that Section 2(q) prohibits the filing of a complaint by an aggrieved person against female members of the family of the husband. In this context, he relies upon the Judgment delivered by this Court (S.B.Shukre, J.) in

the matter of **Arun Ramkrishna Pawade and others vs. Nilima Prakash Pawade and others 2015 (4) B.C.R. (Cri.) 287.**

5. The learned Counsel for the petitioners submits that since the respondent-wife had left the matrimonial home in 2004 itself, all the subsequent alleged events narrated in the complaint before the trial Court are a figment of imagination and the complaint based on such allegations cannot be entertained. He further submits that when the respondent-wife had left the matrimonial home, there is no question of domestic violence and as such, the complaint filed by the wife will have to be dismissed since several events that have been narrated are post leaving the matrimonial home.

6. The learned counsel also submits that Petitioner No.1's mother, one brother and one sister have been arraigned as accused-respondents in the application under Section 12 of the D.V. Act. The mother being a female member of the petitioner's family, could not have been impleaded as a respondent and so also his sister. It is, therefore, contended that taking into account the above aspects, this Petition

deserves to be allowed and the pending complaint deserves to be dismissed by exercising the jurisdiction of this Court under Section 482 of Cr.P.C.

7. The learned Advocate appearing on behalf of respondent Nos. 1 and 2, who are the wife and son of petitioner No.1, draws my attention to the wedding card and the photographs placed on record which indicates that the petitioner has surreptitiously got married to a person by name Poornima. This has been done despite the fact that the marriage with the 1st wife is still subsisting and the petitioner has not obtained any divorce decree.

8. He further submits that the complaint filed under Section 12 of the D.V. Act would indicate that the original respondents have participated in various acts of domestic violence against the original complainant-wife. Specific acts have been narrated and unless these attributes are gone into by the Court below, the wife would not succeed in ensuring that the guilt is proved. He, therefore, submitted that this Petition deserves to be dismissed.

9. It is further submitted by the learned Advocate that the order dated 8.6.2015 passed below Exhibit 5 by the learned Magistrate, which is mentioned in the cause title of the Petition, is an appealable order and Section 29 of the D.V. Act provides for such an appeal which would normally lie before the Court of Sessions. It is, therefore, submitted that even on this ground, the Petition deserves to be dismissed.

10. In rebuttal, learned Advocate for the petitioners specifically states on instructions that the petitioners do not desire to test the order dated 8.6.2015 under Section 29. The petitioners do not desire to withdraw this Petition so as to avail of the said remedy.

11. I have considered the submissions of the learned Advocate as above.

12. The learned Advocate for the petitioners has placed reliance upon the Judgment of this Court in the matter of **Arun**

Ramkrishna Pawade (cited supra) and especially paragraph 7, which reads as under :-

“7. Upon going through the definition of “respondent” given in Section 2(q) of the D.V. Act, I find that learned Counsel for the applicants is right in his submission that no female members of a family could be joined as respondent in a complaint filed under Section 12 of the D.V. Act. Of course, there is a proviso to Section 2(q) which indicates that even the male member of the family of the husband can be joined as respondent in a case where the nature of relationship claimed is akin to marriage or through marriage. This is what has been held by the Hon'ble Apex Court in the case of Sandhya Manoj Wankhade (supra). However, this proviso, as clarified by the Hon'ble Apex Court, would not be applicable to the present case for the simple reason that the basis of domestic relationship claimed by non-applicant Nos. 1 to 4 is not a marriage but the relationship arising from the applicants and non-applicants being the members of a joint family. Therefore, in my humble opinion, non-applicant Nos. 1 to 4 cannot seek assistance from the said case of Sandhya Manoj Wankhade. On the other hand this case, as rightly submitted by the learned Counsel for the applicants, would be covered by the provision of the main Section 2(q), which defines the respondent as any adult male person who is in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under the D.V. Act. I am also fortified in this regard by the view taken by learned Single Judge of the Madhya Pradesh High Court in the case of Tehmina Qureshi v. Shazia Qureshi reported in 2010 ALL MR (Cri) Journal 97. Therefore, so far as applicants No. 2 to 5 are concerned, Section 12 of the D.V. Act proceedings are not maintainable and hence deserve to be quashed and set aside.”

13. In the light of the submissions of the learned Advocates and upon considering paragraph 7 of the **Arun Judgment** (supra), it appears that this Court has not dealt with the proviso to Section 2(q) as being restrictive only to the extent of making a grievance as against the male members of the family. Though this Court has considered Section 2(q) while passing its order, I find that the effect of the proviso to Section 2(q) was really not canvassed before the Court. I am, therefore, dealing with the proviso in this Judgment, considering the submissions of the Petitioners, which have been opposed by Respondent No.1.

14. Section 2(q) reads as under :-

“2(q) “respondent” means any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act:

Provided that an aggrieved wife or female living in a relationship in the nature of a marriage may also file a complaint against a relative of the husband or the male partner;”

15. It is, therefore, apparent that though Section 2(q) indicates that the “respondent” would mean any adult male person in connection with domestic relationship with the aggrieved person, the proviso indicates that the aggrieved wife or female, living in a relationship in the nature of a marriage, may also arraign in a complaint, a relative of the husband or the male partner. Since, the 2005 Act is aimed at protecting women against domestic violence, the submissions of the petitioners, if are accepted, would create an insulation to the female members of the husband's family who may go unpunished for acts amounting to domestic violence.

16. The Hon'ble Supreme Court in the matter of **Sandhya Manoj Wankhade vs. Manoj Bhimrao Wankhade & Anr. (2011) 3 SCC 650** has dealt with the issue as to whether Section 2(q) and the proviso thereunder, read with Sections 12, 18, 19, 20 and 22 of the 2005 Act, would restrict the meaning of the term “respondent” only to the extent of the husband or male partner or only male members of the family or male relatives..

17. Paragraph Nos. 13 to 18 of the **Sandhya Judgment**

(supra) read as under :-

“13. Having carefully considered the submissions made on behalf of the respective parties, we are unable to sustain the decisions, both of the learned Sessions Judge as also the High Court, in relation to the interpretation of the expression "respondent" in Section 2(q) of the Domestic Violence Act, 2005. For the sake of reference, Section 2(q) of the above-said Act is extracted hereinbelow :-

"2(q). "respondent" means any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act:

Provided that an aggrieved wife or female living in a relationship in the nature of a marriage may also file a complaint against a relative of the husband or the male partner."

14. From the above definition it would be apparent that although Section 2(q) defines a respondent to mean any adult male person, who is or has been in a domestic relationship with the aggrieved person, the proviso widens the scope of the said definition by including a relative of the husband or male partner within the scope of a complaint, which may be filed by an aggrieved wife or a female living in a relationship in the nature of a marriage.

15. It is true that the expression "female" has not been used in the proviso to Section 2(q) also, but, on the other hand, if the Legislature intended to exclude females from the ambit of the complaint, which can be filed by an aggrieved wife, females would have been specifically excluded, instead of it being provided in the proviso that a

complaint could also be filed against a relative of the husband or the male partner.

16. No restrictive meaning has been given to the expression "relative", nor has the said expression been specifically defined in the Domestic Violence Act, 2005, to make it specific to males only. In such circumstances, it is clear that the legislature never intended to exclude female relatives of the husband or male partner from the ambit of a complaint that can be made under the provisions of the Domestic Violence Act, 2005.

17. In our view, both the Sessions Judge and the High Court went wrong in holding otherwise, possibly being influenced by the definition of the expression "respondent" in the main body of Section 2(q) of the aforesaid Act.

18. The Appeal, therefore, succeeds. The judgments and orders, both of the learned Sessions Judge, Amravati, dated 15-7-2009 and the Nagpur Bench of the Bombay High Court dated 5-3-2010, in Crl. Writ Petition No.588 of 2009 are set aside. Consequently, the trial court shall also proceed against the said Respondents 2 and 3 on the complaint filed by the appellant.”

(emphasis supplied by me).

18. In my view, the proviso to Section 2(q), especially as per the law laid down by the Hon'ble Supreme Court in **Sandhya Judgment** (supra), cannot therefore be restricted only to arraigning the male members of the husband's family or his male relatives. When specific allegations are made against the

lady members of the husband's family like the mother-in-law, or the sister of the husband or the sister of the husband's brother etc., the complainant cannot be rendered remediless by precluding her from arraigning such female members who could be tried for offences of assault or any type of the offence as is defined in the 2005 Act.

19. The 2005 Act has been introduced to protect women against domestic violence which is undoubtedly a human rights issue and is a serious deterrence to development. The Objects & Reasons and the purpose for which the Bill has been introduced, are specifically aimed at protecting women from violence of any kind and especially occurring within the family. The phenomenon of domestic violence appears to be widely prevalent, but as such remains invisible in the public domain. It cannot be ignored that in several cases, women, who have been subjected to cruelty by the husband and/or his relatives, have chosen to digest such acts for the fear of ruining their marriage and suffering exposure to the public. The object of the Act was,

therefore, keeping in view the rights guaranteed under Articles 14, 15 and 21 of the Constitution and to provide for a remedy under the civil law which is intended to protect women from being victims of domestic violence.

20. The Bill introduced by the Parliament reads as under :-

“4. The Bill, inter alia, seeks to provide for the following:-

(i) It covers those women who are or have been in a relationship with the abuser where both parties have lived together in a shared household and are related by consanguinity, marriage or through a relationship in the nature of marriage or adoption. In addition, relationships with family members living together as a joint family are also included. Even those women who are sisters, widows, mothers, single women, or living with the abuser are entitled to legal protection under the proposed legislation. However, whereas the Bill enables the wife or the female living in a relationship in the nature of marriage to file a complaint under the proposed enactment against any relative of the husband or the male partner, it does not enable any female relative of the husband or the male partner to file a complaint against the wife or the female partner.

(ii) It defines the expression "domestic violence" to include actual abuse or threat or abuse that is physical, sexual, verbal, emotional or economic. Harassment by way of unlawful dowry demands to the woman or her relatives would also be covered under this definition.

(iii) It provides for the rights of women to secure housing. It also provides for the right of a woman to reside in her matrimonial home or shared household, whether or not she has any title or rights in such home or household. This right is secured by a residence order, which is passed by the Magistrate.

(iv) It empowers the Magistrate to pass protection orders in favour of the aggrieved person to prevent the respondent from aiding or committing an act of domestic violence or any other specified act, entering a workplace or any other place frequented by the aggrieved person, attempting to communicate with her, isolating any assets used by both the parties and causing violence to the aggrieved person, her relatives or others who provide her assistance from the domestic violence.

(v) It provides for appointment of Protection Officers and registration of non-governmental organisations as service providers for providing assistance to the aggrieved person with respect to her medical examination, obtaining legal aid, safe shelter, etc.

5. The Bill seeks to achieve the above objects. The notes on clauses explain the various provisions contained in the Bill”.

21. The Vienna Accord of 1994 and the Beijing Declaration and the Platform for Action (1995) have acknowledged and the United Nations Committee on Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) in its General Recommendation No.

XII (1989) has recommended that State parties should act to protect women against violence of any kind especially those occurring within the family.

22. As such, the definition of “respondent” under Section 2(q) read with the proviso, ought to lead to a harmonious interpretation. A proviso is always in aid to the section. As held in **Shah Bhojraj Kuverji Oil Mills & Ginning Factory vs. Subhash Chandra Yograj Sinha AIR 1961 SC 5926** that a proviso is generally added to an enactment to qualify or carve out an exception to what is in the enactment. A proviso to the section implies that an exception is carved out. In **Dwarka Prasad vs. Dwarka Das Saraf (1976) 1 SCC 128**, the Hon'ble Supreme Court (Four Judges Bench) has held that rulings and text-books have a bearing on statutory construction and have assigned many functions for the provisos having regard to the text and the context of the statute. The Legislature by the Amending Act clarified what was implicit earlier and expressly carved out.

23. Considering the above and especially the effect of the proviso, the definition of “respondent” under Section 2(q) will have

to be understood as being “illustrative” in nature and not “exhaustive”.

24. The learned Advocate for the petitioners has further submitted that the Magistrate cannot pass an order on any application under Section 12 unless the report of the domestic incident has been received from the Protection Officer or the service provider.

25. The proceedings have been initiated in 2014. The petitioners have taken this ground before the learned Magistrate and which can be considered finally after the recording of oral and documentary evidence.

26. Insofar as the impugned order dated 8.6.2015 is concerned, the petitioner/original respondent had preferred an application for seeking dismissal of the application under Section 12 of the D.V. Act. The grounds raised in the said application were considered by the learned Magistrate. By the impugned order, the said application was dismissed. The petitioners pray that the complaint be

dismissed and/or the proceedings be quashed.

27. The original applicant-wife has put forth a specific complaint against the respondents, who comprise of the petitioner-husband, his mother, his brother and his sister. The purported second wife of petitioner No.1 has also been arraigned as respondent No.5. She is however not the petitioner before this Court.

28. I have gone through the complaint preferred by the wife which runs into about 20 pages. Several instances with regard to the unusual conduct of the petitioner and his purported unnatural acts and behaviour in his relationship as husband and wife have also been narrated in the complaint, which I do not find it appropriate to discuss in this order. The conduct of the brother of the petitioner-husband and his purported sexual advances towards the complainant have also been narrated. The conduct of the mother and sister has also been specifically stated.

29. The petitioners have contended that the incidents narrated

in paragraph No.33 onwards in the complaint, are said to have occurred after the wife left the marital home and started residing in her parents' home, which appear to be unsustainable. The record reveals that there was a settlement between the husband and the wife and she returned to live in the marital home. The events that are said to have occurred thereafter and which pertain to the co-habitation in between the husband and the wife as have been narrated, would indicate that the wife appears to have suffered physical abuse which need not be discussed in this order.

30. The incident said to have occurred on 27.9.2013 with regard to which a non-cognizable complaint has been lodged by the wife, would also indicate that the petitioner-husband had approached the wife and thereafter had threatened her.

31. In the light of the above, the prayers put forth by the petitioners do not deserve any consideration and are rejected.

32. As such, I do not find that the impugned order can be

termed as perverse or erroneous. This Petition, being devoid of merits, is therefore dismissed. Rule is discharged.

(RAVINDRA V.GHUGE, J.)