

THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT

21.12.2016

CRL.P.NO.9104 OF 2010

YADLAPALLI MARY MANI

PETITIONER

AND

THE STATE OF ANDHRA PRADESH AND ANOTHER.

RESPONDENTS

Counsel for the petitioner: S.Subba Reddy

Counsel for the respondent No.1: Additional Public Prosecutor
Counsel for R-2 : Mr. davuluri Narasimha Rao

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➤ Head Note.

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?Cases Referred:

1. (2016) 10 SCC 165
2. 2015(4) Crimes 498 (A.P.)

THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT

CRL.P.NO.9104 OF 2012

O R D E R

This petition is filed under Section 482 of Cr.P.C. seeking to quash the proceedings against the petitioner pending in D.V.C.No.14 of 2011 on the file of Additional Judicial First Class Magistrate, Tadepalligudem, West Godavari District, under Sections 12, 17, 18, 20 and 23 of Domestic Violence Act, 2005 (for short 'the Act').

2. The 2nd respondent herein is the mother-in-law of the petitioner. The 2nd respondent filed D.V.C.No.14 of 2011, on the file of Additional Judicial First Class Magistrate, Tadepalligudem under Sections 12, 17, 18, 20 and 23 of the Act seeking protection against her son and the petitioner herein, who is her daughter-in-law, for evicting her from the schedule house and to pay an amount of Rs.5,000/- per month towards maintenance under different heads.

3. The case of the 2nd respondent in the complaint is that they have two sons and two daughters and got them educated and performed their marriages. The petitioner herein is her daughter-in-law. Under a will dated 22.1.1976 the husband of the 2nd respondent acquired the house site and in the year 2000, she constructed the RCC house with D.No.3037 situate at Dandagarra village. She got educated her son, who is the 1st respondent in the DVC, and he

secured employment in Indian Armed forces at the age of 22 years and presently working in 7 RR DC, Artillery Canter, Nasik road, Nasik. In the month of January, 2010, the 2nd respondent and her husband stayed with her son for few months at Nasik. On the representation of her son that he has to submit security to his employer, the 2nd respondent and her husband, executed a relinquishment deed on 29.4.2010 for the schedule house, in favour of her son. They performed the marriage of their son on 2.9.2010 with the petitioner herein.

4. The allegations of the 2nd respondent is that after execution of relinquishment deed, her son, left her and her husband at Dandagarra village and went to Nasik, where he is working. He neglected to look after the complainant and further demanding the 2nd respondent to vacate the house, as he intended to sell the same. He left his wife, the petitioner herein, at Avupadu village where his in-law's are residing, and instructed her to make the complainant and her sick husband to vacate the house. So the petitioner used to come to the house of the complainant and demand her to vacate the said house and also harassing the complainant to see her end in the event of staying in the said house. On the ground that as they have no source of income and suffering with different ailments due to old age, and as their son is neglecting them by not providing them any

maintenance and the petitioner is regularly visiting their house and threatening them to vacate the scheduled house, accordingly the 2nd respondent filed the complaint under the provisions of the Act, noted above, seeking protection from their son and daughter-in-law, the petitioner herein, and for maintenance. Seeking to quash the said proceedings pending on the file of the trial court, the present petition has been filed.

5. This court while ordering notice before admission on 17.12.2012, initially granted interim stay for a period of four weeks and subsequently on 13.11.2013, extended the same until further orders.

6. The 1st respondent – State and the 2nd respondent – complainant, have not filed any counter affidavits.

7. The learned counsel for the petitioner mainly raised two contentions *viz.*, (1) that the 2nd respondent will not fall within the definition of “aggrieved person” as defined under Section 2(a) of the Act, since there is no domestic relationship between the 2nd respondent and the petitioner. He submits that under Section 2(f) of the Act, to have domestic relation, the two persons i.e., aggrieved person and the other person i.e., the respondent, on whom the allegations are leveled, who are related by blood, marriage or through

a relationship in the nature of marriage, adoption or are family members living together as a joint family; should live or have at any point of time lived together in a shared accommodation; (2) referring to Section 2(q) in the grounds of the petition, he stated that complaint against the petitioner is not maintainable in view of the language employed in the section, that the respondent shall be an adult male person. In the present case, the petitioner is a woman and hence petition under the Act against her, is not maintainable. With these averments, sought to quash the proceedings pending against the petitioner on the file of trial court.

8. On the other hand, the learned Additional Public Prosecutor for R-1 and Sri Davuluri Narasimhar Rao counsel for the 2nd respondent reiterated the averments made in the complaint and submitted that the husband of the petitioner, who is the son of the 2nd respondent, though employed, failed to maintain his parents and on the other hand instructed the petitioner herein to see that his parents, the 2nd respondent and her husband, are vacated from the schedule house. Accordingly the petitioner has been threatening the 2nd respondent to vacate the schedule house. Therefore, the complainant is entitled to protection against them under the provisions of the Act. The averments of the counsel for the petitioner that the petitioner has not been living with the 2nd respondent and had never lived with her as

required under Section 2(f) of the Act, are all matters of evidence.

Therefore, sought to dismiss the petition.

9. To deal with the above contentions, I would like to first consider the relevant definitions under Section 2 of the Act, which are thus:

2. Definitions:-- In this Act, unless the context otherwise requires.--

(a) “*aggrieved person*” means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subject to any act of domestic violence by the respondent;

(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 any family members living together as a joint family;

(g) “*domestic violence*” has the same meaning as assigned to it in section 3;

(q) “*respondent means*” means any adult male person who is, or has been, in a domestic relationship with 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

(s) “*shared household*” means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household.”

A combined reading of the above provisions makes it clear that an aggrieved person who is in or has been in a domestic relationship i.e., who live or lived at any point of time together, with the respondent, who as per 2(q) shall be an adult male person, in a shared household

as defined under sub clause (s) of Section 2, related by blood, marriage or through a relationship in the nature of marriage, adoption or are family members living together as a joint family, and who is subjected to domestic violence as defined under Section 3 of the Act, is entitled to invoke the provisions of this Act seeking protection from such crimes.

10. As per sub clause (q) of Section 2 of the Act, the respondent against whom the relief sought for, shall be an adult male person. Situations may arise, as in the present case, where the aggrieved person and the respondent may also be women. In such situations, the question that arises for consideration is, whether the aggrieved woman can invoke the provisions of the Act seeking protection against the respondent, who is also a woman? A reading of clause (q) of Section 2 gives the answer in the negative.

11. The Apex Court in the latest decision reported in *HIRAL P.HARSORA v. KUSUM NAROTTAMDAS HARSORA*¹ considering the similar situation, and analyzing the preamble and statement of objects and reasons and clauses (a), (f), (f) and (s) of Section 2 and also the expression of “adult male person” occurring in Section 2(q) and also other provisions under Sections 3, 17 to 20, 26 and 31 of the Act and the remedies under Act and the categories of persons against

¹ (2016) 10 SCC 165

whom available, held that expression “respondent” in section 2(q) or persons who can be treated as perpetrators of violence against women/against whom remedies under Act are actionable, cannot be restricted to expression “adult male person” in Section 2(q); that remedies under Act available even against a female member and also against non-adults. The Apex Court further held that restricting perpetrators of violence against women/acts actionable under the Act to only “adult male person”, fails the test of reasonable classification. Eventually the Apex Court at paragraph No.50 held that *“We, therefore, set aside the impugned judgment of the Bombay High court and declare that the words “adult male” in Section 2(q) of the 2005 Act will stand deleted since these words do not square with Article 14 of the Constitution of India. Consequently, the proviso to Section 2(q), being rendered otiose, also stands deleted.”*

12. In view of the above judgment of the Apex Court, the aggrieved person can seek protection under the Act even against a female member also, provided she satisfies the other provisions of the Act. Therefore, the ground taken by the learned counsel for the petitioner referring to Section 2(q) of the Act, cannot be sustained.

13. Coming to the other issue, the contention of the learned counsel is that as the petitioner is not in domestic relationship with the 2nd respondent/complainant, as she has not been living or at any point

of lived with the 2nd respondent in a shared accommodation, she cannot be implicated in the proceedings.

14. To consider the above issue, the uncontroverted facts as stated in the complaint, are required to be considered.

15. As per the case of the complainant/2nd respondent, the marriage between her son, who is the 1st respondent in the DVC and the present petitioner, has taken place on 2.9.2010. They have relinquished the subject house in favour of their son on 29.4.2010. The son of the 2nd respondent is working at Nasik in Indian Army. After the relinquishment deed, the son of the 2nd respondent left them at Dandagarra vilage and went to Nasik, where he is working. He left his wife i.e., the present petitioner at Avupadu village, where his in-laws are residing. The allegations are that the son of 2nd respondent instructed his wife, the petitioner herein, to see that the 2nd respondent and her husband vacate the schedule house.

16. However, a perusal of the averments made in the entire complaint, it is no where stated in unequivocal terms that the present petitioner is living with the 2nd respondent aggrieved person, or has ever lived at any point of time together in a shared household. In order to make the petitioner liable as the respondent in the DVC, she

shall be in domestic relation with the aggrieved person as defined under Section 2(f) of the Act.

17. Therefore, in view of the above discussion and settled law, in my considered view, when the petitioner is not in domestic relationship with the 2nd respondent – aggrieved person, there is no justification on the part of the 2nd respondent to implicate the petitioner, who is her daughter-in-law.

18. This court in similar circumstances in *A.K.SRINI VASA RAO v. THE STATE OF A.P. AND ORS.*², while considering the quash proceedings initiated against the respondent, who is alleged to have been in domestic relationship with the aggrieved person, held that they must have been living or must have lived together in a shared household along with the aggrieved person and that when any person who was so related who had been not living or had not lived together at any point of time with aggrieved person and who had no domestic relationship, could not be made respondent to case filed by women. Moreover, the domestic relationship must be in existence at relevant time when aggrieved person had been subjected to any act of domestic violence by petitioner. The court further found that when there was no averment in petition of women and no material was also placed on record to show that petitioners therein were having or had

² 2015(4) Crimes 498 (A.P.)

any domestic relationship with the 2nd respondent therein, the proceedings cannot be sustained and accordingly quashed the same in exercise of jurisdiction under Section 482 of Cr.P.C. The relevant portion is as under:

“4 (h) Therefore, in the will-considered view of this Court, for a person to be made a respondent in a DV case filed by an aggrieved woman, such respondent, must have a domestic relationship with the aggrieved person and must have been living or must have lived together in a shared household along with the aggrieved person 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. Therefore, when any person who is so related who has been not living or had not lived together at any point of time when the aggrieved person in a shared household and who has/had no domestic relationship cannot be made a respondent to a case filed by the woman under the provisions of the Act.

4(i) To put it in other words, in order to make a person as a respondent in a DV case filed under Section 12 of the Act, there must be a domestic relationship either in present or in the past between the aggrieved person and the respondent. In any case the domestic relationship must be in existence at the relevant time when aggrieved person has been subjected to any act of domestic violence by the respondent. It is noticeable from the provisions that a domestic relationship arises between the aggrieved person and another in case when either they are living together or have at any point of time lived together in a shared house hold and 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. The aggrieved person and the respondent need not be living together in a shared household at the time of the filing of the case/petition and it would be sufficient if they had living together at any point of time in the past, when the alleged acts/omissions/conduct complained of had taken place.”

19. In view of the above facts and circumstances, and the law laid down in the decisions cited supra, as the petitioner herein had not been living or lived with the 2nd respondent/ complaint, in my considered view, the case cannot be filed under the Act, as it does not fulfill the conditions required under Section 2(f) of the Act. Thus, it is a sheer misuse of the protection guaranteed under the Act.

20. For the foregoing reasons, in exercise of jurisdiction under Section 482 Cr.P.C. I hereby quash the proceedings against the petitioner in D.V.C.No.14 of 2011 on the file of Additional Judicial First class Magistrate, Tadepalligudem, West Godavari District.

21. The criminal petition is accordingly allowed. Miscellaneous petitions pending if any, shall stand closed.

SURESH KUMAR KAIT,J

DATE: 21--12—2016

Avs

Note:

L.R. copy to be marked.

B/O

