



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 21.11.2017

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

CRL.OP.(MD) No.12112 of 2017

and

CRL.MP.(MD) Nos.8375, 8376 and 10414 of 2017

1.Catherine Raxy
2.A.Taarathi Boy
3.G.Anthony Dhasan
4.A.Andro Rex
5.A.Ilataphones
6.A.Francis
7.Jenifer Edison :Petitioners/Respondents 1 to 7

Vs.

J.Sahaya Cleetus : Respondent/Petitioner

PRAYER: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, praying to call for the impugned proceedings bearing D.V.C.No.12 of 2017 on the file of the learned Judicial Magistrate No.II, Nagercoil, Kanyakumari District and quash the same.

For Petitioners :Mr.S.Palani Velayutham
For Respondent :Mr.S.Ramasamy

ORDER

This Criminal Original Petition is filed to quash the impugned proceedings in D.V.C.No.12 of 2017 on the file of the learned Judicial Magistrate No.II, Nagercoil, Kanyakumari District.

2.The petitioners are the respondents 1 to 7 in the proceedings in D.V.C.No.12 of 2017 on the file of the learned Judicial Magistrate No.II, Nagercoil, Kanyakumari District. It is an unusual case where the husband of the first petitioner has filed a petition in D.V.C.No.12 of 2017 alleging various domestic violence against the petitioners. The first petitioner is the wife of the respondent and the petitioners 2 to 7 are the in-laws of the respondent have preferred this petition to quash the proceedings, mainly on the ground that the special enactment, namely, the Protection of Women from Domestic Violence Act, 2005, cannot be invoked by the husband and it cannot be applied to this petition that is now filed by the husband alleging domestic violence and for reliefs that are provided under the Act. The petition has been filed by the husband, namely,



the respondent herein, under Section 12 of the The Protection of Women from Domestic Violence Act, 2005, for the following reliefs:

(a) to pass order for protection of the respondent and his children from any kind of threat or violence;

(b) to direct the fourth petitioner herein to pay a sum of Rs.5,00,000/- to the respondent, which was received by him towards his educational expenses;

(c) to direct the first petitioner herein to hand over a sum of Rs.20,00,000/- towards purchase of jewels and reimbursement of a sum of Rs.2,00,000/- spent at the time of marriage and further a sum of Rs.2,00,000/- given at the time getting job for the first petitioner and a sum of Rs.2,00,000/- paid by him when the first petitioner was admitted in hospital for delivery;

(d) to restrain the petitioners herein from interfering with the business establishment in which the respondent is a partner and from threatening the employees and restraining the petitioners from doing any illegal activities;

(e) to pass appropriate orders for the continuance of his younger son in Garden Court Cambridge School (CBSE), Pillaiyarpuram along with his elder son; and

(f) to direct the petitioners to pay a sum of Rs.25,00,000/- as compensation for all the cruelty by giving false complaint against the respondent;

3.It is to be seen that the respondent has made several allegations against the petitioners herein which are factual. The learned Counsel for the petitioners raised a legal submission that the proceedings initiated by the respondent is not maintainable under Section 12 of the Protection of Women from Domestic Violence Act, 2005. Having regard to the title of the Act and the object of the legislation, which is intended to protect the women from domestic violence. It is further contended that a petition filed by the husband is not maintainable.

4.The learned Counsel for the petitioners referring to Section 2 of the Protection of Women from Domestic Violence Act, 2005, submitted that a husband will not fall within the definition of an aggrieved person. It is further stated that the first petitioner has the custody of minor children and the respondent has filed the petition only with some personal vengeance against the petitioners with an object to keep the first petitioner under domestic violence.

5.The first petitioner is the wife, second and third petitioners are the mother and father of the first petitioner, fourth petitioner is the brother of the first petitioner, fifth and sixth petitioners are the brothers of the second petitioner and the seventh petitioner is the relative and correspondent of a School wherein the first petitioner is working.



6.It is admitted that the first petitioner got married to the respondent on 31.10.2008, at Appattuvilai and that out the wedlock, two male children were born who are now aged about 7 and 4 years respectively. It is stated by the first petitioner that the married life between the first petitioner and the respondent went smoothly for sometime and thereafter, there was a rift due to the intervention of another lady who had developed an affair with the respondent particularly when the inappropriate relationship with that lady was questioned by the first petitioner.

7.It is stated in the present petition that the first petitioner was driven out from the matrimonial home, after retaining her house hold articles, valuable jewels and other belongings. It is further stated that the first petitioner was actually tortured and underwent all sorts of domestic violence during her stay in the matrimonial home with the respondent. It is also the case of the first petitioner that the respondent treated the first petitioner with cruelty and that several complaints had been lodged as against the respondent by the first petitioner at different stages.

8.The petition filed by the respondent is therefore described as yet another illegal attempt to harass the first petitioner and her family members with an ulterior motive. The learned Counsel for the petitioners confined his arguments only to the legal issue as to the maintainability of the petition filed by the husband under the provisions of the Protection of Women from Domestic Violence Act, 2005.

9. From the reading of the objects and reasons, it can be seen that the Act clearly indicates that the Act was intended to protect the woman against any kind of violence, especially that occurring within the family. The Central Government enacted the law to provide remedies under the Civil law and intended to protect the woman from being victimised to domestic violence and to prevent the occurrence of domestic violence in the society. However, it is also indicated that the Act was intended to cover 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.

10.The preamble of the statute is again significant. It states:

"Preamble "An Act to provide for more effective protection of the rights of women guaranteed under the constitution who are victims of violence of any kind occurring within the family and for matters connected therewith or incidental thereto."

11.It is also relevant to mention that aggrieved person has been defined under Section 2 of the Act as follows:

"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 the Domestic Violence by the respondent."

12. Similarly, Section 3 of the Act, defined the term "Domestic Violence" which reads as follows:

"3. Definition of domestic violence.-For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it -

(a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or

(b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or

(c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or

(d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person"

13. From the reading of Section 3 of the Act, it is to be noted that the Act contemplates relief for every aggrieved person, against physical abuse, sexual abuse, verbal and emotional abuse and economical abuse. Since the term of Aggrieved Person, has been defined to mean only woman, it has to be held that the Act, namely, The Protection of Women from Domestic Violence Act, 2005, is meant for providing reliefs only to aggrieved woman, who has suffered domestic violence, while living in a domestic relationship with the respondent.

14. Since the relief provided under the Act are available only to the aggrieved person, who is also defined under the Act, the complaint of the husband in this case, is not maintainable. The learned Counsel for the respondent however submitted that the complaint by the husband is maintainable, in view of the judgment of the Honourable Supreme Court in the case of *Hiral P. Harsora and others vs. Kusum Narattamdas Harsora and others* reported in (2017) 1 SCC (Cri) 1 equivalent to (2016) 10 Supreme Court Cases 165. A reading of the said judgment, indicates that the question arose before the Honourable Supreme Court, is about the applicability of the Act as against the family members. When the constitutional validity of Section 2(q) was challenged before the Bombay High Court, the Bombay High Court held as follows:

<https://hcservices.ecourts.gov.in/hcservices/> 126 of the above discussion and in view of the fact that the decision of the Delhi High Court in *Kusum Lata Sharma's* case has not been disturbed by the Supreme



Court, we are inclined to read down the provisions of Section 2(q) of the DV Act and to hold that the provisions of "respondent" in Section 2(q) of the DV Act are not to be read in isolation but have to be read as a part of the scheme of the DV Act, and particularly along with the definitions of "aggrieved person", "domestic relationship" and "shared household" in clauses (a), (f) and (s) of Section 2 of the DV Act. If so read, the complaint alleging acts of domestic violence is maintainable not only against an adult male person who is son or brother, who is or has been in a domestic relationship with the aggrieved complainant- mother or sister, but the complaint can also be filed against a relative of the son or brother including wife of the son / wife of the brother and sisters of the male respondent. In other words, in our view, the complaint against the daughter-in-law, daughters or sisters would be maintainable under the provisions of the DV Act, where they are co- respondent(s) in a complaint against an adult male person, who is or has been in a domestic relationship with the complainant and such co- respondent(s). It must, of course, be held that a complaint under the DV Act would not be maintainable against daughter-in-law, sister-in- law or sister of the complainant, if no complaint is filed against an adult male person of the family."

15.As against the judgment of the Bombay High Court, an appeal was preferred before the Honourable Supreme Court, after referring to the statement of the objects and reasons of the Act and other provisions, the Honourable Supreme Court has held as follows:

"21. When Section 3 of the Act defines "domestic violence", it is clear that such violence is gender neutral. It is also clear that physical abuse, verbal abuse, emotional abuse and economic abuse can all be by women against other women. Even sexual abuse may, in a given fact circumstance, be by one woman on another. Section 3, therefore, in tune with the general object of the Act, seeks to outlaw domestic violence of any kind against a woman, and is gender neutral. When one goes to the remedies that the Act provides, things become even clearer. Section 17(2) makes it clear that the aggrieved person cannot be evicted or excluded from a shared household or any part of it by the "respondent" save in accordance with the procedure established by law. If "respondent" is to be read as only an adult male person, it is clear that women who evict or exclude the aggrieved person are not within its coverage, and if that is so, the object of the Act can very easily be defeated by an adult male person not standing in the forefront, but putting forward female persons who can therefore evict or exclude



the aggrieved person from the shared household. This again is an important indicator that the object of the Act will not be subserved by reading "adult male person" as "respondent".

"39. A conspectus of these judgments also leads to the result that the microscopic difference between male and female, adult and non adult, regard being had to the object sought to be achieved by the 2005 Act, is neither real or substantial nor does it have any rational relation to the object of the legislation. In fact, as per the principle settled in the Subramanian Swamy judgment, the words "adult male person" are contrary to the object of affording protection to women who have suffered from domestic violence "of any kind". We, therefore, strike down the words "adult male" before the word "person" in Section 2(q), as these words discriminate between persons similarly situate, and far from being in tune with, are contrary to the object sought to be achieved by the 2005 Act.

16.The judgment of Honourable Supreme Court reveals that the word "adult male" should be deleted from Section 2(q) as it is violative of Article 14 of the Constitution of India. It is further held that the proviso to Section 2(q) being rendered otiose, has to be deleted. The said judgment has no application to the present case. By virtue of the the judgment of Honourable Supreme Court, a complaint under the provisions of the Protection of Women from Domestic Violence Act, 2005, is also maintainable against another women. That does not mean complaint filed by an adult male member is maintainable.

17.For the reasons stated above, the contention of the petitioners has to be accepted and the proceedings in D.V.C.No.12 of 2017 on the file of the learned Judicial Magistrate No.II, Nagercoil, Kanyakumari District is quashed. The Criminal Original Petition is allowed. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(AE)

/True Copy/

Sub-Assistant Registrar

To

The Judicial Magistrate No.II,
Nagercoil, Kanyakumari District.

+One cc to Mr.S.Palani Velayutham, Advocate, SR.No.40756

+One cc to Mr.S.Ramasamy, Advocate, SR.No.40863

Cmr

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