

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE M.GANGA RAO**

CRIMINAL PETITION NO.9593 OF 2011

ORDER: (Per Hon'ble Sri Justice M.Ganga Rao)

This Criminal Petition under Section 482 CrPC was filed by the respondents in D.V.C.No.123 of 2011 on the file of the learned IV Metropolitan Magistrate, Hyderabad, to quash the proceedings therein.

Having heard the case, a learned Judge of this Court did not concur with the view taken by another learned Judge of this Court in ***A.Sreenivasa Rao vs. State of A.P.***¹ and referred the following question to a Division Bench for decision:

‘Whether the domestic relationship between wife and husband ceases on obtaining a divorce in spite of they sharing a household, at some of point of time, when they are related by consanguinity, marriage or through a relationship in the nature of marriage?’

Heard Mr.Javed Razack, learned counsel for the petitioners, and the learned Public Prosecutors for the States of Telangana and Andhra Pradesh.

It was the case of the petitioners that no provision of ‘The Protection of Women from Domestic Violence Act, 2005’ (for short ‘Act, 2005’) enables a divorced wife to seek reliefs under Sections 18 to 23 of the Act, 2005; that the first respondent ceased to be the wife of the first petitioner long prior to the filing of the DVC and hence, no ground was made out for the first respondent to maintain the DVC. Continuation of proceedings in the DVC, as per the petitioners, amounts to abuse of process of law as the DVC itself was not

¹ CrI.P.No.7124 of 2008 dated 01.04.2011

maintainable once there was no domestic relationship existing between the parties at the time of its filing. The petitioners relied on the unreported judgment of this Court in **A.Sreenivasa Rao¹**, wherein a learned Judge of this Court held that when the marriage between the parties stood dissolved and when there was no relationship of husband and wife existing between them, the case under Act, 2005, *prima facie*, is not maintainable.

Section 12 of Act, 2005 prescribes that an aggrieved person, as defined under Section 2(a) thereof or a Protection Officer or any other person on behalf of the aggrieved person may present an application to the Magistrate seeking one or more reliefs under the said Act.

Section 18 of Act, 2005 deals with 'Protection Order', Section 19 speaks of a 'Residence Order', Section 20 deals with 'Monetary Reliefs', Section 21 deals with 'Custody Orders', Section 22 deals with 'Compensation Orders' and Section 23 speaks of power to grant interim and *ex parte* orders with regard to property.

Section 2 of Act, 2005, defines various expressions occurring in the said Act. Relevant of those are extracted hereunder:

(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;"

(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:

(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;

(s) “Shared household” means a household where the person aggrieved lives or at any stage has lived in the domestic relationship either singly or alongwith 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;

Section 3 defines ‘domestic violence’ as follows:

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 to 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.”

From a plain reading of the provisions of Act, 2005, it can be understood that it is not necessary that the woman should have a marriage subsisting and existing with the respondent at the time of filing of an application under Section 12 of the Act. It is to be noted that no limitation is prescribed for the aggrieved woman to seek reliefs under the provisions of Act, 2005. ‘Domestic relationship’, as defined in Section 2 (f) of Act, 2005 is sufficient for the said purpose and if those in such a relationship live together or have lived together in a shared household, it would entitle the relief of maintenance under Section 2 (d) of the Act.

In our considered view, past domestic violence cannot be wiped out on the mere taking or grant of a divorce, contrary to criminal jurisprudence. No one can escape the rigour of the law for past criminal misdeeds, unless the matter is compromised as per law or law itself permits it. The overall facts and circumstances of each individual case would be the guiding factor in deciding the case.

It is relevant to note that in ***Khushi Mohd. V. Aneesha***², the High Court of Rajasthan held that a divorced muslim wife is also entitled to relief under Act, 2005 besides the remedies available to her under the Muslim Women (Protection of Rights on Divorce) Act, 1963.

More significantly, in ***Juveria Abdul Majid Patni vs. Atif Iqbal Mansoori***³, the Supreme Court specifically dealt with the question as to whether a divorced woman can seek reliefs against her ex-husband under Sections 18 to 23 of Act, 2005. In the said case, the appellant-wife filed a petition against her ex-husband under Section 12 of Act, 2005 for maintenance and other reliefs. The case of the ex-husband was that the appellant-wife had obtained an *ex parte* Khula (divorce) from a Mufti and was therefore not entitled to file a petition under Act, 2005.

In those circumstances, the Hon'ble Supreme Court held as under:

19. Even if it is presumed that the Appellant has taken 'Khula' (divorce) on 9th May, 2008 and the 1st Respondent is no more the husband, the question arises that in such case whether the erstwhile-wife can claim one or other relief as prescribed Under Sections 18, 19, 20, 21, 22 and interim relief Under Section 23 of the Domestic Violence Act, 2005, if domestic violence had taken place when the

² 2011 (3) Crimes 7 Raj

³ (2014) 10 SCC 736

wife lived together in a shared household with her husband through a relationship in the nature of marriage.

31. An act of domestic violence once committed, subsequent decree of divorce will not absolve the liability of the Respondent from the offence committed or to deny the benefit to which the aggrieved person is entitled under the Domestic Violence Act, 2005 including monetary relief under Section 20, Child Custody under Section 21, Compensation under Section 22 and interim or ex parte order under Section 23 of the Domestic Violence Act, 2005.”

On the above analysis and in the light of the ratio laid down in ***Juveria Abdul Majid Patni***³, we hold that the domestic relationship between the first respondent-wife and the deceased husband (petitioner No.1) did not cease upon her obtaining a divorce and the DVC is maintainable in relation to the past acts of domestic violence allegedly committed by the petitioners. Mere grant of a divorce would not absolve the petitioners from the criminal misdeeds allegedly committed by them during the existence of a domestic relationship between the parties.

The reference is answered accordingly.

Registry is directed to post the case before the learned Judge having the provision to hear it for disposal on merits.

SANJAY KUMAR, J

M. GANGA RAO, J

31st December, 2018

**Note: L.R. Copy to be marked
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