

\$~22

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 23rd August, 2018

+ CRL.M.C. 4705/2016

MEENAKSHI

..... Petitioner

Through: Mr. Malaya Chand, Advocate

versus

PRAVEEN RAJORA

..... Respondent

Through: Mr. Sahil Munjal and Mr. R.S.
Goswami, Advocates

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The petitioner was married to the first respondent on 31.10.2009. From out of their cohabitation, a child took birth on 30.11.2011. It is stated that the petitioner was constrained to leave the matrimonial home with her child on 13.02.2012. The first respondent (husband) sued for divorce sometime in 2013-2014. Subsequent to that event, the petitioner (wife) presented a complaint (CC no.178/6/14) in the court of the Metropolitan Magistrate invoking Section 12 read with Sections 18, 19, 20 and 22 of the Protection of Women from Domestic Violence Act, 2005 (for short, Domestic Violence Act) seeking various reliefs.

2. The respondent (husband), who had been called by the process issued on the said complaint moved an application seeking its dismissal primarily on the ground that it was barred by limitation. The Metropolitan Magistrate dismissed the said application by her order dated 12.08.2015 observing that the issue of limitation required inquiry and evidence to be called for.

3. The above-said order was challenged by the respondent by appeal (Crl. A. no.35/15 – new no.54855/16) in the court of the Sessions. The first appellate court, by its judgment dated 30.09.2016, upheld the contention of the respondent and held that the petition under Domestic Violence Act was barred by limitation referring in this context to Section 468 Cr. PC. The said order has been challenged by the petitioner / wife before this court invoking the inherent power and jurisdiction under Section 482 Cr. PC.

4. Upon perusal, it is found that the first appellate court has primarily gone by the ruling of the Supreme Court in judgment reported as *Inderjit Singh Grewal vs. State of Punjab and Anr.*, (2011) 12 SCC 588 wherein the following observations were recorded :-

*“32. Submissions made by Shri Ranjit Kumar on the issue of limitation, in view of the provisions of Section 468 CrPC, that the complaint could be filed only within a period of one year from the date of the incident seem to be preponderous in view of the provisions of Sections 28 and 32 of the 2005 Act read with Rule 15(6) of the Protection of Women from Domestic Violence Rules, 2006 which make the provisions of CrPC applicable and stand fortified by the judgments of this Court in *Janani Sahoo v. Chandra Sekhar Mohanty* [(2007) 7 SCC 394 :*

(2007) 3 SCC (Cri) 388 : AIR 2007 SC 2762] and *NOIDA Entrepreneurs Assn. v. NOIDA* [(2011) 6 SCC 508 : (2011) 2 SCC (Cri) 1015] .

33. *In view of the above, we are of the considered opinion that permitting the Magistrate to proceed further with the complaint under the provisions of the 2005 Act is not compatible and in consonance with the decree of divorce which still subsists and thus, the process amounts to abuse of the process of the court. Undoubtedly, for quashing a complaint, the court has to take its contents on its face value and in case the same discloses an offence, the court generally does not interfere with the same. However, in the backdrop of the factual matrix of this case, permitting the court to proceed with the complaint would be travesty of justice. Thus, interest of justice warrants quashing of the same.*”

5. *Per contra*, the petitioner places reliance on *Krishna Bhattacharjee vs. Sarathi Choudhury and Anr.*, (2016) 2 SCC 705. It has been pointed out that in *Krishna Bhattacharjee* (supra), the Supreme Court took note of the earlier decision in *Inderjit Singh Grewal* (supra) and observed thus : -

“32. *Regard being had to the aforesaid statement of law, we have to see whether retention of stridhan by the husband or any other family members is a continuing offence or not. There can be no dispute that wife can file a suit for realisation of the stridhan but it does not debar her to lodge a criminal complaint for criminal breach of trust. We must state that was the situation before the 2005 Act came into force. In the 2005 Act, the definition of “aggrieved person” clearly postulates about the status of any woman who has been subjected to domestic violence as defined under Section 3 of the said Act. “Economic abuse” as it has been defined in Section 3(iv) of the said Act has a large canvass. Section 12, relevant*

portion of which has been reproduced hereinbefore, provides for procedure for obtaining orders of reliefs. It has been held in Inderjit Singh Grewal [Inderjit Singh Grewal v. State of Punjab, (2011) 12 SCC 588 : (2012) 2 SCC (Civ) 742 : (2012) 2 SCC (Cri) 614] that Section 468 of the Code of Criminal Procedure applies to the said case under the 2005 Act as envisaged under Sections 28 and 32 of the said Act read with Rule 15(6) of the Protection of Women from Domestic Violence Rules, 2006. We need not advert to the same as we are of the considered opinion that as long as the status of the aggrieved person remains and stridhan remains in the custody of the husband, the wife can always put forth her claim under Section 12 of the 2005 Act. We are disposed to think so as the status between the parties is not severed because of the decree of dissolution of marriage. The concept of “continuing offence” gets attracted from the date of deprivation of stridhan, for neither the husband nor any other family members can have any right over the stridhan and they remain the custodians. For the purpose of the 2005 Act, she can submit an application to the Protection Officer for one or more of the reliefs under the 2005 Act.

33. In the present case, the wife had submitted the application on 22-5-2010 and the said authority had forwarded the same on 1-6-2010. In the application, the wife had mentioned that the husband had stopped payment of monthly maintenance from January 2010 and, therefore, she had been compelled to file the application for stridhan. Regard being had to the said concept of “continuing offence” and the demands made, we are disposed to think that the application was not barred by limitation and the courts below as well as the High Court had fallen into a grave error by dismissing the application being barred by limitation.”

6. In *Krishna Bhattacharjee* (supra), the court of the Magistrate had declined to entertain a similar petition under Section 12 of the

Protection of Women from Domestic Violence Act, 2005 on the ground that the petitioner had ceased to be “*an aggrieved person*” and further on conclusion that the claim as put forth was “*barred by limitation*”. The said order had been upheld by the court of Sessions in appeal and also by the High Court of Tripura in further challenge brought before it. Rejecting the contentions of the respondent / husband in the said case, the proceedings were revived by the Supreme Court, the matter being remitted for further proceedings on merits.

7. Going by the averments in the complaint under Section 12 of the Domestic Violence Act in the present case and having regard to the nature of reliefs which have been claimed – they being inclusive of protection against domestic violence, prohibitory order against repetition of such acts, compensation of Rs.20 Lakhs, interim maintenance of Rs.75,000/- p.m., return of jewellery, costly clothes, streedhan articles, etc. – the view taken by the first appellate court on the question of limitation is found to be wholly erroneous. As in the case of *Krishna Bhattacharjee* (supra), the case presented before the court by the petitioner is also of the nature of a continuing cause of action. It could not have been short-shrived in the manner done, particularly with reference to Section 468 Cr. PC.

8. Thus, the petition is allowed. The impugned order of the first appellate court is set aside. The proceedings in the case of the petitioner against the respondent under Section 12 of the Protection of Women from Domestic Violence Act, 2005 are revived before the

court of the Metropolitan Magistrate. The same shall be taken up for further proceedings in accordance with law by the said court on 14.09.2018. The parties are directed to appear there accordingly.

9. The petition is disposed of accordingly.

R.K.GAUBA, J.

AUGUST 23, 2018

yg

