

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

Present: The Hon'ble Justice Shivakant Prasad

CRR 3767 of 2019

Prajjal Kumar Bhattacharya & Anr.

-Versus-

The State of West Bengal & Anr.

For the Petitioners	:	Mr. Manjit Singh
For the Opposite Party No. 2	:	Mr. Anjan Dutta Ms. Madhurima Sarkar
Heard on	:	16.12.2020
Judgment on	:	05.01.2021

Shivakant Prasad, J.

In this revisional application the petitioners have sought to quash the proceedings in connection with case No. AC-14 of 2018 under Section 12/23 of the Protection of Women from Domestic Violence Act, 2005 (in short D.V. Act, 2005) now pending before the Court of learned Judicial Magistrate, 4th Court, Alipore, South 24-Parganas by assailing the order dated 18.11.2019 passed by learned Additional District and Sessions Judge, 2nd Fast Track Court, Alipore, South 24-Parganas in Criminal Appeal No. 10 of 2019 affirming the order dated 10.12.2018 of the learned Judicial Magistrate, 4th Court, Alipore on an application filed under Section 25 of the Protection of Women from Domestic Violence Act, 2005.

The petitioner no. 1 is a retired Central Government employee. The petitioner no. 2 is housewife of the petitioner no. 1. Previous to the retirement of the petitioner no. 1, they used to reside at Lucknow in their own home and occasionally visit their son at Kolkata, but they reside permanently at Lucknow. The opposite party no. 2 is the daughter-in-law of the petitioners.

After receiving notice, the petitioners appeared before the learned Magistrate and filed an application under Section 25 of the D.V. Act, 2005, praying for deletion of their names on the grounds assigned in the said application mainly under Sections 2(a), 2(f), 2(g), 2(q), 2(s), 3, 13(1), 27 and 28 of the Act on contention that there is no specific allegations of domestic violence against the present petitioners and that mere mentioning of relevant Sections of the D.V. Act and languages of those sections are not sufficient. Particulars of offences committed by each accused persons and role played by each of them in committing the offence need to be stated as the allegations against them but the allegations made in the complaint are completely vague and unspecific.

It is submitted that the allegations levelled against the petitioners in the complaint suffer from antagonistic contradictions and inherent absurdity. The allegations even if, taken to be true, do not make out any cause of action giving rise to initiation of a proceeding under provisions of D.V. Act, 2005 and incidence of such domestic violence in the complaint is entirely missing since the

purported allegations made in the complaint against the petitioners are inherently improbable that a prudent person could never reach a just conclusion to hold any *prima facie* case against them.

In support of such contention, Mr. Manjit Singh learned counsel appearing for the petitioners relied on the observations made in the decision of **Sri Aloy Kumar Chanda & Another Vs. The State of West Bengal & Another** (2016 (1) C.CrLR 6) which is reproduced hereunder:

16. On an analysis of the facts alleged by the opposite party no. 2 in above paragraphs of the petition of complaint I find that the allegations made by the opposite party no. 2 are vague and omnibus, because the specific date, month and year of the incidents are not disclosed in the petition of complaint. Moreover, some of the allegations are highly improbable and absurd. This court is not oblivious of the general tendency of the aggrieved person to rope in all members of family of the husband in any proceeding initiated by the wife, so that the wife can wreck vengeance on all members of family of the husband. On an analysis of facts alleged by the opposite party no. 2 in the petition of complaint I am of the opinion that no domestic violence is made out against the petitioner nos. 2 and 3 who are elder brother-in-law and sister-in-law of the opposite party no. 2, though the allegation of domestic violence is made out against the petitioner/husband. In "P. Venkatrajam and Others v. State (A.P.)" reported in 2015 (2) AICLR 900 the allegations of domestic violence made against the father-in-law and brother-in-law of the aggrieved persons were found to be vague and omnibus. In the said report, the Andhra Pradesh High Court quashed the proceeding under Section 12 of the Domestic Violence Act against the father-in-law and brother-in-law of the aggrieved persons, as the allegations made against them were found to be vague and non-specific. By relying on the said decision I am also inclined to quash the proceeding against the petitioner nos. 2 and 3 who happens to be the brother-in-law and sister-in-law of the opposite party no. 2.

Reference is also made to a case of **Shyamlal Devda and Ors. Vs. Parimala** [2020 (3) SCC 14: 2020 AIR (SC) 762] advertent my attention to paragraph 9 to contend that there is no substantial

allegation against the petitioners/the parents in law of the opposite party no. 2 which reads thus:

9. In the present case, the respondent has made allegations of domestic violence against fourteen appellants. Appellant No.14 is the husband and appellants No.1 and 2 are the parents-in-law of the respondent. All other appellants are relatives of parents-in-law of the respondent. Appellants No.3, 5, 9, 11 and 12 are the brothers of father-in-law of the respondent. Appellants No.4, 6 and 10 are the wives of appellants No.3, 5 and 9 respectively. Appellants No.7 and 8 are the parents of appellant No.1. Appellants No.1 to 6 and 14 are residents of Chennai. Appellants No.7 to 10 are the residents of State of Rajasthan and appellants No.11 to 13 are the residents of State of Gujarat. Admittedly, the matrimonial house of the respondent and appellant No.1 has been at Chennai. Insofar as appellant No.14-husband of the respondent and appellants No.1 and 2-Parents-in-law, there are averments of alleging domestic violence alleging that they have taken away the jewellery of the respondent gifted to her by her father during marriage and the alleged acts of harassment to the respondent. There are no specific allegations as to how other relatives of appellant No.14 have caused the acts of domestic violence. It is also not known as to how other relatives who are residents of Gujarat and Rajasthan can be held responsible for award of monetary relief to the respondent. The High Court was not right in saying that there was prima facie case against the other appellants No.3 to 13. Since there are no specific allegations against appellants No.3 to 13, the criminal case of domestic violence against them cannot be continued and is liable to be quashed.

Having regard to the above observation in the cited decision, it appears that the Hon'ble Apex Court declined to quash the proceeding against parents in law, finding that there were averments of allegations that parents in law had taken away the Jewellery of the aggrieved person/respondent gifted by her father on the occasion of the marriage.

Now, it would be apt to take notice of the averments made in paragraphs 4, 6, 8 and 9 of the application under Section 12 of D.V. Act, 2005 to decipher fact therefrom as to whether there is

substantial allegation against the petitioners and whether any relief has been prayed for against them by the aggrieved person /opposite party no. 2.

In paragraph 4, it is categorically averred that on 03.02.2017, the aggrieved person was taken to her matrimonial home, being her shared household situated at Sherwood Estate, 169 N.S.C. Bose Road, Block-I, Flat no. L1, Narendrapur, P.S. Sonarpur, Kolkata-700 103, South 24-Parganas, and that she had received a substantial amount of gold ornaments and other valuable presentations on the day of bridal ceremony held on 04.02.2017 as per a list annexed to the application under Section 12 of the Act and all such stridhan articles were entrusted to the respondents, according to their direction on the pretext of keeping the same in safe custody.

Averments made in paragraph 6 reflect that she had noticed that her husband is a habitual drunker and each and every day he used to return home under the influence of liquor and she tried her best to rectify the respondent no. 1 and even, intimated the same to the respondent no. 2 and 3 being her parents in law, but the respondent no. 2 and 3 (the present petitioners) instead of taking any effort or endeavour to rectify the bad behaviour and habits of the respondent no. 1 (husband) not only had abused the aggrieved person but also had perpetrated physical violence upon her but she was keen to keep the marital tie intact.

It is depicted from the statements in paragraph 8 that since before the marriage between herself and the respondent no.1, she was in avocation with Tata AIG General Insurance Company Ltd. But owing to continuous act of domestic violence upon her by the respondents, her performance got affected that her employer issued a Performance Improvement Program Letter dated 25.5.2017 and subsequent, the petitioner was deprived of earning her livelihood.

In my view such an averment of allegation may be directed against her husband who had developed bad habit allegedly being a drunk and beating her under drunken state of mind which might have told upon her mind to such extent that she could not perform her duty well as the manager of the company to the satisfaction of her employer but such allegation by no stretch of imagination can be considered as against the present petitioners/the parents in law of the aggrieved person and allegation so made may be treated as vague and without any substance.

In paragraph 9 of the application, it has been averred by the aggrieved person that respondent no. 1(husband) escalated torture upon her but the respondent nos. 2 and 3 (parents in law) did not interfere when the respondent no.1/husband tried to put an end to her life by subjecting her to smothering with pillow with active assistance and indulgence of the respondent nos.2 and 3.

In the averments made in the application under Section 12 of the Act, 2005, applicant has contended that despite having

knowledge regarding such deteriorated mental condition of the petitioner owing to such continuous perpetration torture, the respondent nos. 1, 2 and 3 instead of deescalating such torture and fomentations upon her, had escalated such torture to a substantial level and be it mentioned here that such returning home by the respondent no. 1 under the influence of liquor and perpetration of torture, acts of domestic violence upon the petitioner had become a regular routine to the petitioner and even, the petitioner had noticed that the respondent no. 1 has developed several extramarital relationship with various women and kept busy in contacting those women over Whatsapp, Facebook and Messenger and on being raising protest thereof, the petitioner was not only physically assaulted by the respondent no. 1 at the instance of the respondent nos. 2 and 3, but she was also subjected to smothering with a pillow by the respondent no. 1 with the active assistance and indulgence of the respondent no. 2 and 3 and thereby all the respondents had tried to put an end to the life of the petitioner and when the petitioner somehow had been able to free herself from such atrocities being perpetrated by the respondents upon her and further had tried to communicate her parents over telephone, her mobile phone was snatched by the respondents and the respondent no. 2 and 3 instead of “restraining” the respondent no. 1 from causing perpetration of such torture upon the petitioner, had not only denied to intervene into it, but also had casually shrugged off the incident by stating

that their son being the respondent no. 1 had an angry streak. However, the petitioner had to pay visit to doctor immediately and had to get medically treated owing to such heinous act of domestic violence upon herself by the respondents, more particularly by the respondent no. 1, with the active instigation and indulgence of the other respondents.

To support such contention the aggrieved person/opposite party no. 2 has annexed certain medical papers but they do not support the contention of subjecting her to smothering with pillow by her husband with active assistance and indulgence of her parents in law because had it been so, the aggrieved person might have been suffocated to death but no medical documents annexed to the application really supports such contention. Therefore, such an allegation *prima facie* appears to be vague and omnibus.

On behalf of the opposite party no. 2, it is submitted that the husband filed one divorce suit before the learned District Judge at Alipore vide Matrimonial Suit No. 3176 of 2017 which is pending for its adjudication. On perusal of the plaint of Matrimonial Suit, it clearly deciphered that the opposite party live in the shared household.

It is contended on behalf of the petitioner that the present petitioners never verbally abused their daughter in law. Keeping in mind for peaceful life of their son, they never raised any objection, never lodged any complaint with any authority, rather the petitioners

are the victim of violence caused by the so called aggrieved person and her parental relatives. Presently Sri Arup Kumar Mukherjee, the father of the aggrieved person who used to hold threat in petitioners showing his high access with the political lords and higher police authorities.

In my opinion, the averments of allegations as against the parents in law (the present petitioners) appear to be vague and omnibus to wreck the vengeance against the petitioners because it may not be possible for the old aged parents to have control over their erring son who had developed a bad habit as alleged by the aggrieved person.

It would not be out of the context to take note of the averments made in the plaint of Matrimonial Suit No. 3176 of 2017 which has been made part of the affidavit in opposition filed by the opposite party no. 2. It emerges therefrom that her husband has prayed for a decree of dissolution of marriage solemnised on 27.11.2016 between the petitioner and the respondent in accordance with Special Marriage Act, 1954, wherein the averments made is that the plaintiff on the contrary, came to know that his wife is a habitual drunker and had no self respect. The respondent /wife had forced him to take her out to night clubs on a daily basis though the plaintiff /husband was not comfortable with such culture but had to do so under pressure on various occasions and that the parents of his wife had been putting pressure on him for being ghar jamai (domesticated son

in law) and have a family life without his aged parents. It is also alleged in the plaint that on 13.8.2017 there was get-together of family members in connection with marriage anniversary of cousin brother of the plaintiff when his wife/aggrieved person had boozed there too much that she was not in a position to even walk and so 13.8.2017 she left her matrimonial home at her own wish and without her consent and or support of her husband or her parents in law.

All such allegations which are averred in the plaint are on affidavit in opposition filed on behalf of the aggrieved person. There are allegations and counter allegations which are undoubtedly required to be considered on the basis of the evidence in the matrimonial proceedings by and between the wife and husband.

This Court is aware of a latest decision of the Hon'ble Apex Court in **Satish Chander Ahuja Vs. Sneha Ahuja** case reported in **2020 SCC 841** wherein it has been held that the aggrieved person/daughter in law would be entitled to the living in the shared house even exclusively belonging to her parents in law. It is not understood whether the duplex Flat at Narendrapur belongs exclusively to the parents in law or the husband of the aggrieved person but, *prima facie*, it is revealed that the petitioners occasionally make visit to the place. Even if the petitioners are putting up on regular basis after the retirement, the jurisdiction of the Court is well inferred as Section 27 of the Protection of Women from Domestic

Violence Act, 2005 covers the situation. It would be profitable to reproduce the provisions of Section 27 of the Act which reads thus:

"27. Jurisdiction (1) The court of Judicial Magistrate of the first class or the Metropolitan Magistrate, as the case may be, within the local limits of which (a) the person aggrieved permanently or temporarily resides or carries on business or is employed; or (b) the respondent resides or carries on business or is employed; or (c) the cause of action has arisen, shall be the competent court to grant a protection order and other orders under this Act and to try offences under this Act (2) Any order made under this Act shall be enforceable throughout India.

A plain reading of the above provision makes it clear that the petition under the Domestic Violence Act can be filed in a court where the person aggrieved permanently or temporarily resides or carries on business or is employed. In the present case, the respondent is residing with her parents within the territorial limits of Metropolitan Magistrate Court, Bengaluru. In view of Section 27(1) (a) of the Act, the Metropolitan Magistrate court, Bengaluru has the jurisdiction to entertain the complaint and take cognizance of the offence. There is no merit in the contention raising objection as to the jurisdiction."

The definition of shared household includes a household where the person aggrieved lives or at any stage had lived in a domestic relationship. He contended that since admittedly the respondent had lived in the property in question in the past, hence the said property is her shared household.

Object and reason of the Act, 2005 being a Special Act cannot be lost sight of, which provide for affective protection of the right of women who are victim of violence of any kind in the shared house.

The Hon'ble Apex Court in Sneha Ahuja's case held that the definition of shared household given in Section 2(s) cannot be read to mean that shared household can only be that household which is

household of the joint family of which husband is a member or in which husband of the aggrieved person has a share and further observed that the judgment in *S.R. Batra Vs. Taruna Batra* reported in (2007) 3SCC 169, has not correctly interpreted Section 2(s) of Act, 2005 and the judgment does not lay down a correct law.

It has been observed that where a final order has been passed by the Magistrate under Section 12. What is the nature and life of the said order? Section 25(2) itself contemplates an eventuality when order passed under the Act can be altered, modified or revoked. Section 25(2) provides:

“Section 25. Duration and alteration of orders.-

(1) xxx xxx xxx

(2) *If the Magistrate, on receipt of an application from the aggrieved person or the respondent, is satisfied that there is a change in the circumstances requiring alteration, modification or revocation of any order made under this Act, he may, for reasons to be recorded in writing pass such order, as he may deem appropriate.”*

Observations in Paragraphs 108, 109, 110 and 111 of the Hon’ble Apex Court can profitably be take note to consider the legality and propriety of the order impugned under revision which read thus:

108. Whether apart from powers of Magistrate under Section 25(2) of the Act, 2005, the Act, 2005 contemplates any other eventuality when despite the order of residence under Section 19 an aggrieved person can be evicted or dispossessed.

109. The right to reside in shared household as granted by Section 17 itself contemplates an exception in express words, i.e., “save in accordance with the procedure established by law”.

110. The procedure prescribed for proceedings under Section 19 as provided in Section 28 of the Act is as per the provisions of the Code of Criminal Procedure, 1973. Section 28 of the Act, 2005, provides as follows:- “28. Procedure.- (1) Save as otherwise provided in this Act, all proceedings under sections 12, 18,19,20,21,22 and 23 and offences under section 31 shall be governed by the provisions of the Code of Criminal Procedure, 1973(2 of 1974). (2) Nothing in sub-section (1) shall prevent the court from laying down its own procedure 106 for disposal of an application under section 12 or under sub-section (2) of section 23.”

111. The rules have been framed under the Act, 2005, namely “The Protection of Women from Domestic Violence Rules, 2006”. Rule 5 deals with Domestic Incident Report which is to be submitted by protection officer in Form I. The Form I is part of Rule which contains details in various columns to enable the Magistrate to take appropriate decision. Rule 6 provides that every application of the aggrieved person under Section 12 shall be in Form-II or as nearly as possible thereto. Form-II is again part of Rule which contains various details including orders required, residence orders, under Section 19, monetary relief under Section 20, details of previous litigation, if any, and other details to enable the Magistrate to take appropriate decision. Rule 6 sub-Rule (4) provides that for obtaining an interim ex-parte order under Section 23, an affidavit is to be filed in Form-III. The Form-III is an affidavit of an aggrieved person or the person filing affidavit on behalf of his ward, daughter, etc. The Act and the Rules thus provide for a procedure and manner of filing an application for obtaining a relief under Act, 2005. The Act, 2005, is an Special Act which provides for manner and procedure for obtaining relief by an aggrieved person.

The averments made in application under Section 12 by the aggrieved person as against her parents in law is of the entrustment of jewellery and stridhan articles which she received in her wedding ceremony. This is what is the averments made in the Affidavit in opposition which has not been refuted by the petitioners by use of affidavit in reply. As such, the decision in *Sri Aloy Kumar Chanda (supra)* is quite distinguishable from the facts of the instant case. In respectful consideration of the decision of the Hon'ble Apex Court in *Sneha Ahuja (supra)*, I am of the opinion that ratio of decision is apposite to the facts and circumstances of the instant case, inasmuch as, the parents in law were not exonerated from the case on the allegation of taking away jewellery by them. I find *prima facie* uncontroverted allegations of entrustment of jewellery and stridhan of the aggrieved person to the petitioners on the plea of safe keeping which facts are required to consider in accordance with the evidence to be adduced by the parties to the proceeding before the Trial Magistrate.

That apart, in the Court of Judicial Magistrate, opposite party no. 2/aggrieved person sought for the following protection orders:

- "a. an order under Section 18 of PWDV Act, restraining the respondent from perpetrating any torture or acts of domestic violence, upon your petitioner;
- b. an order under Section 19 of PWDV Act, directing upon the respondents to pay a sum of Rs. 50,000/- per month in favour of the petitioner for the stay of herself at a separate alternative accommodation;

- c. *an order under Section 20 of PWDV Act, directing upon the no. 1, to pay a sum of Rs. 1,75,000/- per month in favour of the petitioner towards the monthly monetary relief of the petitioner, which includes her expenditures towards fooding, garments, medication, conveyances and other sundries;*
- d. *an order under Section 22 of PWDV Act, directing upon the respondents, to pay compensation to the tune of Rs. 25,00,000/- to your petitioner for causing harm, injuries and mental distress to your petitioner, upon perpetration of the acts of domestic violence. It would not be possible for your petitioner to survive at the status of the respondent no. 1, in this era of regular price hiking."*

Definition of domestic violence enshrined in section 3 of the Act, 2005, means any act, omission or commission or conduct of the respondent.

In view of the texture of the prayer portion of the application under Section 12 of the Act, it cannot be said that no protection relief has been sought for against the present petitioners.

In respectful consideration of the views of the Hon'ble Apex Court in case of *Sneha Ahuja (supra)* and further in consideration of the application under Section 25(2) and application under Section 12 of the Act, 2005 filed by the opposite party no. 2 herein, I am of the view that application under Section 25(2) of the Act, 2005 was prematurely filed on behalf of the present petitioners, ergo, the order impugned calls for no interference.

In the context of the discussions above, I am not inclined to quash the proceeding as against the petitioners, however, I direct the

Ld. Magistrate to decide the case as expeditiously as possible preferably within a period of three months from the date of receipt of the order.

Accordingly, revisional application being CRR No. 3767 of 2019 is disposed of affirming the impugned order dated 18.11.2019 passed by learned Additional District and Sessions Judge, 2nd Fast Track Court, Alipore, South 24-Parganas in Criminal Appeal No. 10 of 2019.

Urgent certified photocopy of this Judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Shivakant Prasad, J.)