

CRR 918 of 2010
With
CRAN 2/2010 (Old No. CRAN 3196 of 2010)
CRAN 3/2011 (Old No. CRAN 266 of 2011)
CRAN 4/2011 (Old No. CRAN 630 of 2011)

Avijit Mukherjee @ Avijit Mukhopadhyay.
Vs
State of West Bengal & Anr.

Mr. Sourav Chatterjee, ... for the petitioner.

Mr. Navanil De, ... for the State.

Petitioner seeks to quash Misc. Case No.90 of 2008 (T.R. No.181 of 2008) pending before the learned Judicial Magistrate, 3rd Court, Howrah under Sections 12/18/19/20 of the Protection of Women from Domestic Violence Act, 2005 on the ground that the Protection of Women from Domestic Violence Act, 2005, has no retrospective operation.

The issue is no more res integra.

It has been held in the judgment reported at (2014) 3 SCC 712 as follows:

22.In the present case, in view of the fact that even after the order passed by the Subordinate Judge the respondent husband has not allowed the appellant wife to reside in the shared household/matrimonial house, we hold that there is a continuance of domestic violence committed by the respondent husband against the appellant wife. In view of the such continued domestic violence, it is not necessary for the courts below to decide whether the domestic violence is committed prior to the coming into force of the Protection of Women from Domestic Violence Act, 2005 and whether such act falls within the definition of the term “domestic violence” as defined under Section

3 of the DVA, 2005.

23. *The other issue that whether the conduct of the parties even prior to the commencement of the DVA, 2005 could be taken into consideration while passing an order under Sections 18, 19 and 20 fell for consideration before this Court in V.D. Bhanot v. Savita Bhanot. In the said case, this Court held as follows: (SCC pp. 186-87, para 12)*

“12. We agree with the view expressed by the High Court that in looking into a complaint under Section 12 of the DVA, 2005 the conduct of the parties even prior to the coming into force of the DVA, could be taken into consideration while passing an order under Sections 18, 19 and 20 thereof. In our view, the Delhi High Court has also rightly held that even if a wife, who had shared a household in the past, but was no longer doing so when the Act came into force, would still be entitled to the protection of the DVA, 2005.”

In view of that matter, I do not see any reason to allow the revisional application on ground of prospective operation of the Act. The said Act in my view is retroactive.

Accordingly, CRR 918 of 2010 along with CRAN 3 of 2011 and CRAN 4 of 2011 is dismissed.

The petitioner, however, will be at liberty to agitate all other points taken in the revisional application in the pending proceedings, if any, before the learned Magistrate in the Court below.

(Kausik Chanda, J)