



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR.**

S.B. Criminal Misc(Pet.) No. 4666/2021

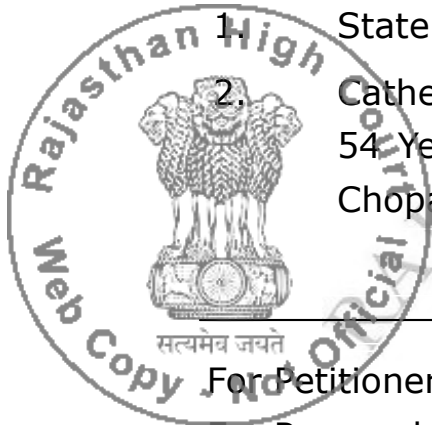
Robarto Nieddu S/o Shri Constetino Nieddu, Aged About 56 Years, R/o Sukhsagar Haweli, Chopasani Road, Near Prem Vihar Colony, Jodhpur (resident of Italy) presently in Indonesia.

----Petitioner

Versus

1. State Of Rajasthan, Through Pp
2. Catherine Nieiddu W/o Shri Robarto Nieddu, Aged About 54 Years, Citizenship Of Canadian R/o Sukhsagar Haweli, Chopasni Road, Near Prem Vihar Colony, Jodhpur.

----Respondents



For Petitioner(s) : Mr. Manoj Bhandari.
For Respondent(s) : Mr. S.K. Bhati, PP
Dr. Sachin Acharya.
Mr. Ajeet Singh.

HON'BLE MR. JUSTICE VINIT KUMAR MATHUR
Order

Reportable

20/11/2021

The present Criminal Misc. Petition has been preferred against the order dated 05.08.2021 passed by learned ADJ (Women Atrocities Cases), Jodhpur Metropolitan in Criminal Appeal No.11/2021 filed against the order dated 11.02.2021 passed by Civil Judge and Jodhpur Metro Magistrate No.6, Jodhpur.

The petitioner preferred an application for rejection of complaint undertaken by the respondent- complainant under section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as the 'Act of 2005'). The application preferred by the petitioner on the ground of maintainability of the complaint as being non maintainable was dismissed by the learned



trial court vide order dated 11.02.2021. The order dated 11.02.2021 was assailed by the petitioner by way of filing an appeal before the appellate court and the same was also rejected by the appellate court vide order dated 05.08.2021. Aggrieved against the orders dated 11.02.2021 and 05.08.2021, the present petition has been filed.

Learned counsel for the petitioner vehemently submits that the application preferred by the respondent No.2 i.e. complainant before the trial court under section 12 of the Act of 2005 is not maintainable as the petitioner and the respondent No.2 are not Indian citizens and thus, are not amenable to the jurisdiction of the Act of 2005. He further submits that since the petitioner was only resident of India at that relevant point of time will not confer jurisdiction in the present case.

Per contra, learned counsel for the respondent No.2 submits that by virtue of definition of section 2 (a) and section 12 of the Act of 2005, the present application is very much maintainable.

I have considered the submissions made at the bar and gone through the orders dated 11.02.2021 and 05.08.2021 passed by the courts below.

The facts which are noted for decision in the present case are that on 23.10.2019, an application under section 12 of the Act of 2005 was preferred by the respondent No.2. The notices were issued to the petitioner. On 05.12.2019, time was sought by the present petitioner through counsel to file reply to the application. Thereafter, on 12.01.2021, an application was preferred regarding maintainability of the petition before the trial court. To this application, a reply was filed by the respondent No.2 on 22.01.2021 and finally after the arguments were heard, the



application preferred by the petitioner was rejected by the trial court vide order dated 11.02.2021. Against the order dated 11.02.2021, the petitioner preferred an appeal before the appellate court and the same was rejected by the appellate court vide order dated 05.08.2021.

It is noted that as per section 2(a) of the Act of 2005, the definition of 'aggrieved person' is given and as per the definition itself, any woman including a foreign citizen who is subjected to domestic violence can maintain an application before the trial court under the Act of 2005. Section 2 (a) of the Act of 2005 reads as under:

"2(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".

Not only this, section 12 of the Act of 2005 provides that even an aggrieved person can prefer an application through protection officer seeking the relief under the Act of 2005. For brevity, section 12 of the Act of 2005 is reproduced as under:-

"12. Application to Magistrate:- (1) An aggrieved person 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 this Act.

Provided that before passing any order on such application, the Magistrate shall take into consideration any domestic incident report received by him from the Protection Officer or the service provider".

The fact that the respondent No.2 is resident of Jodhpur for last about 25 years and after having solemnized marriage with the petitioner, the incident which is reported in the complaint also took place at Jodhpur and therefore, in view of definitions enumerated



under sections 2 (a) and 12 of the Act of 2005, it is held that the application preferred by the respondent No.2 before the trial court is maintainable. The observations of the Supreme Court in the case of ***Shyamlal Devda & Ors. V/s Parimala reported in AIR 2020 SC 762*** also fortifies the fact of maintainability of the application under section 12 of the Act of 2005 in the present case.

Para 10 of the judgment rendered in the case of Shyamlal Devda (supra) is quoted as under:-

"10. Insofar as the jurisdiction of the Bengaluru Court, as pointed out by the High Court, [Section 27](#) of the Protection of Women from [Domestic Violence Act](#), 2005 covers the situation. [Section 27](#) of the Act reads as under:-

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 of the Metropolitan Magistrate Court at Bengaluru”.

A plain reading of Act of 2005 also reveals that protection under this Act is also extended to the persons who are temporarily resident of India being covered under the definition of aggrieved person as per section 2 (a) of the Act of 2005.

Even Article 21 of the Constitution of India extends the benefit of protection not only to every citizen of this country, but also to a “person” who may not be a citizen of the Country. Article 21 states that no person shall be deprived of his life or personal liberty except according to a procedure established by law. Therefore, looked at from that angle, a person aggrieved i.e. respondent No.2 is very much entitled to get protection of section 12 of the Act of 2005.

The above observation is also supported by the judgment of the Supreme Court in the case of **Chairman, Railway Board and Others Versus Chandrima Das (Mrs.) and Others reported in (2000) 2 SCC 465**. The relevant paras of said judgment read as under:-

“19. It was next contended by the learned counsel appearing on behalf of the appellants, that Smt. Hanuffa Khatoon was a foreign national and, therefore, no relief under Public Law could be granted to her as there was no violation of the Fundamental Rights available under the Constitution. It was contended that the Fundamental Rights in Part III of the Constitution are available only to citizens of this country and since Smt. Hanuffa Khatoon was a Bangladeshi national, she cannot complain of the violation of Fundamental Rights and on that basis she cannot be granted any relief. This argument must also fail for two reasons; first, on the ground of Domestic Jurisprudence based on Constitutional provisions and secondly, on the ground of Human Rights Jurisprudence based on the Universal Declaration of Human Rights, 1948, which has the international recognition as the "Moral Code of Conduct" having been adopted by the General Assembly of the United Nations.

.....



.....

27. Our Constitution guarantees all the basic and fundamental human rights set out in the Universal Declaration of Human Rights, 1948, to its citizens and other persons. The chapter dealing with the Fundamental Rights is contained in Part III of the Constitution. The purpose of this Part is to safeguard the basic human rights from the vicissitudes of political controversy and to place them beyond the reach of the political parties who, by virtue of their majority, may come to form the Govt. at the Centre or in the State.

28. The Fundamental Rights are available to all the "citizens" of the country but a few of them are also available to "persons". While [Article 14](#), which guarantees equality before law or the equal protection of laws within the territory of India, is applicable to "person" which would also include the "citizen" of the country and "non- citizen" both, [Article 15](#) speaks only of "citizen" and it is specifically provided therein that there shall be no discrimination against any "citizen" on the ground only of religion, race, caste, sex, place of birth or any of them nor shall any citizen be subjected to any disability, liability, restriction or condition with regard to access to shops, public restaurants, hotels and places of public entertainment, or the use of wells, tanks, bathing ghats, roads and places of public resort on the aforesaid grounds. Fundamental Right guaranteed under [Article 15](#) is, therefore, restricted to "citizens". So also, [Article 16](#) which guarantees equality of opportunity in matters of public employment is applicable only to "citizens". The Fundamental Rights contained in [Article 19](#), which contains the right to "Basic Freedoms", namely, freedom of speech and expression; freedom to assemble peaceably and without arms; freedom to form associations or unions; freedom to move freely throughout the territory of India; freedom to reside and settle in any part of the territory of India and freedom to practise any profession, or to carry on any occupation, trade or business, are available only to "citizens" of the country.

29. The word "citizen" in [Article 19](#) has not been used in a sense different from that in which it has been used in Part II of the Constitution dealing with "citizenship". [See: [STC of India Ltd. v. CTO](#)]. It has also been held in this case that the words "all citizens" have been deliberately used to keep out all "non-citizens" which would include "aliens". It was laid down in [Hans Muller of Nuremburg vs. Superintendent Presidency Jail](#), AIR at P.374 that this Article applies only to "citizens". In another decision in [Anwar vs. State of J & K](#), it was held that non-citizen could not claim Fundamental Rights under Article 19. In [Naziranbai vs. State](#), and [Lakshmi Prasad v. Shiv Pal](#), it was held that [Article 19](#)



does not apply to a "foreigner". The Calcutta High Court in [Sk. Md. Soleman v. State of WB](#) held that [Article 19](#) does not apply to a Commonwealth citizen."

In view of the discussions made above, the orders dated 11.02.2021 passed by the learned Civil Judge & Metropolitan Magistrate No.6, Jodhpur Metropolitan in Misc. Case No.341/2019 and order dated 05.08.2021 passed by learned ADJ (Women Atrocities Cases), Jodhpur Metropolitan Jodhpur in Appeal No.11/2021 do not suffer from any infirmity. The present petition, therefore, is dismissed being bereft of merit.

In view of dismissal of the present petition, all the pending interlocutory applications also stand dismissed.

(VINIT KUMAR MATHUR),J

S-250-Anil Singh/-

