



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5185 OF 2018

1. Mrs. Zeba Mohasin Pathan
2. Eesak Gulab Pathan,

Petitioners

Versus

1. The State of Maharashtra,
through DCP Zone 5, to be served through
Public Prosecutor, High Court (A.S.),
Bombay.

...Respondents

Mr. Sushil Upadhyay, with Ashok Saraogi for Petitioners.
Mr. Jayesh Yagnik, APP for Respondent No.1-State.

CORAM : DR. NEELA GOKHALE, J.
RESERVED ON : 3rd January 2024.
PRONOUNCED ON : 5th January 2024

JUDGMENT:

1. This petition involves an important question of law pertaining to the liability of a daughter in law, her father and brother in an

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action initiated against them by her mother in law under the provisions of Protection of Women From Domestic Violence Act, 2005 (“DV Act”).

2. The Petitioners seek quashing of DV Application No.40 of 2018, initiated by the Respondent No.2 against them under the provisions of the DV Act, and consequently, setting aside order dated 10th January 2019 passed by the Judicial Magistrate, First Class, Koregaon, Satara, directing issuance of summons to the Petitioners.

3. By order dated 19th March 2019, notice was directed to be issued to the Respondent No.2 returnable on 5th April 2019 and private service was allowed. Notice was again issued by order dated 20th June 2019 by this Court to the Respondent No.2. The Petitioners have served the Respondent No.2 by private service and an affidavit of service along with the receipt of private service has been placed on record. Despite, receipt of notice, the Respondent No.2 has failed to appear before the Court and hence, the matter is taken up for hearing ex-parte.

4. The Petitioner No.1, Zeba is the daughter-in-law of the Respondent No.2, Afrin. The Petitioners No.2 and 3 are the father and brother respectively of the Petitioner No.1. The facts giving rise to the proceedings are that Zeba married Mohsin, son of Afrin in May 2016. According to Zeba, she was subjected to tremendous amount of

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ill-treatment and cruelty at the hands of her husband and his family members. She was therefore, compelled to lodge a complaint dated 29th December 2017 against Mohsin and his family members with the police authorities concerned. FIR No.00/18 was thus registered, after much persuasion under Section 498A, 323, 504, 506, 34 of the Indian Penal Code, 1860 and thereafter transferred from Palghar PS to Pune PS. In February 2018, the Petitioner No.1 also filed an application for maintenance under Section 125 of the Code of Criminal Procedure, 1973 (“**Cr.PC.**”) in the Court of Judicial Magistrate, First Class, (“**JMFC**”) Vasai, Palghar seeking maintenance of Rs.25,000/- per month from her husband. Complaining of domestic violence in her matrimonial home, she also made an application under the DV Act against her husband, mother-in-law, father-in-law and the brother of her mother-in-law. Pending these proceedings, the Respondent No.2, Afrin filed the application/complaint under Section 12 of the DV Act against Zeba, her father and brother seeking reliefs under Sections 18, 19, 20 and 22 of the DV Act in the JMFC Court, Koregaon, Satara. The JMFC issued summons dated 28th August 2018 and 21st November 2018. It is the maintainability of this complaint and the summons issued thereon by the JMFC court, that is assailed by the Petitioners in the present petition.

5. Mr. Sushil Upadhyay, learned counsel appears for the Shivgan

Petitioners and Mr. Jayesh Yagnik, Additional Public Prosecutor appears for the State. It is the contention of Mr. Upadhyay that the mother-in-law of Zeba, ie., Afrin has initiated the proceedings under the DV Act against the Petitioners only as a counter-blast to the proceedings for maintenance and domestic violence initiated by Zeba as well as the registration of FIR. He says that the complaint is totally untenable and there was never any shared household of the parties. Mr. Upadhyay challenges the DV proceedings on the ground that *firstly*, the proceeding is initiated only as a counter-blast to the proceedings filed by Zeba herself against her husband and his family members including the Respondent No.2 herein; *secondly*, the DV proceedings under challenge is a direct attempt to interfere in the grant of justice to the Petitioners amounting to 'Contempt of Court' and *thirdly* and most importantly the proceedings are not maintainable under the DV Act as none of the Petitioners fit within the category of a person against whom such proceedings can be filed. On these grounds, Mr. Upadhyay says that the Respondent No.2 has abused the process of law and urges the court to quash the complaint.

6. Heard the learned counsel and perused the documents on record.

7. In order to deal with the issue regarding maintainability of the proceeding against the Petitioners under the DV Act, it is necessary to

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discern the object of the 2005 Act from the statement of objects and reasons:

"STATEMENT OF OBJECTS AND REASONS"

1. Domestic violence is undoubtedly a human rights issue and serious deterrent to development. The Vienna Accord of 1994 and the Beijing Declaration and the Platform for Action (1995) have acknowledged this. The United Nations Committee on Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) in its General Recommendation No. XII (1989) has recommended that State should act to protect women against violence of any kind especially that occurring within the family.

2. The phenomenon of domestic violence is widely prevalent but has remained largely invisible in the public domain. Presently, where a woman is subjected to cruelty by her husband or his relatives, it is an offence under section 498A of the Indian Penal Code. The civil law does not however address this phenomenon in its entirety.

3. It is, therefore, proposed to enact a law keeping in view the rights guaranteed under articles 14, 15 and 21 of the Constitution to provide for a remedy under the civil law which is intended to protect the woman from being victims of domestic violence and to prevent the occurrence of domestic violence in the society.

4. The Bill, inter alia, seeks to provide for the following:-

(i) It covers those women who are or have been in a relationship with the abuser where both parties have lived together in a shared household and are related by consanguinity, marriage or through a relationship in the nature of marriage or adoption. In addition, relationships with family members living together as a joint family are also included. Even those women who are sisters, widows, mothers, single women, or living with the abuser are entitled to legal protection under the proposed legislation. However, whereas the Bill enables the wife or the female living in a relationship in the nature of marriage to file a complaint under the proposed enactment against any female relative of husband or the male partner, it does not enable any female relative of the husband or the male partner to file a complaint against the wife or the female partner.

(ii) It defines the expression "domestic violence" to include actual abuse or threat or abuse that is physical, sexual, verbal, emotional or economic. Harassment by way of unlawful dowry demands to the woman or her relatives would also be covered under this definition.

(iii) It provides for the rights of women to secure housing. It also provides household, whether or not she has any title or rights in such home or household. This right is secured by a residence order, which is passed by the Magistrate.

(iv) It empowers the Magistrate to pass protection orders in favour of the aggrieved person to prevent the respondent from aiding or committing an act of domestic violence or any other specified act, entering a workplace or any other place frequented by the aggrieved person, attempting to communicate with her, isolating any assets used by both the parties and causing violence to the aggrieved person, her relatives or others who provide her assistance from the domestic violence.

(v) It provides for appointment of Protection Officers and registration of non-governmental organizations as service providers for providing assistance to the aggrieved person with respect to her medical examination, obtaining legal aid, safe shelter, etc.

5. The Bill seeks to achieve the above objects. The notes on clauses explain the various provisions contained in the Bill.”

8. The preamble of the statute is again significant. It states:

*“**Preamble:** An Act to provide for more effective protection of the rights of women guaranteed under the constitution who are victims of violence of any kind occurring within the family and for matters connected therewith or incidental thereto.”*

9. What is of great significance is that the 2005 Act is to provide for effective protection of the rights of women who are victims of violence of any kind occurring within the family. The preamble also makes it clear that the reach of the Act is that violence, whether physical, sexual, verbal, emotional or economic, are all to be redressed by the statute. That the perpetrators and abettors of such violence can, in given situations, be women themselves, is obvious. With this object in mind, let us now examine the provisions of the statute itself.

The relevant provisions of the statute are contained in the following

Sections:

"2. Definitions.—In this Act, unless the context otherwise requires,—

(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 a domestic relationship either singly or along with 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.”

10. Section 12 of the DV Act provides for an aggrieved person or a protection officer or any other person on behalf of aggrieved person to present an application to the Magistrate seeking one or more reliefs under the Act. The expression “aggrieved person” as defined under Section 2(a) means any woman who is or has been in a domestic relationship with the Respondent and alleges to have been subjected to domestic violence by the Respondent. Thus, the Respondent has to essentially be in ‘domestic relationship’ with the

complainant. Furthermore, domestic relationship as defined in Section 2(f) is 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 (a) consanguinity (b) marriage or (c) through a relationship in the nature of marriage, adoption or (d) are family members living together as a joint family. Domestic violence has the same meaning as assigned to it in Section 3 of the DV Act.

11. A perusal of the complaint impugned clearly suggests that the Petitioners No.2 and 3 were never in a domestic relationship with the Respondent No.2. The Respondent No.2 has tried to somehow bring the 2nd and 3rd Petitioner within the ambit of the definition of 'domestic relationship' by claiming in a stray statement that the Petitioner No.2 is a second cousin of her husband and Petitioner No.3 is his son and thereby related to her through marriage. However, the complaint in its entirety clearly reveals that the allegations made against these Petitioners are in their capacity as father and brother of the Petitioner No.1 and not through her marital relation. The inept attempt of the Respondent No.2, in some way or the other, to fit these Petitioners in a domestic relationship is farfetched and hence, fails.

12. The complaint further narrates that being fed up of the alleged cruelty by the Petitioner No.1, the Respondent No.2-Smt. Afrin rented a flat in Kondhwa, Pune for the Petitioner No.1 and her husband-Mohsin. Another allegation against the Petitioners No.2 and 3 is that
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they insisted that Afrin should send her son Mohsin to live with Zeba's family as a house-husband. She alleges that they also demanded Rs.7 Lakhs from Afrin. Paragraph no.8 of the complaint further narrates that Afrin and Mohsin repeatedly tried to convince Zeba to resume co-habitation and start residing at their house but she refused to accede their request. Further allegations of threats to Afrin continue to find place in the complaint.

13. Thus, the averments in the complaint themselves do not bring the 2nd and 3rd Petitioner within the scope and ambit of the definition of 'aggrieved person', 'domestic violence', 'respondent' or 'shared household' in the DV Act. For the Respondent No.2 to be an 'aggrieved person' it has to be qua a 'Respondent' as defined in the Act. Moreover, the woman claiming to be the 'aggrieved person' must be in a 'domestic relationship' with the 'respondent'. Mere allegations of threat and violence against 2nd and 3rd Petitioners are not sufficient to make them liable for prosecution under the DV Act. They do not come within the purview of the definition of 'Respondent' since they do not satisfy the qualifying 'domestic relationship' criteria. Even the definition of 'shared household' excludes these Petitioners from being prosecuted under the Act.

14. Admittedly, the 2005 Act is a social beneficial legislation enacted to protect women from domestic violence of all kinds. While the object and purpose of the DV Act is to protect a woman from

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domestic violence, it does not confer a right on a mother-in-law to prosecute the father and brother of her daughter-in-law under the DV Act. The remedy against any alleged threats or violence against the father and brother of Zeba lies elsewhere. Hence, the DV proceeding against the Petitioners No.2 and 3 is not maintainable.

15. In so far as Zeba is concerned, although the averments in the complaint do not indicate the parties living in a 'shared house-hold for a substantial period, parties are related to each other by marriage and are also family members living together in the joint family at some point of time. The original definition of the 'respondent' in Section 2(q) was limited to mean 'any adult male person' who is or has been in a domestic relationship with the aggrieved person. However, the Supreme Court in its decision in the matter of *Hiral P Harsora and Ors v. Kusum Narottamdas Harsora*¹ has struck down the portion of Section 2(q) and declared as deleted the words 'adult male' appearing before the word 'person' in the provision. Thus, the word 'violence' in Section 3 of the Act defining "domestic violence", is gender neutral. It is also clear that physical abuse, verbal abuse, emotional abuse and economic abuse can all be by women against other women. Even sexual abuse may, in a given fact circumstance, be by one woman on another. Section 3, therefore, in tune with the general object of the Act, seeks to outlaw domestic violence of any

¹ (2016) 10 SCC 165
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kind against a woman, and is gender neutral.

16. In these circumstances, Zeba falls within the definition of the word 'respondent' under the Act. It can safely be held that a complaint by a mother-in-law under the DV Act is maintainable against her daughter-in-law, subject to the satisfaction of other criteria. I have not gone into the merits of the allegations made against Zeba and leave it to the DV Court to ascertain the veracity of the allegations made by Afrin against her while dealing with the complaint.

17. In view of the foregoing, the complaint against Petitioners No.2 and 3 is quashed and the summons issued to them by order dated 10th January 2019 of the JMFC, Koregaon, Satara are also set aside. The complaint against Zeba is maintainable and the DV Court is entitled to continue the prosecution against Zeba without being affected by any observations on merits made in this order. All other contentions of the parties are left open. It is again clarified that I have not gone into the merits of the complaint.

18. The petition stands disposed accordingly. There will be no order as to costs.

(DR. NEELA GOKHALE, J.)