
Punem Srinivas Rao And 2 Others Vs State Of Telangana And 3 Others

Writ Petition No. 22970 Of 2021

Court: High Court For The State Of Telangana:: At Hyderabad

Date of Decision: Sept. 27, 2021

Acts Referred:

Constitution Of India, 1950 " Article 14, 19, 21#Protection of Women from Domestic Violence Act, 2005 " Section 4, 5, 12, 18, 19, 20, 21, 22, 23, 28, 31#Indian Penal Code, 1860 " Section 498A

Hon'ble Judges: P.Naveen Rao, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

1. This writ petition is filed to grant the following relief:

1. Issue a Writ of Mandamus declaring the action of the respondents No.2 and 3 in initiating the proceedings in D.V.C.No.653 of 2020 under the

provisions of Protection of Women From Domestic Violence Act, 2005 is arbitrary, illegal, without jurisdiction and contrary to the provisions of

Protection of Women From Domestic Violence Act, 2005 and also in violation of fundamental rights of the petitioners guaranteed under Articles 14,

19 and 21 of Constitution of India and set aside the same and to pass such other order or orders appropriate in the case.

2. Third respondent is the wife of first petitioner. Fourth respondent is the daughter of third respondent. Petitioner Nos 2 and 3 are parents of first

petitioner, in-laws of third respondent and grand parents of fourth respondent. Third respondent filed case under Section 12 of Protection of Women

from Domestic Violence Act, 2005 (for short "the Act") against the petitioners alleging demand of dowry, ill-treatment, harassment and also

thrown out of the house with young child. She also filed petition to grant monetary relief under Section 20 of the Act. Order of prohibition under

Section 18 from committing acts of domestic violence and to grant Rs.20,000/- under Section 20 of the Act to each of the petitioners per month for

maintenance. In this writ petition, petitioners challenge the maintainability of DVC.No.653 of 2020 in the Court of Judicial Magistrate of First Class at

Luxettipet.

3. According to learned counsel for the petitioners only bald allegations are levelled without any merit and this case is initiated only to harass and

humiliate the petitioners. More particularly, petitioner Nos 2 and 3 are no way concerned with what is alleged as first petitioner and third respondent

have been living separately. As first petitioner is a police officer in Special Police, he has to live in the quarters located in the concerned Battalion.

Parents are not living with him and there was no occasion for parents of first petitioner behaving rudely against third respondent, ill-treating the third

respondent and question of throwing third respondent out of the house does not arise. By pointing out to the various averments in D.V.C. learned

counsel contends that these are all bald allegations, without any substance. Based on these bald allegations at least petitioner Nos 2 and 3 could not

have been included and prays to set aside the D.V.C. proceedings against all petitioners and alternatively at least insofar as petitioner Nos 2 and 3 are

concerned.

4. The purpose and object of enactment, scope of various provisions of the Act and conferment of jurisdiction on criminal Court were all considered

by this Court in WP.No.40818 of 2015.

5. This Court observed and held as under:

10. It is a special enactment dealing with domestic violence and provides protections and safeguards to the women from domestic violence. The Act

recognizes that only protection available to a woman was on cruelty by her husband or her relatives punishable under Section 498-A of I.P.C.; that

domestic violence is not reported properly; there is no mechanism to look into the grievances of the victims and remedies are not provided under civil

law. This Act enables wife or a female living in a relationship in the nature of marriage, a victim of domestic violence, to file a complaint against any

relative of the husband or the male partner. The expression "Domestic Violence" includes actual abuse or threat of abuse be it physical, sexual,

verbal, emotional or economic. It extends to harassment meted out to a woman or her relatives for unlawful dowry demand. It provides a woman to

secure housing, a right to reside in her matrimonial home or shared household even if she has no title or right in such home or shared household. The

Act also envisages 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.

11. The Act is a self-contained code; deals with what constitutes "domestic violence" and the remedies available to the victims and the

protection that is required to be provided from such violence. Unlike ordinary civil litigation, occurrence of domestic violence or imminent violence can

be reported by any one and based on such report case can be registered and proceedings would commence. The aggrieved person can enforce the

rights flowing out of the said Act by availing the remedies provided under the Act. The Act empowers the Magistrate to pass protection orders in

favour of the aggrieved person to prevent the respondents before the Court from aiding or committing an act of domestic violence or any other

specified act, entering a work place 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.

12. As per Section 28 of the Act, for matters arising under Sections 12 and 18 to 23 and offences under Section 31 of the Act, Code of Criminal

Procedure would apply. Section 12 of the Act deals with submission of application to Magistrate by which the Magistrate takes note of the complaint

and adjudicates the grievance. Section 18 of the Act deals with protection orders; Section 19 deals with residence orders; Section 20 deals with

monetary reliefs; Section 21 deals with custody orders; Section 22 deals with compensation orders; Section 23 deals with power to grant interim and

ex parte orders; and Section 31 deals with penalty for breach of protection order by the respondent. However, it is apparent that entire gamut of the

Code of Criminal Procedure is not extended mutatis mutandis. At this stage, going back to the objective for bringing about this Act, it is apparent that

Act intends to provide legal remedy, not addressed in codified civil law, against the phenomenon of domestic violence. In other words, the Indian

Parliament was conscious that women needed to be provided safeguards under the Act and remedies in addition to the remedies available under the

Indian Penal Code, and to fill the vacuum in civil law. Thus, merely because for some of the provisions of the Act, the Code of Criminal Procedure is

made applicable would not mean that the orders/decisions made under the Act are governed by the Code of Criminal Procedure. Further, though

Magistrate Court is vested with jurisdiction to adjudicate cases of domestic violence, but is not constrained by the Code of Criminal Procedure while

adjudicating cases under the Act and has the liberty to lay down its own procedure.

28. Domestic violence is a social evil and is crime against society, though victim is an individual. Having regard to illiteracy, lack of awareness,

financial resources and societal constraints, a victim may be compelled to suffer such violence against her will and therefore may not report the

incident/may not be in a position to seek appropriate legal remedy/may not have the means to resort to legal course. Ghastly incidents of such violence

are increasing. Therefore, Section 4 enables any person to complain on instance of domestic violence to the concerned protection officer. According

to Section 5 of the Act, Police Officer, Protection Officer, service provider or Magistrate, as the case may be, who receives complaint of domestic

violence or who was otherwise present at the place of an incident of domestic violence or when the domestic violence is reported, should inform the

aggrieved person of her right to make an application for obtaining a relief by way of a protection order, an order for monetary relief, a custody order, a

residence order, a compensation order, which are all referable to the provisions contained in Sections 18 to 23, or more than one such order under this

Act, the availability of services of service providers, protection officers, right to take free legal services under the Legal Services Authorities Act and

right to file a complaint under Section 498-A I.P.C. Thus, a reading of Sections 4 and 5 of the Act would make it clear that unlike any civil litigation,

the case can be registered and Magistrate can initiate proceedings under the Act even if an incident of occurrence of domestic violence/imminent

violation is reported by a third party and it is not necessary that aggrieved person alone should lodge a complaint. The aggrieved person can seek

further reliefs as per Sections 18 to 23 after cognizance is taken by the Magistrate.

29. Thus, the proceedings arising under the Act cannot be looked into as regular civil dispute between two rival claimants. This is a hybrid enactment

which takes care of rights of a victim in civil law while extending Code of Criminal Procedure to certain aspects. It is a welfare legislation aiming to

root out social menace. It is intended to protect a woman from social evil in the form of domestic violence. Thus, while considering an issue arising out

of such enactment, technicalities cannot defeat overarching objective to redress the grievance of an aggrieved person who claims to be a victim of

domestic violence. It must receive liberal construction.

6. Having regard to the view taken by this Court in WP.No.40818 of 2015, the averments made in the complaint are seen to test the contentions of

learned counsel for petitioners. In the complaint filed by respondent Nos 3 and 4, it is alleged that complainant and first petitioner were in love and

wanted to marry, there was demand of dowry as condition precedent to perform marriage and even thereafter there has been continuous demand of

dowry and alleging that additional dowry was not paid, third respondent was ill-treated earlier, during the pregnancy and after delivery of the child.

Petitioners have not cared to attend to third respondent when she was in the hospital and to look after the welfare of mother and new born and on the

contrary used abusive language. Complaint further alleges that petitioners have beaten the third respondent alleging that she begot a female child and

alleging that she did not bring additional dowry, she was necked out of the house. These allegations, if established are very grave. At this stage, the

Court cannot dwell into the truth in the allegations. It is for the petitioners to satisfy the trial Court that there is no element of truth in those allegations.

Suffice to note that complainant makes allegations against all the petitioners.

7. At this stage, it is suffice to notice that Judicial Magistrate of First Class is competent to entertain the complaint registered under the Act and

conduct trial into the allegations levelled by the complainant. When a Court of competent jurisdiction is seized of the matter, this Court in exercise of

power of judicial review cannot dwell into the merits of the allegations and interject the process of adjudication. Entertaining a writ petition to quash

the D.V.C. case at the initial stage would defeat the very object of making such enactment.

8. The decision of Madras High Court in K.Navaneethan v. Abirami @ Arulmozhi (Crl.OP.No.2291 of 2012) relied upon by learned counsel for the

petitioners turns on its facts and do not come to the aid of the petitioners. From the contents of decision of Madras High Court, it is seen that Court

was satisfied that there were no allegations made against other family members except on the husband of the complainant therein.

9. Writ Petition is dismissed leaving it open to the petitioners to raise all pleas as available in law before the trial Court. It is also open to the petitioners

to seek dispensing the appearance of petitioner Nos 2 and 3 and it is for the trial Court to consider such request on its own merits. It is made clear that

observations made above are only for the purpose of the considering the issue of maintainability of writ petition. Pending miscellaneous petitions, if

any, shall stand closed.