

(2010) 07 JH CK 0041
Jharkhand High Court
Case No: Criminal M.P. No. 7 of 2010

Rakesh Sachdeva and
Others

APPELLANT

Vs

State of Jharkhand
and Neelam Sachdeva

RESPONDENT

Date of Decision: July 9, 2010

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Protection of Women From Domestic Violence Act, 2005 - Section 12, 12(5), 18, 2

Citation: (2011) CriLJ 158

Hon'ble Judges: Dabbiru Ganeshrao Patnaik, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

D.G.R. Patnaik, J.

The petitioners, herein, by invoking the inherent jurisdiction of this Court u/s 482 of the Cr.P.C., have prayed for quashing the entire proceedings of C.P. Case No. 754 of 2009, initiated u/s 12 of the Protection of Women from Domestic Violence Act, 2005. The prayer includes quashing of the order dated-23.07.2009, passed by the Judicial Magistrate, Dhanbad whereby the petition filed by the petitioners for summary dismissal of the case was rejected. The petitioners have also prayed for quashing the order dated-30.11.2009, passed by the Sessions Judge, Dhanbad in Criminal Revision No. 255 of 2009, whereby the Revision application filed by the petitioners against the order of cognizance, dated-23.07.2009, was also dismissed.

2. Heard the learned Counsel for the petitioners and learned Counsel for the Opposite Party No. 2 as also the learned Counsel for the State.

3. Brief facts of the case, are as follows:

Neelam Sachdeva the Opposite Party No. 2 filed a complaint before the court of the Chief Judicial Magistrate, Dhanbad u/s 12 of the Protection of Women from Domestic Violence Act, 2005, praying for an order of her protection u/s 18 of the Act. The nature of protection, sought for, was by way of order of injunction in terms of Columns 4(a)(b)(c)(d)(e)(f)(g) of the application restraining them from indulging in any acts of domestic violence and also restraining them from alienating her assets as also restraining them from dispossessing her from the shared household, besides the order of protection, she has also prayed for a direction to be issued against the Opposite party for providing her monetary relief and compensation.

The case of the complainant is that her marriage with the Opposite Party, Rakesh Sachdeva was solemnized on 21.02.1985 at Dhanbad. After her marriage, she commenced living with her husband at her matrimonial house, which comprised of a joint family including the parents-in-law and the brothers and sisters-in-law. After marriage of her brother-in-law three years later, the relations between the members of the family became sour and strained and in course of time, the husband and the members of the family subjecting her to mental cruelty by taunting her that she was a barren lady unable to give birth to a child. On the pretext that her separation from the family would restore peace, her husband brought and kept her at his brother's house at Dhanbad though he used to occasionally visit and take her on social outings during the period of his visits. She was thus compelled to live separately from her husband and her matrimonial house for more than four years and when she insisted that she should be taken back, her husband dissuaded her on the ground that his earnings from his business was not sufficient to meet the household expenses. On being compelled by her husband, she had to take a job as a teacher in a School but even then, except for attending some occasional family rituals, she was not given the privilege of permanent access to her matrimonial house and the company of her husband. She was thus forced to live separate from her husband. She later came to learn that her husband had filed a suit for divorce against her in the year 2006. In the matrimonial suit, she was granted a maintenance allowance of Rs. 1,000/- per month. Alleging that her husband and in-laws have conspired to deprive her of her matrimonial rights as well as rights in the property of her husband including her rights to share the husband's household, she had alleged that she is being subjected to various acts of domestic violence and has therefore, sought for protection.

4. Upon receipt of the complaint, the Chief Judicial Magistrate registered a case and transferred the same to the Judicial Magistrate for enquiry.

Notice was issued to the Opposite Party, namely, the present petitioners to appear. After submitting their appearance, the petitioners filed an application for dropping the proceedings on the ground that the very initiation of the proceedings was illegal and not in consonance with law in as much as even after going through the entire allegations in the complaint petition, no case for any proceeding u/s 12 of the Act is

made out nor has the complainant made out any case for grant of any order of protection as claimed by her, against the petitioners.

5. Assailing the impugned order of the Judicial Magistrate as also that of the Revisional court, learned Counsel for the petitioners would argue that the alleged acts of domestic violence relates to the period, prior to 2005. The Protection of Women from Domestic Violence Act, 2005, came into force on 26.10.2006. The provisions of the Act would have prospective operation and not retrospective, and therefore, in this view of the matter, the initiation of the proceedings for enquiry u/s 12 of the Act in respect of the alleged act of violence, pertaining to a much earlier period, is itself bad in law.

Referring to some of the allegations in the complaint, learned Counsel would want to explain that even according to the complainant's assertion, her husband was suffering from physical disability and impotency and on account of such grounds, she had voluntarily left her association with her husband and had left her matrimonial house and had ultimately deserted him since 1993. Under such circumstances, the husband had to file a suit for divorce against her in the Family Court at Dhanbad.

Learned Counsel explains further that before initiating the enquiry u/s 12 of the Act, though the Chief Judicial Magistrate had called upon the Protection Officer to submit an incident report, but even without obtaining any such report, has proceeded to conduct the enquiry into the complaint against the petitioners by summoning them to face the enquiry. This, according to the learned Counsel, is contrary to the provisions of law, since the C.J.M. could not possibly take cognizance on the complaint of the Opposite Party without taking into consideration any domestic incident report from the Protection Officer.

Learned Counsel argues further, that even otherwise, the wives of the brothers of the petitioners are not likely to be prosecuted under the Act.

Summing up his arguments, learned Counsel submits that in view of the admitted fact that a Title Matrimonial suit is pending and in view of the fact that the alleged act of domestic violence are of the period much prior to the date when the Act came into force, the continuation of the enquiry proceedings against the petitioners is bad in law and is illegal.

6. Refuting the entire grounds, raised by the petitioners, learned Counsel for the Complainant/Opposite Party No. 2 would submit that the present application is thoroughly misconceived and is not maintainable. Rather, this application is premature, since no final order u/s 18 of the Act has been passed. Even otherwise, in the event of a final order being passed u/s 18 of the Act, the procedure laid down in the act enables Revision to be filed against such order.

Referring to the contents of the complaint petition of the Complainant/Opposite Party No. 2, learned Counsel submits that the contention of the petitioners that the alleged act of domestic violence, are confined to a period prior to the date when the Act came into force, is totally misconceived. Referring to the definition of the term "Domestic violence" as laid down in Section 2 of the Act, learned Counsel submits that the acts of domestic violence also include verbal and emotional abuse, economic abuse, deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom, alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship, prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household. Learned Counsel adds that in the complaint petition, the Opposite Party No. 2 has specifically stated that the husband and her in-laws have been depriving her of all economic and financial resources to which she is entitled including her right of access to the shared household with her husband and have been threatening her of alienating the assets including movable and immovable properties to which she is entitled to by way of her domestic relationship with her husband. All such acts of domestic violence was still continuing against the Opposite Party No. 2 though according to the learned Counsel, her right to claim protection under the provisions of the Act.

7. I have heard the learned Counsel for the parties and I have gone through the materials available on record.

8. As it appears, upon the receipt of the complaint of the Opposite Party No. 2, an enquiry has been initiated against the petitioners under the provisions of Section 12 of the Act. The statement of the complainant was recorded in course of enquiry and simultaneously a report was called for from the Protection Officer, to be submitted within two days from receiving the notice.

9. Upon receipt of the notice issued by the Enquiry Magistrate, the Opposite Party in the proceedings, namely, the present petitioners, filed their appearance. An objection against the continuance of the proceedings, was taken by the petitioners.

After hearing both the parties, the learned Magistrate rejected the prayer for dropping the proceedings on the ground that the allegations do indicate that the act of domestic violence, as alleged, by the complainant is a continuing act of violence and the provisions of the Act are certainly attracted. The mere fact that the proceedings for enquiry has been initiated against the two female members, in itself, would not render the order of cognizance as bad, since in addition to the two aforesaid female members, the other members of the Opposite Party in the proceedings are male members of the complainant's matrimonial family.

10. Against the order of the Magistrate, the petitioner has filed a Revision application before the Sessions Judge, which also came to be rejected by the impugned order of the Revisional court.

11. Section 12 as contained in Chapter IV of the Protection of Women from Domestic Violence Act, 2005 lays down the procedure for obtaining order or reliefs and it reads 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.

(2) The relief sought for under Sub-section (1) may include a relief for issuance of an order for payment of compensation or damages without prejudice to the right of such person to institute a suit for compensation or damages for the injuries caused by the acts of domestic violence committed by the respondent:

Provided that where a decree for any amount as compensation or damages has been passed by any Court in favour of the aggrieved person, the amount, if any, paid or payable in pursuance of the order made by the Magistrate under this Act shall be set off against the amount payable under such decree and the decree shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), or any other law for the time being in force, be executable for the balance amount, if any, left after such set off.

(3) Every application under Sub-section (1) shall be in such form and contain such particulars as may be prescribed or as nearly as possible thereto.

(4) The Magistrate shall fix the first date of hearing, which shall not ordinarily be beyond three days from the date of receipt of the application by the Court.

(5) The Magistrate shall endeavour to dispose of every application made under Sub-section (1) within a period of sixty days from the date of its first hearing.

12. It would thus appear that the proviso to Section 12 would impose that before passing any order on an application of the aggrieved person, the Magistrate shall take into consideration any domestic incident report received by him from the Protection Officer. The order contemplated in the proviso relates to the final orders, which the Magistrate, may pass u/s 18 of the Act. The Protection orders, which the Magistrate may pass u/s 18 of the Act, is only on being prima facie satisfied that the domestic violence has taken place or is likely to take place. The insistence to take into consideration the domestic incident report of the Protection Officer would therefore, not apply at the stage of initiation of the enquiry u/s 12 of the Act. The

contention of the petitioners that without considering the domestic incident report, the very initiation of the enquiry is bad, appears to be misconceived and therefore, not tenable.

13. As regards the petitioners' contention that since the alleged acts of domestic violence relate to a period prior to the date when the domestic violence Act was made effective no proceedings could be initiated under the Act against the petitioners, I find from the contents of the complaint petition of the Opposite Party No. 2, referring to the acts of mental and physical cruelty, which was allegedly inflicted upon her during her sojourn at her matrimonial house and later, such acts of cruelty include her forcible separation from the company of her husband and deprivation of her conjugal rights. She has also alleged that she has been subjected to forcible desertion and has also been refused access to the shared household with her husband as well as alienation of the assets to which she would have right in her matrimonial house by virtue of her domestic relationship with her husband. Such acts of deprivation from economic and financial resources, refusal of access to the shared household and threats of alienation of assets in which she has an interest or is entitled, by virtue of her domestic relationship with her husband, is allegedly still continuing against her.

In the light of such allegations, the contention of the petitioners that the provisions of the Protection of Women from Domestic Violence Act, 2005, would not apply, also appears to be misconceived.

14. From the admitted facts, the present stage of the proceedings is at the enquiry stage. The petitioners have been called upon to participate in the enquiry, thereby enabling them opportunity of rebutting whatever evidences, which the complainant and her witnesses may adduce in support of her claim for protection. It is for the Enquiring Magistrate, upon conducting the enquiry, to assess as to whether the complainant would be entitled to any of the relief's of protection as claimed by her. It would be open to the petitioners to satisfy the Enquiring Magistrate that the complainant has not made out any case for an order of protection in her favour.

15. As rightly pointed out by the learned Counsel for the Opposite Party No. 2, the Act does provide a remedy of appeal to the court of Sessions against the final orders, passed by the Magistrate at the conclusion of the enquiry, made u/s 18 of the Act.

16. In the light of the facts and circumstances and the discussions made, I do not find any merit in this application. Accordingly, this application is dismissed. The Enquiry Magistrate is directed to conclude the enquiry within the period stipulated under Sub-section 5 of Section 12 of the Act.