

(2016) 02 KAR CK 0009

KARNATAKA HIGH COURT

Case No: Criminal Petition No. 5246 of 2010 connected with Criminal Petition No. 3685 of 2013.

Smt. Nagarathnamma and
Others - Petitioners @HASH Smt.
M.S. Vanithashree

APPELLANT

Vs

RESPONDENT

Date of Decision: Feb. 1, 2016

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Protection of Women From Domestic Violence Act, 2005 - Section 12, Section 28

Citation: (2016) 4 KantLJ 121

Hon'ble Judges: Mrs. Rathnakala, J.

Bench: Single Bench

Advocate: Sri Gururaj Joshi, Advocate, for the Petitioner; Sri L. Harish Kumar, Advocate, for the Respondent

Final Decision: Disposed Off

Judgement

@JUDGMENTTAG-ORDER

Mrs. Rathnakala, J. - In Cri.P.No. 5246 of 2010:

The petitioners herein are arrayed as respondents in proceedings initiated by the respondent under the provision of Protection of Women from Domestic Violence Act, 2005 (for brevity, "Act"). They are her in-laws. She is wife of V. Santosh Nagammanavar, S/o petitioners 1 and 2 and brother of 3rd and 5th petitioners, 4th petitioner is a married daughter of the family.

2. The allegation of the respondent in her petition under Section 12 of the Act in essence was, she was living with her in-laws, pursuant to her marriage, she went to UK with her husband on 20-5-2006. He was taking good care of her. However, when

these petitioners contacted him over phone, he would pick up quarrel with her for trivial reasons. During December 2006, he brought her back to India and left her in the matrimonial house by insisting her to take up course in computers and staying in her parents' house, he returned to UK. Thereafter, from June 2007, he stopped telephonic calls to her. He issued a legal notice calling upon her to consent for divorce. She had tolerated all the harassment of dowry inflicted on her by the in-laws. During her stay at her in-laws house, she was beaten, tortured, abused on one pretext or the other that she is unemployed and she has no other source of income. She was willing to go and reside at the matrimonial house, however, her in-laws in collusion with their daughters, son have been threatening that they would not allow her to stay in the matrimonial house. She intended to go and reside with the respondent-husband, however, she fears harassment and danger to her life... etc.

3. Sri Gururaj Joshi, learned Counsel for the petitioners submits that 3rd petitioner is a deserted woman, after marriage she is staying with her parents. 4th petitioner is residing at UK on the assignment of her husband herself. 5th petitioner is residing away from his parents with his family in a house constructed of his own. He is also abroad on assignment of his profession. Respondent-wife does not have any matrimonial house in Bengaluru. Whenever her husband visits India, he resides with his brother-5th petitioner. Several proceedings are pending between the petitioners and her husband. Divorce petition is filed by her husband whereas respondent has filed a petition for restitution of conjugal rights. Criminal case was also initiated on her husband. This Court quashed the complaint against all in-laws except her husband Dr. Santosh. She is not entitled for any relief against the respondent in the present petition. Without application of mind, learned Magistrate has issued process against them. Notice issued without calling for Child Development and Protection Officer Report is erroneous. Petitioners 1 and 3 being female relatives cannot be arrayed as respondents within the meaning of Section 2(q) of the Act. None of them are having domestic relationship with her within the meaning of Section 2(f) of the Act. The complaint filed by her against these petitioners ended up with B report. Further investigation is quashed by this Court. There is no shared household within the meaning of Section 2(s) of the Act. Sections 18, 19 and 20 of the Act are not applicable so far as these petitioners are concerned. They cannot be called upon to pay monetary relief to the respondent under Section 20(2) of the Act. Hence, the entire proceedings is liable to be quashed in the light of the judgments of the Apex Court and in catena of the judicial pronouncements passed by this Court.

4. Sri L. Harish Kumar, learned Counsel for the respondent submits that the petition filed by her husband for divorce is dismissed and her petition for restitution of conjugal rights is allowed. She was prevented by her in-laws in joining the matrimonial house at Bengaluru. Hence, she was compelled to file petition for protection and maintenance orders under the Act. The proceedings under the Act being civil in nature, the provision of Section 482 of Criminal Procedure Code, 1973

is not applicable in the present circumstances. As per the judgment of the Apex Court in the case of **Sou. Sandhya Manoj Wankhade v. Manoj Bhimrao Wankhade and others, (2011) 3 SCC 650 : 2011 Cri. L.J. 1687 (SC)**, in Cri. Appeal No. 271 of 2011, dated 31-1-2011, wherein it has observed that "respondent" as under Section 2(q) of the Act applies to the female members also. Earlier petition filed by these petitioners in W.P. No. 48009 of 2012 (GM-Res) was dismissed on 6-3-2015. Since the petition filed by her husband for divorce is dismissed, the petitioners herein are to be restrained from committing violence against her. The contentions raised in this petition can be advanced by them before the Trial Court. It is too premature to quash the entire proceedings as held in similar circumstances by this Court. They cannot respect for the law since they are not paying maintenance amount, they are not entitled for any relief. The petition is liable to be rejected.

5. On survey of the entire complaint, specific allegation against these petitioners, the husband in collusion with his family members/petitioners harassed his wife to a maximum extent for dowry, marriage was celebrated on 8-5-2006. Until she left to UK with her husband, she was staying with her in-laws till 20-5-2006, whenever, in-laws called 1st petitioner over the phone and engaged in long conversations, pursuant to that he picked up quarrel with the wife, after return from UK, as per directions of her husband and the petitioners, she resided with her parents. After leaving his wife in India, he left to UK and disconnected from the wife after June 2007, though she was willing to stay in the matrimonial home, her in-laws were threatening her to stay away from the matrimonial home.

6. In the light of the above submissions, following points need to be addressed:

1. Whether the wife had shared household with these petitioners?

2. Criminal prosecution against these petitioners on the very same allegation having already been quashed by this Court whether the petitioners could be fastened with the liability of Domestic Violence?

7. The Apex Court in the matter of **S.R. Batra and another v. Smt. Taruna Batra, AIR 2007 SC 1118 : (2007) 2 SCC (Cri.) 56 : (2007) 3 SCC 169**, referred to the judgment of **B.R. Mehta v. Atma Devi, AIR 1987 SC 2220 : (1987) 4 SCC 183**, observed that: "in England the rights of the spouses to the matrimonial home are governed by the Matrimonial Homes Act, 1967, no such right exists in India. Further it was held at para 17 that: "There is no such law in India like the British Matrimonial Homes Act, 1967, and in any case, the rights which may be available under any law can only be as against the husband and not against the father-in-law or mother-in-law".

In accordance with the definition of Shared Household under Section 2(s) of the Act, if it is found that the parties had shared household then question of granting relief under Sections 17 (regarding Right to reside in a shared household), 18 (Protection orders) and 19 (Residence orders) would arise for consideration.

8. The Apex Court brushing aside the contention for the wife that the definition of the Shared Household includes "where the person aggrieved lives or at any stage had lived in a domestic relationship" observed at paras 26 and 27 of the judgment which reads thus:

"26. If the aforesaid submission is accepted, then it will mean that wherever the husband and wife lived together in the past that property becomes a shared household. It is quite possible that the husband and wife may have lived together in dozens of places e.g. with the husband's father, husband's paternal grandparents, his maternal parents, uncles, aunts, brothers, sisters, nephews, nieces, etc., if the interpretation canvassed by the learned Counsel for the respondent is accepted, all these houses of the husband's relatives will be shared households and the wife can well insist in living in all these house of her husband's relatives merely because she had stayed with her husband for some time in those houses in the past. Such a view would lead to chaos and would be absurd.

27. It is well-settled that any interpretation which leads to absurdity should not be accepted."

9. On the showing of the complainant herself, she resided hardly 10 to 12 days with her in-laws subsequent to marriage. After return from the UK, though she has resided for some time with her in-laws, there is no specific averment as to how many days she resided with them. On her own showing, the husband was residing at UK at the relevant point of time, a temporary stay of the couple subsequent to the marriage, at any expansion of logic will not yield to a proposition that it was shared household of the parties. It is not a joint family property of her husband and in-laws, but a rented one. She does not specifically deny the contention of the petitioners that these parents are presently residing with the 5th petitioner in the house owned by him. That being so, she cannot attribute the residence of the 5th petitioner/brother-in-law as shared household of the petitioners and herself.

10. Paras 29 and 30 of the judgment in the case of S.R. Batra, which reads thus:

"29. As regards Section 17(1) of the Act, in our opinion the wife is only entitled to claim a right to residence in a shared household, and a shared household would only mean the house belonging to the or taken on rent by the husband, or the house which belongs to the joint family of which the husband is a member. The property in question in the present case neither belongs to Amit Batra nor was it taken on rent by him nor is it a joint family property of which the husband Amit Batra is a member. It is the exclusive property of appellant 2-mother of Amit Batra. Hence, it cannot be called a "shared household".

30. No doubt, the definition of "shared household" in Section 2(s) of the Act is not very happily worded, and appears to be the result of clumsy drafting, but we have to give it an interpretation which is sensible and which does not lead to chaos in society."

11. The contention regarding female members cannot be arrayed as respondents in a proceedings under the Act is no more res integra, in view of the judgment of the Apex Court in the case of Sou. Sandhya Manoj Wankhade. There is no impediment to include a female relative of the husband as respondent in the absence of any clear exclusion of the female members under the Act from the array of the respondent in the complaint under the Act.

12. In the judgment of the Apex Court in the case of **Kailash Chandra Agrawal and another v. State of Uttar Pradesh and others, 2014 AIR SCW 6152 : (2014) 16 SCC 551 : (2015) 3 SCC (Cri.) 536**, the complaint which did not attribute specific role to the relatives of the husband was quashed, by referring to the judgment in the case of **Kans Raj v. State of Punjab and others, AIR 2000 SC 2324 : 2000 SCC (Cri.) 935 : 2000 Cri. L.J. 2903 (SC) : (2000) 5 SCC 207**, which reads thus:

"5..... A tendency has, however, developed for roping in all relations of the in-laws of the deceased wives in the matters of downy deaths which, if not discouraged, is likely to affect the case of the prosecution even against the real culprits. In their over enthusiasm and anxiety to seek conviction for maximum people, the parents of the deceased have been found to be making efforts for involving other relations which ultimately weaken the case of the prosecution even against the real accused as appears to have happened in the instant case."

13. The respondent has placed reliance on the various judgments of this Court whereby the in-laws when challenged their inclusion in the case instituted by the aggrieved wife in a proceedings under the Act, this Court has dismissed such petitions directing them to face trial. In the present case, charge-sheet was filed against husband only. She, therefore, filed a complaint to the Commissioner of Police against these petitioners. In pursuance of said complaint, prosecution filed an applicant under Section 173(8) of Cr.P.C. requesting for reinvestigation of complaint filed by wife. The application was allowed directing the Investigating Officer to conduct further investigation under Section 173(8) of Cr.P.C. against accused 2 to 6, i.e. present petitioners. Accordingly, investigation was held and additional charge-sheet was filed against them. The petitioners challenged the order of the Magistrate and additional charge-sheet in Cr.P. No. 3704 of 2009 under Section 482 of Cr.P.C. Co-ordinate Bench of this Court, held that, in the absence of any application by the Investigating Officer, Magistrate cannot exercise the powers to direct further investigation on the request of Senior APP and the only course left open for the complaint was to have recourse to the provisions of Section 319 of Cr.P.C. during the trial. Thereby the criminal petition was allowed and the order of the Magistrate directing further investigation and additional charge-sheet filed in pursuance of the said order against these petitioners were quashed and the order has become final.

14. In the light of the above, now the submission on behalf of the wife is since additional charge-sheet is quashed on technical ground, the order of this Court in

Cri.P. No. 3704 of 2009 is not a bar to prosecute her complaint both under criminal proceeding and present proceedings.

15. The order of learned Magistrate in issuing process against the petitioners was not warranted and amounts to abuse process of law" thereby liable to be quashed in exercise of jurisdiction under Section 482 of Cr.P.C. Because of operation of interim stay order granted in this petition, the criminal proceeding is absconding. If the petition is dismissed, the wife can exercise the liberty reserved to her to invoke provisions of Section 319 of Cr.P.C.

Even if above submission is accepted on its face value, then also it cannot be lost sight of that Domestic Violence as contemplated under Section 3 of the Act, "Cruelly" as contemplated under Section 498-A of IPC are to be independently proved in the respective case. When no case is made out by wife in the complaint that the parties resided together under same roof as members of a joint family, her stay with her parents-in-laws subsequent to marriage till she left for UK with her husband, was only a sojourn and they cannot be answerable to her claims in the present proceedings.

16. Very maintainability of the petition under Section 482 of Cr.P.C. in respect of proceeding under the Domestic Violence Act is questioned by learned Counsel for the wife. The contention is, the case is not registered by the police, for the absence of respondents, they will be placed ex-parte. Reliefs that will be claimed in a case under the Act, since both civil and criminal in nature, the jurisdiction under Section 482 of Cr.P.C. cannot be invoked.

17. Code of Criminal Procedure is made applicable by Section 28 of the Act in respect of proceedings under Sections 12, 18, 19, 20, 21, 22 and 23 and offence under Section 31 of the Act. Though a proceedings under Section 125 of Cr.P.C./maintenance case, the absentee respondent will be placed ex parte, in recovery proceedings. Fine Levy Warrant (as under Chapter XXXII C-Sections 421 to 424 of Cr.P.C.) and sentence of imprisonment (as at Chapter IX, Section 125, sub-section (3) of Cr.P.C.) will be ordered. When Code of Criminal Procedure is made applicable to a proceeding under the Act, there is no impediment to an aggrieved party to invoke provision of Section 482 of Cr.P.C. In our cultural set family, relation plays a vital role in an individual's life. It is highly probable that though the kith and kin are residing far away from estranged couple, their moral support is in favour of their own son or daughter. But civil and criminal liability cannot found in such logic or hypothesis. The complaint averments shall disclose specifically the positive roll of family member in the alleged acts of Domestic Violence. If family members are dragged to trial on speculation, imaginary and vague allegation and legal endorsement is stamped on it, the consequence is catastrophic. In that view of the matter, the proceedings as against these petitioners amount to abuse of process of law.

Cri.P. No. 5246 of 2010 is allowed. The entire proceedings in Cri. Misc. No. 2000 of 2009, on the file of 1st Additional C.M.M., Bangalore, as against these petitioners are concerned, is quashed.

In Cri.P. No. 3685 of 2013:

18. The petitioner-wife is aggrieved by the order of the learned Principal City and Sessions Judge, Bangalore, in transferring criminal proceedings in Cri. Misc. No. 186 of 2011, from the Court of MMTC-V, Bangalore to II Additional Chief Metropolitan Magistrate, Bangalore City", where the criminal proceedings in CC No. 15092 of 2009 in respect of the offence punishable under Section 498-A of Indian Penal Code, 1860 and Sections 3 and 4 of Dowry Prohibition Act, 1961, is pending. At the instance of wife, criminal proceedings are initiated against respondent in-laws and husband who is said to be absconding. On the request of parents-in-laws (petitioners Nos. 1 and 2 of Cri.P. No. 5246 of 2010), learned District Judge transferred the case by opining that the nature of trial and proof is akin in both case. Since the domestic violence case is tried by the MMTC-V, there is no case is pending before the learned Magistrate. Posting the cases before the MMTC, the Court is to see the cases are disposed of expeditiously.

19. It is about 3 years, the case in Cri. Misc. No. 6130 of 2012 was transferred to the II Addl. CMM, Bangalore, where the criminal proceedings are pending. In view of the order passed in Cri. P. No. 5246 of 2010, the proceedings under DV Act against the petitioners therein is liable to be quashed. That being so, there is no question of adjudicating both cases together against in-laws. Respondent 2-father-in-law/Sri Vishnupanth Nagammanavar already expired during the pendency of the petition before this Court and mother-in-law Smt. Nagarathnamma (petitioner 1 in Cri. P. No. 5246 of 2010) is not the accused in the criminal case and additional charge-sheet filed against her and deceased Vishnupanth Nagammanavar is quashed by this Court. Transfer of the case in respect of DV Act was mainly on the ground that the allegations are similar, but the subsequent developments have changed the circumstances.

20. In the light of the facts as existed there, the order of the learned District Judge cannot be found fault with.

21`The petition is disposed of. However, liberty is reserved to the petitioner to move petition under Section 408 of Cr.P.C. before Principal District and Sessions Judge to re-transfer the case to the original Court i.e. MMTC-V, where the case was initially pending.