

K. Karnala, K. Paskngili and C. Vasantharaja Vs M. Parimala and The District Social Welfare Office cum The District Dowry Prohibition Officer, Dindigul

Court: Madras High Court (Madurai Bench)

Date of Decision: April 28, 2009

Citation: (2009) 2 LW(Cri) 893

Hon'ble Judges: V. Periya Karuppiyah, J

Bench: Single Bench

Advocate: Veera Kathiravan, for the Appellant; R.R. Kannan for RI and Mr. L. Murugan Govt. Advocate (Crl. Side) for R2, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

V. Periya Karuppiyah, J.

This petition has been filed by the petitioners seeking to quash the cognizance order passed by the learned Judicial

Magistrate No. II, Dindigul, in C.C.No.465 of 2008 as illegal and abuse of process of law and misuse of provisions of the Protection of Women

from Domestic Violence Act, 2005 (herein after called as "Act").

2. The brief facts of the case are as follows:-

The first petitioner is the mother-in-law, the second petitioner is the sister-in-law and the third petitioner is the husband of the sister-in-law of the

first respondent. The first respondent preferred a complaint against the petitioners under the said Act. The allegation against the first

petitioner/mother-in-law is that she wrote a letter to the Secretary, L.I.C. Employees Association, Dindigul, where the first respondent is working

and a second letter to the Public Relation Officer, Deputy Commercial Tax Officer-IV, Commercial Tax Office, Dindigul, where the first

respondent's husband is working, with some allegations against the petitioner, under the guise of seeking for certain information"s. The only

allegation as against the petitioners 2 and 3 is that the 2nd petitioner/sister-in-law had written complaint where the first petitioner/mother-in-law had

put her signature. Further, on 09.05.2008 the petitioners 2 and 3 were attacked the first respondent and based on which, a complaint has been

given and based on the complaint a case has been registered in 128 of 2008 which is pending on the file of the Police. Further, the first respondent

claimed compensation of Rs. 10 lakhs under the Act. The learned Judicial Magistrate concerned has also taken cognizance of the same, as if the

complainant is entitled for compensation. The offence said to have committed by the petitioners are under Sections 18, 20, 21, 22 and 23 of the

Act. Based on the complaint, the 2nd respondent has forwarded it to the trial court for prosecution and a criminal case was registered in

C.C.No.465 of 2008 on the file of the learned Judicial Magistrate No. II, Dindigul and they were arrayed as respondents/accused. The learned

Judicial Magistrate No. II, Dindigul has taken cognizance and issued summons in the said complaint. Challenging the same, the petitioners have

come forward with the present Criminal Original Petition for the relief as stated supra.

3. Heard Mr. Veera Kathiravan, learned counsel appearing for the petitioner and Mr. R.R. Kannan, learned counsel appearing for the first

respondent and Mr. L. Murugan, learned Government Advocate (Crl. Side) appearing for the second respondent.

4. The learned counsel for the petitioner would submit in his argument that the petition given by the first respondent against the petitioners herein,

who are the mother-in-law, sister-in-law and husband of the sister-in-law of the first respondent, was without any verification to be submitted by

the protection Officer before the learned Judicial Magistrate No. II, Dindigul and the same was taken cognizance and summons were issued in

contravention of the provisions of the Act and therefore, the order of cognizance passed by the learned Judicial Magistrate No. II, Dindigul, in

C.C.No.465 of 2008 has to be quashed.

5. The learned counsel for the petitioners would further submit in his argument that the first respondent's husband was not included as respondent

and therefore, it cannot be said that the petitioners are liable to be proceeded under the provisions of the said Act. The said inclusion of female

members, as the relatives of the husband, as respondents, is not sustainable u/s 2(q) of the Act. He would further submit that the allegations said to

have been made against the petitioners in Form-I under the Act, are not adequate, to take cognizance and on the face of it, the offence against the

petitioners pertaining to the 3 days" cause of action viz., 26.04.2008, 30.04.2008 and 09.05.2008 are not sustainable and admittedly, on

09.05.2008, a complaint has been already lodged before the Police, North Police Station, Dindigul Town, Dindigul, and the Police have also given

the receipt in C.S.R.No.128 of 2008. Now, the very same cause of action, has beer repeated here and it would amount to ?double jeopardy?

against the petitioners.

6. The learned counsel would further submit that the allegations as against the 2nd and 3rd petitioners in the said complaint would be that they

helped the first petitioner to write the petition against the first respondent on 26.04.2008 and another petition against the husband of the first

respondent on 30.04.2008 to their respective offices. He would state that no material has been produced for the purpose of criminating the 2nd

and 3rd petitioners and merely because they are living with the first petitioner, it cannot be said that they have instigated the first petitioner to write

so. Moreover, he would also submit that the dispute between the first petitioner and her son namely, the husband of the first respondent and

another younger son, in respect of the property, bequeathed by her husband in her favour for enjoying the property till her lifetime and the vested

remainder to the sons. The first petitioner is in possession of the said property, situated in Salem, in pursuance of her life interest, the first

respondent wanted her to get out of the property and immediately she caused disturbances by harassing the first petitioner by giving this complaint.

He would further submit that the allegations in the letter dated 26.04.2008, written by the first petitioner to the Secretary, L.I.C. Employees

Association might not have been disclosed to the first respondent for warranting a cause of action. For this, an enquiry has to be conducted by the

L.I.C. Employees Association, where the first respondent is working and therefore, there could not be any mental stress or domestic violence as

told by the first respondent in the petition.

7. He would further submit that the letter dated 30.04.2008 written by the first petitioner seeking for information about the particulars of the

employment of her son from his employer, and her son was not in any way prejudiced by the first petitioner and absolutely there was no cause of

action for the aggrieved person. If any stress is emanating out of the letter dated 30.04.2008, it would be the first petitioner's son and the second

cause of action is also not sustainable both in law and on facts. Without following of the legal formalities, the learned Judicial Magistrate No. II,

Dindigul, has taken the complaint on file, which has to be quashed.

8. The learned counsel for the first respondent would submit in his argument that after taking cognizance of the complaint, about 39 hearings have

passed and the petitioners have appeared for 5 hearings only and now, they have come forward with this case at the belated stage only. He would

further submit that the petitioners are certainly attracted under the definition of "domestic relationship" as per Section 2(f) of the said Act and the

first respondent is entitled to give such a complaint against the petitioners, who are defined as "respondents", as per Section 2(q) of the said Act

and this petition has been filed only for prolonging the case so as to defeat the provisions of Section 12(5) of the Act, regarding the disposal of the

case made under Sub-Section (1) within a period of 60 days from the date of taking cognizance. Therefore, he requests the Court to dismiss the

petition as not sustainable.

9. The learned Government Advocate (Criminal Side) would reiterate the argument of the first respondent and he would also submit that the

Protection Officer has promptly filed the application in time and it has been taken cognizance and there is no infirmity in the order passed by the

learned Judicial Magistrate No. II, Dindigul in taking cognizance of the case and therefore, the petition may be dismissed.

10. I have carefully considered the submissions made on either side.

11. The foremost contention of the petitioners would be that the implication of the petitioners, as respondents in C.C.No.465 of 2008 on the file of

the learned Judicial Magistrate No. II, Dindigul, cannot be sustained as female relatives of the husband are not attracted under the definition of the

respondents u/s 2(q) of the said Act. For the better understanding the meaning of the term "respondent", we have to extract the said provision

itself. Section 2(q) runs as follows:

(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;

12. According to the main part of the said Section, the respondent in any case means any adult male person who must be in a domestic relationship

with the aggrieved person. However, the proviso to Section 2(q) of the said Act, would go to show that an aggrieved wife or a female partner may

also file a complaint against a relative of husband or male partner. Whether the term "a relative" will spread its ambit to attract the petitioners, who

are the female relatives of the husband, is a question to be decided. No doubt, the first petitioner is the mother and the second petitioner is the

sister and the 3rd petitioner is the bother-in-law of the husband of the first respondent. Therefore, a relative in a "domestic relationship", shall be

the "respondent" in a case. The definition of domestic relationship u/s 2(f) runs as follows:

(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,

13. According to the said Section, two persons should live at any point of time together in a shared household, when they are related by

consanguinity, marriage or through a relationship in the nature of marriage, adoption or as members of the joint family. This domestic relationship

qualification is given to a relative member of her husband, to be impleaded as "respondent". According to the petitioners they are not attracted by

the said provisions. The insistence of the learned counsel for the petitioners would be that when the term "respondent" is defined with a

qualification as to be an adult male person in the Section, the reference "a relative" should also be a male relative of the husband or male partner

and therefore, the case against the 1st and 2nd petitioners, who are the female members, cannot be sustained. For the purpose of determining as to

whether a female relative of the husband cannot be a respondent in view of the mentioning of any adult male person in the Section, and therefore it

would a ISO apply to the proviso of 2(q), we have to necessarily to apply our mind to find the intention of the legislation, from the Statement of

Objects and Reasons for enactment of this Act. In the sub Section (i) of the 4th paragraph of the Statement of Objects and Reasons, it has been

categorically mentioned as follows:

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 relative of the 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.

14. The objects and reasons would categorically show that the aggrieved wife or female partner can file a complaint against any relative of the

husband or male partner. Thus it helps us to understand the word "a relative" mentioned in the proviso to section 2(q), could be construed as any

relative. Will the words any relative include both female and male relatives? is an important question to be decided at this juncture. According to

"Concise Oxford English Dictionary" Eleventh Edition, "any" means, to refer to one or some of a thing or number of things, and it does not matter

how much or how many. As regards, the meaning of "any", it does not restrict to a singular and a particular category, it applies to all categories or

classes of persons. In this background, when we approach the object and reasons, it has been categorically mentioned that the bill was prepared

to enable the wife or the female partner living in a relationship in the nature of marriage to file a complaint under the proposed enactment against

any relative of the husband or the male partner, even though, it does not enable any female relative of the husband or of the male partner to file a

complaint against the wife or the female partner. Therefore, the Act has been enacted to protect the wife or the female partner, who is living with

her husband or a male partner in a relationship in the nature of marriage from the harassment or violence emanated from any of the relative of her

husband or male partner living in a relationship in the nature of marriage, including the adult female persons of the family. The benefits and

protection given under this Act is not available to other female members of the family. Therefore, the meaning given in the proviso of Section 2(q)

would be against any relative of the husband or male partner which includes, the petitioners 1&2 being the adult female persons as per the

allegations made by the first respondent.

15. As regards, the maintainability of the allegations, we have to see the ingredients of the complaint made by the first respondent against the

petitioners as "respondents" in the said case which is pending before the court below. The allegations against the 2nd and 3rd petitioners would be

that they helped the first petitioner to write and send a petition to the Secretary, L.I.C. Employees Association, where the first respondent is

working and to the Public Relation Officer, Deputy Commercial Tax Officer-IV, Commercial Tax Office, Dindigul, where the first respondent's

husband is working. Except the said allegations, nothing was mentioned against the petitioners in respect of cause of action dated 26.04.2008 and

30.04.2008.

16. On 26.04.2008, the first petitioner was stated to have written a complaint to the Secretary, L.I.C. Employees Association, Dindigul Branch I,

45, New Agraharam, Palani Road, Dindigul. Similarly, on 30.04.2008, the first petitioner is said to have sent a letter seeking for information under

the Right to Information Act, to the Public Relation Officer, Deputy Commercial Tax Officer-IV, Dindigul. These letters were signed by the first

petitioner only. Either the letters were neither signed nor attested by the second and third petitioners or nothing is available to show that both the

letters were prepared by the 2nd and 3rd petitioners.

17. In the aforesaid circumstances, it cannot be said that there is a prima facie case against the petitioners 2 and 3 in respect of the cause of action

dated 26.04.2008 and 30.04.2008.

18. So far as the second cause of action dated 30.04.2008 is concerned, it was a letter alleged to have been written by the first petitioner to the

Public Relation Officer, Deputy Commercial Tax Officer-IV, Dindigul seeking for certain information from the said office regarding the employment

of the first petitioner's son. The allegations in the said letter is in respect of the first petitioner's son's employment and he is a male member and the

first respondent is in no way aggrieved as it was not addressed to her office. Moreover, the son of the first petitioner, who is the husband of the

first respondent, is the aggrieved person and not the first respondent. The said letter would in any way affect or harm the first respondent to give a

complaint against the petitioners under the provisions of the said Act.

19. Regarding the third cause of action dated 09.05.2008, it has been categorically mentioned in the complaint that the petitioners 1 and 2 and two

other persons had come to the office of the first respondent and the second petitioner had abused the first respondent, slapped on her cheek and

twisted her hand. It was also alleged that the first petitioner had criminally intimidated the first respondent and for that the first respondent had given

a complaint to North Town Police Station, Dindigul and she was given with a receipt in C.S.R. No. 128 of 2008. It has been also told that the

Police is yet to take action against the petitioners. It has not been averred by the first respondent that the Police, North Town Police Station,

Dindigul had dropped the action. When the said case is pending for the same cause of action, the complaint given by the first respondent in the

third cause of action is not sustainable. It has been taken cognizance by the learned Judicial Magistrate No. II, Dindigul, which would be certainly

amounting to "double jeopardy", as prohibited by the Constitutional Law. Whenever a complaint is given by the Protection Officer before the

Court, the Court must apply its mind and go through the provisions of the special enactment and to take cognizance of the cases, if the allegations

are attracting the provisions of the said Act. But, in this case, it is evident that it had abruptly taken the complaint without going through the

provisions of the said Act.

20. For the foregoing discussion, I am of the considered view that the complaint does not disclose any cause of action against the petitioners 2 and

3 even though they are the relatives of the husband of the aggrieved wife and no case is made out in all the three causes of action namely,

26.04.2008, 30.04.2008 and 09.05.2008. As regards, the first petitioner is concerned, the first respondent, who is said to be the aggrieved wife,

had chosen to file complaint against the first petitioner being the closest relative of her husband for all the three cause of action. It is found that the

cause of action dated 30.04.2008 and 09.05.2008 can not be sustained against the first petitioner. The second cause of action dated 30.04.2008

had pointed out only at the husband of the first respondent and not against the first respondent. Regarding the third cause of action dated

09.05.2008 already a Police complaint is pending before the Dindigul North Police and the present complaint based on the same cause of action

dated 09.05.2008 would be certainly amounting to a "double jeopardy". The cause of action dated 26.04.2008 could alone be taken cognizance

by the court and that too only against the first petitioner. It is already considered that an adult female relative of the husband of the aggrieved

person may also be proceeded under the provisions of the Act. For the foregoing discussions, it has become necessary for this Court to quash the

entire case against the 2nd and 3rd petitioner and the case in respect of causes of action dated 30.04.2008 and 09.05.2008 against the first

petitioner. Accordingly the cognizance taken by the learned Judicial Magistrate No. II, Dindigul in C.C. No. 465 of 2008 has been partially

quashed and the learned Judicial Magistrate No. II, Dindigul is competent to proceed against the first petitioner alone in respect of the cause of

action dated 26.04.2008 only and nothing-else.

21. The submission of the learned counsel for the petitioner at this juncture regarding the claim for compensation of Rs. 10 lakhs should have been

referred to. According to the provisions of the said Act, only the penalty has been envisaged u/s 31 of the Act. Therefore, there is no provision for

awarding compensation.

22. According to the provisions of the Act, there is no reference as to the awarding of compensation. Therefore it is open for the learned Judicial

Magistrate No. II, Dindigul, to apply his mind at the time of trial and to pass appropriate orders in accordance with law.

23. With the aforesaid observation, the petition is ordered partially and the cognizance taken by the learned Judicial Magistrate No. II, Dindigul in

C.C. No. 465 of 2008 is quashed in respect of the case taken on file against the petitioners 2 and 3 and in respect of the causes of action namely,

30.04.2008 and 09.05.2008 against the first petitioner. The learned Judicial Magistrate No. II, Dindigul is competent to proceed with the case

against the first petitioner in respect of the cause of action dated 26.04.2008 alone. Petition is ordered accordingly. Consequently, connected M.P.

is closed.