

A.Vidya S Vs. the State of A.P., Rep. by Its Public

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Court : Andhra Pradesh

Decided On : Sep-12-2014

Judge : Hon'Ble Dr. Justice K.G.Shankar

Appellant : A.Vidya S

Respondent : The State of A.P., Rep. by Its Public

Advocate for Def. : Sri. P.Veerraju Counsel

Judgement :

HONBLE Dr. JUSTICE K.G.SHANKAR Criminal Petition No.4105 of 2013 12-9-2014 A.Vidya Sagar Petitioner/Respondent The State of A.P., Rep. by its Public Prosecutor, High Court of A.P., Hyderabad; and another Respondents Counsel for the Petitioner:Sri P.Veerraju Counsel for Respondent No.1: Public Prosecutor, High Court, Hyderabad Counsel for Respondent No.2: Sri S.Tulasi Das : ?. Cases referred:

1. 1992 Supp (1) SCC3352. (2009) 9 SCC6823. (2006) 6 SCC7364. AIR 2011 SC4795. AIR 1999 AP191) HONBLE Dr. JUSTICE K.G.SHANKAR Criminal Petition No.4105 of 2013 Date:

12. 9-2014 Order: The petitioner is the sole respondent in D.V.C.No.40 of 2012 on the file of the IV Metropolitan Magistrate, Yerram Manzil, Hyderabad. It was a petition filed by the 2nd respondent. The petitioner seeks for the quashment of D.V.C.No.40 of 2012 on various grounds.

2. The 2nd respondent sought compensation of Rs.50 lakhs from the petitioner, maintenance at Rs.50,000/- per month, residential order for shelter and protection order under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (the D.V. Act, for short). The petitioner is a senior IAS Officer. He is presently working as Principal Secretary, Tribal Welfare Department, Government of Andhra Pradesh. His wife is also said to be a senior IAS Officer. The pair has two children.

3. The 2nd respondent submitted a petition to the Protection Officer cum Project Director, District Women and Child Development Agency, Nampally, Hyderabad against the petitioner herein. In the representation describing it to be the complaint, the 2nd respondent portrayed the petitioner as her husband. She claimed: (a) The 2nd respondent herein worked as a publisher and earned good reputation in the society. She came to know the petitioner on account of her pursuit of Telugu Literature. The petitioner developed intimacy with the 2nd respondent. He allegedly sought solace in the company of the 2nd respondent on the ground that he did not have happy conjugal life with his wife. (b) The petitioner spent much of his time with the 2nd respondent. The petitioner proclaimed before the 2nd respondent that on account of some personal obligations and entangles, he had been living with his wife and that he was contemplating to divorce her at an appropriate time. He also promised that he would introduce the 2nd respondent as his wife to public after his divorce with his wife. The 2nd respondent proclaimed that she purchased agricultural properties at Kanigiri, Prakasam District along with the petitioner and other. When the petitioner borrowed agricultural term loan from Andhra Bank, Sitarampuram Branch, Hanumanthunipadu Mandal, Prakasam District, the petitioner stood as co-obligant. The petitioner and the 2nd respondent cohabited together happily. (c) The wife of the petitioner purchased Ac.12-00 cents of land in the name of her mother, Smt. K.Vimala Bai. The wife of the petitioner started sending threatening and annoying messages to the 2nd respondent. Although the 2nd respondent forwarded the messages to the petitioner, the petitioner evinced no interest in dispelling the apprehensions of the 2nd respondent. The 2nd respondent claimed that the petitioner and she regularly stayed at the house of the 2nd respondent situate in the First Floor, Mulk Villa, Plot No.8, Road No.13, Banjara Hills, Hyderabad. The petitioner used to resort to threatening the 2nd respondent with dire consequences on the one side and also

emotionally blackmailing the 2nd respondent on the other side declaring that he would commit suicide if the 2nd respondent reveals her relationship with the petitioner. The petitioner subjected the 2nd respondent to immense mental turmoil and anguish. Emboldened by the attitude of the petitioner, his wife also started threatening and intimidating the 2nd respondent through phone calls. (d) The petitioner got defamatory propaganda against the 2nd respondent by printing, publishing and circulating pamphlets with captions like Maya Lady Bommiseti Vatsala and referred the 2nd respondent as a land-grabber, cheat, criminal, blackmailer and characterless woman. The 2nd respondent is not able to effectively pursue her business or move in the society on account of the high influence of the petitioner in the society. In this background, she claims maintenance at Rs.50,000/- per month, monetary compensation at Rs.50 lakhs, residential order for shelter and protection order. (e) This is the gist of the complaint.

4. The petitioner seeks for the quashment of the case in D.V.C.No.40 of 2012 on various grounds. He primarily contended that the 2nd respondent is an immoral lady and acquired assigned lands misusing the name of the petitioner and his wife. As the petitioner directed the Revenue authorities to take appropriate action against the 2nd respondent, she lodged Crime No.10 of 2011 under Section 436 IPC alleging that the petitioner committed arson. After due investigation, Police filed a referred charge-sheet recording that the complaint was false.

5. It is contended by the petitioner that the 2nd respondent filed a false complaint against the petitioner under Sections 507 and 506(2) IPC before the Court, which was referred by the Court under Section 156(3) Cr.P.C to Police. Hanumanthunipadu Police Station registered the same as First Information Report Report (FIR) in Crime No.2 of 2011. Further proceedings of the same have been stayed through orders of this Court in Criminal Petition No.2308 of 2011.

6. The petitioner contended that the 2nd respondent has the habit of sending false and defamatory complaints and mails against him, so much so, the petitioner and his wife filed a complaint before the Court, which, on the reference under Section 156(3) Cr.P.C by the learned Magistrate was registered as Crime No.197 of 2011

on the file of Central Crime Station, Hyderabad on 07-7-2011 against the 2nd respondent and two others for the offences under Section 66-A of the Information Technology Act, 2008 and under Sections 120-B, 182 and 384 read with Sections 511, 506 and 507 IPC. Accused No.2 was arrested in connection with that case. The case is pending as on today.

7. The petitioner claimed that he came to know that Nallakunta Police Station registered a case against the 2nd respondent on a complaint by 3rd parties for the offences under Sections 506 and 507 IPC. The same is also pending. FIR in Crime No.67 of 2012 on the file of Sultan Bazar Police Station was registered on the complaint of the 2nd respondent for the offences under Sections 182, 406, 420, 468 and 471 read with Section 120-B, IPC through FIR dated 02-3-2012 against personalities like Dr. C.Narayana Reddy, Sri K.Raju, IAS, Additional Secretary and National Advisory Council, Government of India and others the complaint being lodged through her agent, by name A.Venkata Ramana. Police, however, closed the FIR after due investigation, recording that the complaint was false.

8. The petitioner submitted that the 2nd respondent is claiming as if she is the wife of the petitioner with a view to defame with the mala fide intention to make the petitioner to succumb to her pressure and that the very complaint is not maintainable and is liable to be dismissed.

9. The learned counsel for the petitioner also submitted that the Protection Officer forwarded the complaint to the IV Metropolitan Magistrate, Yerram Manzil, Hyderabad in a routine manner without Domestic Information Report (DIR) and without complying with the provisions of the D.V. Act. He submitted that taking cognizance of the case on the basis of such a complaint is illegal and is liable to be quashed.

10. The learned counsel for the petitioner advanced exhaustive arguments. He argued for more than 2 hours. Perhaps if it becomes necessary for a party or his counsel to take 2 hours to explain about the prima facie falsity of the complaint, the very petition for quashment would be fit to be dismissed in limine. It is trite law that in a petition for quashment the Court cannot go into intrinsic details and shall

determine whether a case is made out prima facie or otherwise. I consider that if the nature of the allegations is such that at once the allegations are shockingly unbelievable or even if the contents are all true, the contents of the complaint would not constitute any triable offence, Court should interfere under the provisions of Section 482 Cr.P.C to quash the case. The leading authority on this issue is the now famous STATE OF HARYANA v. BHAJAN LAL . It would be convenient to extract para 102 of the judgment. Para 102 reads: In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised. (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused. (2) Where the allegations in the first information and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code. (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused. (4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code. (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused. (6) Where there is an express legal bar engrafted in any of the provisions of the Code

or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceeding and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party. (7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

11. It is the contention of the learned counsel for the petitioner that even if the allegations made in the FIR are accepted at their face value, no prima facie case is made out and that as one of the grounds envisaged by BHAJAN LAL (1 supra) has been made out, the case in DVC deserves to be quashed. He also contended that the allegations made in the complaint are absurd and inherently improbable on the basis of which no prudent person would reach a conclusion that the petitioner is guilty and that as the ground envisaged in Clause (5) of para 102 of BHAJAN LAL (1 supra) is made out, the case in DVC deserves to be quashed. He also submitted that the criminal proceedings were manifestly malicious and were instituted with an ulterior motive to wreak vengeance against the petitioner, the case in DVC is liable to be quashed. Such situation warranted interference by the Court vide BHAJAN LAL (1 supra) (para 102, Clause (7)).

12. The learned counsel for the petitioner relied upon M.N. OJHA v. ALOK KUMAR SRIVASTAV . The Supreme Court noticed in this case:

30. the High Court cannot refuse to exercise its jurisdiction if the interest of justice so required where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no fair minded and informed observer can ever reach a just and proper conclusion as to the existence of sufficient grounds for proceeding. In such cases refusal to exercise the jurisdiction may equally result in injustice more particularly in cases where the complainant sets the criminal law in motion with a view to exert pressure and harass the persons arrayed as accused in the complaint.

13. Some of the principles enunciated in BHAJAN LAL (1 supra) were repeated in para 12 of INDIAN OIL CORPN. v. NEPC INDIA LTD. relying upon the earlier

decisions of the Supreme Court. On the basis of these decisions and on the basis of the available facts, it is contended by the learned counsel for the petitioner that this false case against the petitioner deserves to be quashed.

14. Inter alia, the learned counsel for the petitioner contended that the petitioner is a hapless Government Servant pitting against an unscrupulous lady. On the other hand, I consider that the petitioner being a senior IAS Officer and his wife also being a senior IAS Officer have much more power to wield against an individual, who is neither rich nor otherwise powerful as it is not the case of anybody that the 2nd respondent possesses political influence or financial backing. However, whether the petitioner is powerful or the 2nd respondent is a Titan is beside the point since the question is whether the case in DVC is liable to be quashed.

15. The learned counsel for the petitioner raised two legal questions viz., whether a DVC case would lie against an individual by a person other than his wife and whether D.V.C.No.40 of 2012 could validly be taken cognizance of by the learned IV Metropolitan Magistrate, Yerram Manzil, Hyderabad without DIR.

16. Section 2(a) of the D.V. Act defines aggrieved person as any woman who is, or has been, in a domestic relationship with the respondent. Section 2(f) of the D.V. Act defined domestic relationship. Section 2(f) of the D.V. Act reads: 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. A plain reading of Section 2(f) of the D.V. Act shows that domestic relationship is a relationship between two persons who lived or have, at some time lived, inter alia, in a shared house when they were related through a relationship in the nature of marriage. The 2nd respondent contended that she and the petitioner have intimacy with each other, so much so, the petitioner wanted to marry the 2nd respondent and the 2nd respondent was willing for the marriage with the petitioner.

17. Added to it, the 2nd respondent contended in the complaint to the Protection Officer that the petitioner who used to regularly stay with me (the 2nd respondent) at our house at First Floor, Mulk Villa, Plot No.8, Road No.13, Banjara Hills,

Hyderabad started occasionally visiting me and on the one hand he used to pick up quarrel on one aspect or the other and even used to manhandle and threaten me that he would kill me and see that even my dead body will not be available and on the other hand, he used to emotionally blackmail me stating that if I disclose about our relationship, he would commit suicide as his name would be tarnished. Thus, the 2nd respondent fairly spoke that the petitioner and the 2nd respondent lived in a shared house through a relationship in the nature of marriage.

18. The learned counsel for the petitioner placed reliance upon *D.Velusamy v. D.Patchaiammal* where relationship in the nature of marriage was examined by the Court. In para 33 of the judgment, the Court held that although there was no formal marriage, (1) the couple must hold themselves out to society as spouses, (2) they must be of legal age to marry, (3) they must be otherwise qualified to enter into a legal marriage, including being unmarried and (4) they must be voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period of time. That the petitioner and the 2nd respondent were of marriageable age is not in dispute. Regarding conditions 1 and 4 that the couple must have described themselves to the society to be spouses or akin to spouses, there is no allegation from the 2nd respondent that the petitioner exhibited the 2nd respondent as his 2nd wife. On the other hand, she contended that the petitioner was emotionally blackmailing her not to reveal their relationship. The learned counsel for the petitioner submitted that the condition of relationship in the nature of marriage thus has not been made out.

19. The learned counsel for the petitioner also submitted that by the date of the alleged cohabitation between the petitioner and the 2nd respondent, the 2nd respondent had already had a living spouse and that as she did not divorce her spouse, she could not be said to be in domestic relationship with the petitioner in the nature of marriage. The learned counsel for the petitioner tried to show that the 2nd respondent had contracted marriage with another person. The record however did not show whether the 2nd respondent was earlier married and if so, whether the earlier marriage of the 2nd respondent has been subsisting. At any rate, the petitioner admittedly is a married person. Thus, he would fall within Clause (3) of the conditions envisaged in para 33 of *D.Velusamys* case (4 supra) that the parties

must be qualified to enter into legal marriage including enjoying the status of not being married.

20. The Supreme Court in D.Velusamys case (4 supra) went further to state that spending weekends together or one night stand would not make it a domestic relationship. It is contended by the learned counsel for the petitioner that assuming that the contentions of the 2nd respondent are true, there is no domestic relationship between the petitioner and the 2nd respondent. The 2nd respondent contended that the petitioner used to visit her house at Banjara Hills, Hyderabad frequently. She did not state that their relationship was a weekend affair or once in a lifetime contact. I therefore do not consider that the petitioner and the 2nd respondent satisfy the condition that they have been together for more periods than simple weekends or at one night. However, it predominantly is a question of fact. I am afraid in a petition under Section 482 Cr.P.C., the question of fact and the truth and genuineness of the fact situation cannot be gone into.

21. The case of the 2nd respondent is that the petitioner has domestic relationship with her and caused domestic violence. She consequently claimed the reliefs envisaged by the D.V. Act.

22. I may now examine whether the case fits in any of the clauses of para 102 of BHAJAN LAL (1 supra). The first clause of para 102 of BHAJAN LAL (1 supra) envisages that even if the complaint is accepted at its face value as true, if no offence could still be made out, it would be a good ground for the High Court to interfere under Section 482 Cr.P.C. In the present case, if the contentions of the 2nd respondent are accepted at their face value, it would be established that the petitioner and the 2nd respondent have/had living relationship and that the petitioner now disowns the 2nd respondent entitling her to make a claim against him. Consequently, the present case does not fall within the parameters provided by the first clause in BHAJAN LALs case (1 supra).

23. It was also observed in BHAJAN LAL (1 supra) that if the allegations are absurd and are inherently improbable, it would be a ground to quash the prosecution. I am afraid that there is nothing absurd about the claim of the 2nd respondent, albeit whether the claim is true or otherwise is a different question. If

the criminal proceedings are attended with mala fides or where the proceedings were instituted maliciously, it would be a fit case for quashment according to the 7th condition mentioned in BHAJAN LAL (1 supra). Although the learned counsel for the petitioner contended that the claim of the 2nd respondent is mala fide, I am afraid that mala fides cannot be assumed or proved merely because the petitioner has already a legally wedded wife or because the 2nd respondent has been residing elsewhere and has otherwise described herself to be the daughter of B.Reddappa rather than as the wife of the petitioner herein.

24. In BHAJAN LAL (1 supra), the Court suggested that if there is an express legal bar in any of the provisions of the Code or the concerned Act, it would be appropriate to quash the proceedings. The learned counsel for the petitioner contended that there was no DIR, so much so, the claim is not maintainable even if the other contentions of the 2nd respondent are true.

25. Section 9 of the D.V. Act prescribes the duties and functions of a Protection Officer. Section 9(1)(b) of the D.V. Act adumbrates that the Protection Officer shall make a Domestic Incident Report to the Magistrate and also forward copies to the police officer in charge of a police station. Section 12 of the D.V. Act envisages that an aggrieved person or a Protection Officer under the D.V. Act or any other person on behalf of the aggrieved person may present an application to the Magistrate seeking the reliefs envisaged under the D.V. Act. Proviso to Section 12(1) of the D.V. Act contemplates that before passing any order on the application from an aggrieved person or a Protection Officer or any other person, the Magistrate shall take into consideration any Domestic Incident Report received by him from the Protection Officer or the service provider.

26. The learned counsel for the petitioner submitted that a Magistrate is entitled to proceed with under Section 12 of the D.V. Act on the basis of Domestic Incident Report given under Section 9(1)(b) of the D.V. Act by the Protection Officer and that the cognizance of the case cannot be taken otherwise. He submitted that Section 9(1)(b) of the D.V. Act shall be read with the proviso to Section 12(1) of the D.V. Act.

27. Even a reading of the two provisions leads to an inescapable conclusion that in the event there is any Domestic Incident Report, the Magistrate shall take into consideration such report. Section 12(1) of the D.V. Act does not prohibit a Magistrate from proceeding with the case unless there is a Domestic Incident Report. The words used in proviso to Section 12(1) of the D.V. Act are any Domestic Incident Report and not the Domestic Incident Report. Thus, the proviso to Section 12(1) of the D.V. Act contemplates that in the event there is a Domestic Incident Report, the Magistrate shall take it into consideration. If there is no Domestic Incident Report, the question of the Magistrate considering the same does not arise. Needless to state that Section 12 of the D.V. Act does not contemplate that the petition under Section 12 of the D.V. Act would not lie without any Domestic Incident Report. I do not agree with the contention of the learned counsel for the petitioner that a Domestic Violence Case can be instituted and taken cognizance of on the basis of the Domestic Incident Report only and not otherwise. Such a contention is not sustainable and is accordingly rejected.

28. The learned counsel for the petitioner tried to show that the 2nd respondent is not a wife of the petitioner within the meaning of the Hindu Marriage Act. There cannot be any doubt that the 2nd respondent cannot be the wife as long as the marriage of the petitioner with his wife is subsisting. However, whether the 2nd respondent is entitled to maintenance and other reliefs sought for under Section 12 of the D.V. Act are matters to be considered in D.V.C.No.40 of 2012 and not in this petition.

29. The learned counsel for the petitioner placed reliance upon a Full Bench decision of this Court in *Abbayolla M. Subba Reddy v. Padmamma*. In that case, this Court observed that Section 25 of the Hindu Marriage Act cannot be invoked to grant permanent alimony to a woman who is not a legally wedded wife. However, under the D.V. Act, any lady who has domestic relationship with a man is entitled to seek certain reliefs from such a man. This decision of the Full Bench of the Andhra Pradesh High Court consequently has no application for cases under the D.V. Act.

30. The learned counsel for the petitioner placed reliance upon M.N. OJHA (2 supra). The Court held that if the dispute is in respect of a civil remedy or where the intention of the criminal proceedings is to prevent the public servant from discharging his duties, such complaints deserve to be quashed. In the present case, the D.V. Act provides the reliefs sought for by the 2nd respondent. The petitioner failed to show at this stage that the complaint is motivated. I therefore consider that this is not a fit case where D.V.C.No.40 of 2012 deserves to be quashed at this stage. It would be appropriate for the petitioner to raise his contentions before the Trial Court and seek appropriate relief from the Trial Court. I see no merits in this petition. This petition deserves to be dismissed.

31. Where the petitioner is claimed to be a senior IAS Officer and where the petitioner is denying domestic relationship with the 2nd respondent, it would be appropriate to exempt the petitioner from making appearance before the Trial Court at the time of trial.

32. Accordingly, this criminal petition is disposed of granting liberty to the Trial Court to proceed with the trial of D.V.C.No.40 of 2012. The presence of the petitioner before the Trial Court is dispensed with. The Trial Court, however, is at liberty to call for the personal appearance of the petitioner on any occasion if the Trial Court deems it necessary that the petitioner be present for proper conduct of the case. The miscellaneous petitions, if any, pending in this petition shall stand closed. _____ Dr. K.G.SHANKAR, J.

12th September, 2014.

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