

Priya Vs. Shibu and ors.

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SooperKanoon Citation : sooperkanoon.com/726738

Court : Kerala

Decided On : Jun-16-2008

Reported in : 2008(3)KLJ304

Judge : V. Ramkumar, J.

Acts : [Protection of Women from Domestic Violence Act, 2005](#) - Sections 2, 12, 12(1), 19(8), 20 and 29; [Dowry Prohibition Act, 1961](#) - Sections 3, 6 and 23; Code of Criminal Procedure (CrPC) - Sections 125

Appeal No. : Crl.R.P. No. 2524 of 2007

Appellant : Priya

Respondent : Shibu and ors.

Advocate for Def. : R. Reji, Adv. and; P. Ravindra Babu, (PP)

Advocate for Pet/Ap. : R. Padmakumar, Adv.

Judgement :

ORDER

V. Ramkumar, J.

1. The interesting question which is raised in this revision is as to whether a divorced wife is entitled to file a petition under Section 12(1) of the [Protection of](#)

[Women from Domestic Violence Act, 2005](#) (hereinafter referred to as 'the Act') claiming return of dowry and ornaments and also for maintenance payable under Section 125 of Cr.P.C.

2. I heard Adv. Sri. Padmakumar, the learned Counsel appearing for the revision petitioner and Adv. Sri. R. Reji, the learned Counsel appearing for respondents 1 to 3.

3. The facts leading to the impugned proceedings are the following:

The marriage between the first respondent, Shibu and the revision petitioner, Priya was solemnised on 17.4.2003. Their post marital life lasted only for about the year. In November, 2004 the marital partners parted company. Subsequently as per order dated 13.5.2005 passed by the Family Court, Alappuzha, their marriage was dissolved and a decree of divorce was passed. On 11.1.2007, the revision petitioner, Priya moved the JFCM, Mavelikkara by filing CMP 278/ 2007 under Section 12(1) of the Act claiming the following reliefs:

1) to register a case against her former husband, Shibu, mother-in-law, Retnamma, Sister-in-law Sheeja, brother-in-law, Sunil Kumar and Sunil Kumar's wife, Sheeba under Sections 3 and 6 of the [Dowry Prohibition Act, 1961](#).

2) to direct the aforementioned persons to return Rs. 59,000/- and 40 sovereigns of gold ornaments received by them at the time of the marriage of Priya with Shibu.

3) to order a monthly maintenance of Rs. 2,000/- to the applicant from the respondents.

4) to direct the respondents not to intimidate or otherwise cause any difficulties to the applicant and to award a compensation of Rs. 50,000/- for the mental and physical loss sustained by the applicant on account of the domestic violence committed by the respondents.

The revision petitioner also filed CMP 284/2007 under Section 23 of the said Act for interim maintenance at the rate of Rs. 2,000/- per month and for return of the

sum of Rs. 59,000/- and 40 sovereigns of gold ornaments paid as dowry. On 11.1.2007, the learned Magistrate passed an ex-parte order directing the counter petitioners to CMP 284/2007 to pay a sum of Rs. 1,000/- per month by way of maintenance to the applicant, Priya from the month of January, 2007 onwards. Respondents 1 to 3 herein, who were the counter petitioners to CMP 284/2007, filed an appeal under Section 29 of the Act as Crl. Appeal 89 of 2007 before the Additional Sessions Court II, Mavelikkara challenging the order passed by the learned Magistrate as per the impugned judgment dated 10.4.2007 the learned Additional Sessions Judge set aside the order passed by the Magistrate and directed the Magistrate to dispose of the main application filed as CMP 278/2007 on merits, according to law. In the course of the judgment, the Additional Sessions Judge took the view that going by the definition of aggrieved person contained in Section 2(a) and the definition of 'domestic relationship' contained in Section 2(f) of the Act, unless the applicant has the present status as a 'wife' or is at least in a 'domestic relationship' with the respondent on the date of the application, she cannot maintain an application under Section 12 of the Act and if so, no interim order also could be granted to the applicant under Section 23 of the Act. It is the said order which is assailed in this revision by the applicant.

4. Adv. Sri. Reji, learned Counsel appearing for respondents 1 to 3 made the following submission before me in support of the impugned judgment of the lower appellate court:

The person who can move the Magistrate under Section 12 of the Act is an 'aggrieved person' as defined under Section 2(a) of the Act. The definition of 'aggrieved person' is any woman who is, or has been, in a domestic relationship with the respondent. The words employed are 'who is' or 'has been' which mean that she should be presently in a domestic relationship with the respondent or the domestic relationship should continue to be in existence in view of employment of the words 'has been' which is in a present perfect continuous tense. Likewise, the word 'domestic relationship' defined under Section 2(f) also means a relationship between two persons who live or have at any point of time lived together in a shared household. The expression 'respondent' as defined in Section 2(g) of the Act is also a person who is or who has been in a domestic relationship with the

aggrieved person. The word 'shared household' as defined in Section 2(s) of the Act is also a household where the aggrieved person and the respondent live or have lived. So, 'aggrieved person' and the 'respondent' are those persons who are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members who either live or who have lived together in a shared household. Here also the tense used is present perfect continuous. Hence, unless the applicant is, or has been, on the date of application in a domestic relationship with the respondent and 'lives' or 'has lived' on the date of application as such, the applicant cannot have any locus standi to prefer an application under Section 12(1) of the Act. So, the view taken by the lower appellate court does not call for any interference.

5. I am afraid that I cannot agree with the above submissions. It is true that on 11.1.2007 when the revision petitioner, Priya approached the Magistrate under Section 12(1) of the Act, she was already a divorced wife, her divorce having been declared with effect from 13.5.2005 by the Family Court, Alappuzha. But the main relief prayed for in the application was for return of the sum of Rs. 59,000/- paid in cash and 40 sovereigns of gold ornaments allegedly given as dowry. This is a claim which can be made under Section 19(8) of the Act even by a divorced wife. Likewise, a claim for maintenance under Section 125 Cr.P.C. is a monetary relief which can be claimed under Section 20 of the Act. It cannot be gainsaid that even a divorced wife is entitled to claim maintenance under Section 125 Cr.P.C.

6. The further question is as to whether the applicant should continue to be in a domestic relationship with the respondents on the date of preferring the claim and whether the persons who are related by consanguinity, marriage or any of the relationship referred to in Section 2(f) of the Act should continue to be in that relationship on the date of filing the petition. In other words, whether the employment of present perfect continuous tense in Sections 2(a), 2(f), 2(q) and 2(s) renders it obligatory on the part of the applicant to be in a domestic relationship on the date of preferring the application. I am not inclined to accept the contention made on behalf of the respondents that the present perfect continuous tense used is to indicate the continuance of the relationship even on the date of preferring the application.

7. On the contrary, the words 'has been' and the words 'have lived' are employed for the purpose of showing the past relationship or experience between the parties concerned and they cannot be so construed as to mean that unless the 'domestic relationship' continuous on the date of application, the applicant will have no locus standi to move the Magistrate. The existence of the present status as a wife cannot be read into those provisions to hold that the application filed by the revision petitioner before the Magistrate was not maintainable. The view taken by the learned Sessions Judge is clearly wrong. The judgment sought to be revised is accordingly set aside and the order dated 11.1.2007 passed by the Magistrate is restored. Respondents 1 to 3 are given one month's time from today to deposit the arrears of maintenance before the Magistrate. They shall thereafter continue to pay the interim maintenance in accordance with the subject to the order passed by the Magistrate. The revision petitioner as well as respondents 1 to 3 shall appear before the learned Magistrate without any further proceedings before the Magistrate, who shall pass final orders, as expeditiously as possible, after giving the counter-petitioners also an opportunity of being heard.