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Court : Chennai

Decided On : Dec-13-2011

Judge : C.T.Selvam, J.

Acts : [The Protection of Women from Domestic Violence Act, 2005](#) - Sections 19, 20, 22, 18; Indian Penal Code (IPC) - Section 498(A); Dowry Prohibition Act - Section 4 (1); [Domestic Violence Act, 2005](#); [Constitution of India](#) - Article 14

Appeal No. : Crl.R.C.No.1321 of 2010

Appellant : Saraswathy

Respondent : Babu

Advocate for Def. : Mr.P.H.Pandian, Adv.

Advocate for Pet/Ap. : Mr.R.Muniyapparaj, Adv.

Judgement :

This revision arises against the judgment of the learned V Additional Sessions Judge, Chennai passed in C.A.No.339/2008 on 21.10.2010. The revision petitioner moved a petition in Crl.M.P.No.2421/2008 before the XIII Metropolitan Magistrate seeking reliefs under Section 19,20 and 22 of [The Protection of Women from Domestic Violence Act, 2005](#) (herein after referred to as the Act). The petitioner informed that she and the respondent were married on 17.02.2000, that after four months her husband made dowry demands and sent her out of the house. The

respondent attempted a second marriage. The petitioner moved a petition before the Hon'ble Principal Subordinate Judge seeking restitution of conjugal rights. Such petition was allowed and thereafter, she went to her husband's house where her mother-in-law informed of intent of carrying out a second marriage of the respondent and that she could not come to the house. The petitioner preferred a complaint and on his appearance for enquiry the respondent informed of having moved an appeal against the order of restitution of conjugal rights. Thereafter, the petitioner went to the respondent's house, wherein the mother-in-law informed that the respondent was not in. Petitioner has no means to maintain herself and she wished to reside with her husband who has to provide her food, clothing and shelter. The respondent had informed that the petitioner lived in his house only for ten days. Thereafter, there was a function held at the house of the petitioner's uncle which the respondent was asked not to attend. Thereafter, the petitioner returned and stayed in the respondent's house for three days and went to her father's house for the month of Adi. The petitioner had left with her grand father on 21.06.2000 and had not returned. She had accompanied her grand father for a wedding which was also attended by respondent's mother. On return, his mother informed that the petitioner's parents and her brother had attempted to assault her and she had returned immediately. The respondent's friend informed that his mother had been chased out of the house. The respondent made enquiry over telephone and the other side informed that they would repeat their act. The petitioner informed that she was not willing to see him. The petitioner caused a notice requiring the respondent to live with her in a separate residence. The respondent caused a reply that he was willing to live with the petitioner along with his parents. The petitioner's parents took the stand that their daughter would live with the respondent only if he set up a separate residence. The petitioner had filed a H.M.O.P seeking restitution of conjugal rights while the respondent had moved a petition for divorce. The petitioner petition was allowed while that of the respondent stood dismissed. The Hon'ble Subordinate Judge, who dealt with the petition for restitution of conjugal rights had concluded that the allegation of the petitioner that the respondent demanded jewels and money was frivolous. The petition for restitution of conjugal rights was allowed with a rider that the petitioner should not ask for separate residence. Holding that pursuant to the decree of

conjugal rights the respondent was bound to live with the petitioner and that they had shared a household for a period of four months the Magistrate held the petitioner entitled to a shared household. He also held the petitioner entitled to get protection under Section 18 and prohibited the respondent from committing acts of Domestic Violence by not allowing the petitioner to share household with him. The respondent also was directed to pay maintenance in a sum of Rs.2000/- per month. Against such finding of the learned Magistrate, the respondent moved appeal C.A.339 of 2008.

2. The Appellate court found that the acts of Domestic Violence alleged were of the date 21.06.2000, i.e. prior to the passage of the Act. The same may amount to cruelty under Section 498(A) of I.P.C and Section 4 (1) of the Dowry Prohibition Act but would not come under the purview of the Act. It found improper the order passed by the Magistrate under Section 18 of the Act, after having found that the alleged demand for gold and money was frivolous. The Appellate court found that among several actions moved by the petitioner one was a suit for permanent injunction in respect of property in which she claimed share household. Therein, she had claimed to be in possession of the house and the learned District Munsif, Ambattur had granted an injunction in her favour against the respondent/appellant and his mother. Therefore, it was of the view that the Magistrate could not have directed the appellant not to exclude the respondent from the shared household except in accordance with the procedure established by law. The Appellate court found erroneous the orders passed under section 18 and 19 of the Protection of Women from Domestic Violence Act as it had been held by more than one court that the acts of cruelty/violence had not been proved. It however maintained to maintain the finding of the court below as regards direction for payment of maintenance. There against this revision had been preferred by the petitioner/wife.

3. Heard Mr.R.Muniyapparaj for Mr.S.Sankar, learned counsel appearing for the petitioner and Mr.P.H.Pandian, learned Senior counsel for Mr.P.Rathnavel, learned counsel for the respondent.

4. The primary question that arises for consideration is whether acts committed prior to the coming into force of the Protection of Women from Domestic Violence

Act, 2005 and which fall within the definition of the term 'Domestic Violence' as informed in the Act could form the basis of an action. When met with this question, learned counsel for the petitioner would place reliance on the following decisions:

(i) *Dennison Paulraj and others vs. Mrs. Mayawinola* in (2008) 2 MLJ (Cri) 389 wherein it is stated as follows:

8. On a careful perusal of Section 31 of the Act, it is found that the act of domestic violence does not attract penal consequence as per the Act. Only if a protection order is passed and the respondent in the main petition violates the protection order passed by the court, then such act of breach of protection order is construed as an offence. The penal consequence emanates from the date of protection order passed by the court. But, it does not date back to the act of domestic violence committed by the husband and his relatives. Therefore, it is farfetched to contend that the provisions of the Act can be invoked only if any domestic violence is committed after the Act came into force. The court is competent to take cognizance of the act of domestic violence committed even prior to the Act came into force and pass necessary protection orders. The Act can be applied retrospectively to take cognizance of the act of violence alleged to have been committed even prior to the coming into force of the Act (ii) *Mohit Yadav and Anr etc vs. State of Andhra Pradesh and Ors*, 2010 (1) ALD (Cri) 1:

37. If the remedies provided in the aforesaid mentioned provisions are applicable prospectively to the acts or omissions of domestic violence occurred prior to 26-11-2006, then the aggrieved persons who suffered violence prior to it, would be deprived of claiming any relief under the Act. There is no justification or reason to deny certain remedies available to the women, who suffered domestic violence prior to 26-11-2006, under the Act, then the aggrieved persons who suffered prior to it, would be deprived of claiming any relief under the Act. There is no justification or reason to deny certain remedies provided to the women, who suffered domestic violence prior to 26-11-2006, under the Act. The object and purpose of enacting the Act would be defeated if narrow interpretation is given. No doubt, Article 20(1) of the [Constitution of India](#) prohibits the making of ex post facto criminal law with regard to conviction and sentence. The [Domestic Violence](#)

[Act, 2005](#), under no stretch of imagination, can be said to be ex post facto criminal law. Any act or omission under the [Domestic Violence Act, 2005](#) performed by the Respondent prior to the Act came into force has no direct penal consequences of conviction or sentence.

38. From the above discussion, it is clear that the intention of the legislation is to provide certain remedies to the victims of domestic violence and also to prevent occurrence of domestic violence in the society. Therefore, the acts of violence occurred prior to 25-10-2006 would come within the meaning of 'domestic violence' as defined under the Act. For the foregoing reasons, this Court is of the opinion that the [Domestic Violence Act, 2005](#) is retrospective in operation. (iii) Mrs. Savita Bhanot vs. Lt. Col V.D. Bhanot (2010) 158 PLR 1 :

15. On the other hand in “Dennison Paulraj and Ors. v. Maya Winola” II (2009) DMC 252, as judgment relied upon by the learned Counsel for the petitioner, Madras High Court clearly held that since penal consequences under Section 31 of the Act are attracted only if a protection order is passed and the respondent violates that order, the penal consequences mandate from the date of the protection order and not from the date of acts of domestic violence and, therefore, the court was competent to take cognizance of the acts of domestic violence committed even prior to the Act came into force, and pass necessary protection orders. It was held that the Act could be applied retrospectively to take cognizance of the acts of violence, alleged to have been committed even prior to coming into force of the Act. In a rather recent decision Crl. W.P. 2 102/2008 decided on 18th July, 2009, Bombay High Court noted that the penal provision contained in Section 31 of the Act will come into picture only if the respondent commits breach of protection order or interim protection order.

16. Since Andhra Pradesh High Court and Madhya Pradesh High Court have neither considered that the Act does not make any act of domestic violence or any other act punishable and it is only the contravention of an order passed under the provisions of the Act, which has been made punishable under Section 31 of Act, nor have they taken note of the fact that proceedings under the Act are meant to provide civil remedy to the aggrieved person as noted in the Statement of Objects

and Reasons and, it is only the breach of the orders passed in those proceedings which has been made punishable under the Act, I am unable to take the view taken by these High Courts.

17. If the court takes the interpretation that a petition under the provisions of the Protection of Women from [Domestic Violence Act, 2005](#) cannot be filed by a woman unless she was living with the respondent, in the shared household, on the date this Act came into force, or a date subsequent thereto or that a petition under the provisions of the Act cannot be filed by a person who has been subjected to domestic violence before coming into force of the Act, that would amount to giving a discriminatory treatment to the woman who despite living with the respondent and having a domestic relationship with him before coming into force of the Act, is later compelled to live separately from him on account of the acts attributable to the respondent and to the woman who was, prior to coming into force of the Act, subjected to domestic violence, viz a viz, the women who are living with the respondent or women in respect of whom acts of domestic violence are committed after coming into force of the act. There can be no reasonable classification based upon an intelligible differentia between the women who are living with the respondent on the date of coming into force of the Act or who are subjected to domestic violence after coming into force of the Act on one hand and the women who were living with the respondent or who were subjected to domestic violence prior to coming into force of the Act, on the other hand. Therefore, any discriminatory treatment to women in either category would be violative of their constitutional right guaranteed under Article 14 of the Constitution. The court needs to eschew from taking an interpretation which would not only be violative of the rights conferred upon the citizens under Article 14 of the Constitution but would also result in denying the benefit of the beneficial provisions of the Act to the women who have been subjected to domestic violence and are compelled to live separately from the respondent on account of his own acts of omission or commission. Such an interpretation would at least partly defeat the legislative intent behind enactment of the Protection of Women from [Domestic Violence Act, 2005](#), which was to provide an efficient and expeditious civil remedy to them, in order either to protect them against occurrence of domestic violence, or to give them compensation and other suitable reliefs, in respect of the violence to which

they have been subjected.

18. For the reasons given in the preceding paragraphs, I am of the considered view that a petition under the provisions of the Protection of Women from [Domestic Violence Act, 2005](#) is maintainable even if the acts of domestic violence have been committed prior to coming into force of the Act or despite her having in the past lived together with the respondent a shared household woman is no more living with him, at the time of coming into force of the Act. It is be open for the Magistrate to pass appropriate order under the provisions of Sections 12, 18, 19, 20, 21, 22 or 23 of the Act on a petition filed by such a woman and the person who commits breach of the protection order or interim protection order passed on an application filed by such a woman will be liable to punishment under Section 31 of the Act.

5. This court would first concern itself with whether acts which now constitute domestic violence but committed prior to the coming into force of the Act would form a basis of an action thereunder. With due respect to the authorities above cited, this court would inform that the fundamental issue stands unaddressed. The Act came into force on 2005. It cannot be disputed that several wrongful actions which might have amounted to offences such as cruelty and demand for dowry cannot have taken the description of "Domestic Violence" till such time the act came into force. In other words the offending acts could have been construed as offences under other enactments but could not have been construed as acts of 'Domestic Violence' until the act came into force. Therefore, what was not "Domestic Violence" as defined in the Act till the Act came into force could not have formed the basis of an action. Ignorance of law is no excuse but the application of this maxim on any date prior to the coming into force of the Act could only have imputed knowledge of offence as subsisted prior to coming into force of the Act. It is true that it is only violation of orders passed under the Act which are made punishable. But those very orders could be passed only in the face of acts of domestic violence. What constituted domestic violence was not known until the passage of the act and could not have formed the basis of a complaint of commission of 'Domestic Violence'.

6. The decision of the Calcutta High Court in *Nityananda Das @ Chantu Das vs. State of West Bengal* and *Karimkhan vs State of Maharashtra*, reported in CDJ 2011 BHC 992 and *Bulu Das v Ratan Das* in MANU/GH/0590/2009 are relied upon towards contending that the question of retrospective effect of the act does not arise at all since the actions complained of provide a continuous cause of action. To provide continuity, there must be a beginning. What this court has herein above held is that the beginning of acts of domestic violence can at best be the date on which the Act came into force and a description and understanding of what constituted domestic violence came to be. In a given case, the complaint relating to the acts prior to the date of coming into force of the enactment may survive because as on the date of coming into force of Act, the wrongs complained of subsisted. The starting point would be the subsistence of the wrongs as on the date of coming into force of the enactment and not the wrongs committed prior thereto. In the instant case, we would hold that the revision would not succeed even on such consideration. The allegation of wrongful demand for cash and jewellery have been found to be falsified. The claim for share household has been denied on the reasoning that the petitioner had claimed to be in possession of the said property and obtained orders of injunction in her favour in respect thereof. We find no reason to interfere with such findings of the courts below.

7. Learned counsel for the petitioner has relied on one further ruling of this court in *Vandhana vs. T. Srikanth and Krishnamachari* in 2007 (5) CTC 679 wherein this court has held as follows:

“ 20. In a society like ours, there are very many situations, in which a woman may not enter into her matrimonial home immediately after marriage. A couple leaving for honeymoon immediately after the marriage and whose relationship gets strained even during honeymoon, resulting in the wife returning to her parental home straight away, may not stand the test of the definition of domestic relationship under Section 2(f) of the Act, if it is strictly construed. A woman in such a case, may not live or at any point of time lived either singly or together with the husband in the “shared household”, despite a legally valid marriage followed even by its consummation. It is not uncommon in our society, for a woman in marriage to be sent to her parental home even before consummation of marriage,

on account of certain traditional beliefs, say for example, the intervention of the month of Aadi. If such a woman is held to be not entitled to the benefit of Section 17 of the Act, on account of a strict interpretation to Section 2(f) of the Act that she did not either live or at any point of time lived together in the shared household, such a woman will be left remediless despite a valid marriage. One can think of innumerable instances of the same aforesaid nature, where the woman might not live at the time of institution of the proceedings or might not have lived together with the husband even for a single day in the shared household. A narrow interpretation to Sections 2(f), 2(s) and 17 of the Act, would leave many a woman in distress, without a remedy. Therefore, in my considered view a healthy and correct interpretation to Sections 2(f) and 2(s) would be that the words “live” or “have at any point of time lived” would include within their purview “the right to live”. In other words, it is not necessary for a woman to establish her physical act of living in the shared household, either at the time of institution of the proceedings or as a thing of the past. If there is a relationship which has legal sanction, a woman in that relationship gets a right to live in the shared household. Therefore, she would be entitled to protection under Section 17 of the Act, even if she did not live in the shared household at the time of institution of the proceedings or had never lived in the shared household at any point of time in the past. Her right to protection under Section 17 of the Act, co-exists with her right to live in the shared household and it does not depend upon whether she had marked her physical presence in the shared household or not. A marriage which is valid and subsisting on the relevant date, automatically confers a right upon the wife to live in the shared household as an equal partner in the joint venture of running a family. If she has a right to live in the shared household, on account of a valid and subsisting marriage, she is definitely in “domestic relationship” within the meaning of Section 2(f) of the Act and her bodily presence or absence from the shared household cannot belittle her relationship as anything other than a domestic relationship. Therefore, irrespective of the fact whether the applicant/plaintiff in this case ever lived in the house of the first respondent/first defendant 7.2.2007 or not, her marriage to the first respondent/first defendant on 7.2.2007 has conferred a right upon her to live in the shared household. Therefore, the question as to whether the applicant/plaintiff ever lived in the shared household at any point of

time during the period from 7.2.2007 to 13.6.2007 or not, is of little significance.” In *Rananjaya Singh v. Baijnath Singh and others*, A.I.R. 1954 SC 749 it has been held that

“.....The spirit of the law may well be an elusive and unsafe guide and the supposed spirit can certainly not be given effect to in opposition to the plain language of the sections of the Act and the rules made thereunder. If all that can be said of these statutory provisions is that construed according to the ordinary, grammatical and natural meaning of their language they work injustice by placing the poorer candidates at a disadvantage the appeal must be to Parliament and not to this Court. In *Venkatramana Devaru vs. State of Mysore* in A.I.R 1958 SC 255 it has been held that

... the language of the Article being plain and unambiguous, it is not open to the courts to read into it limitations which are not there, based on a priori reasoning as to the probable intention of the Legislature. Such intention can be gathered only from the words actually used in the statute; and in a court of law, what is unexpressed has the same value as what is unintended.

The revision shall stand dismissed.

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