

(2011) 12 MAD CK 0074

In the Madras High Court

Case No : Criminal O.P. No. 26916 of 2011 and M.P. No. 1 of 2011

Abizar N. Rangwala, Nuruddin Rangwala and Alifiya Rangwala APPELLANT

Vs

Ms. Sakina RESPONDENT

Date of Decision : 02-12-2011

Acts Referred:

Constitution of India, 1950 — Article 19

Protection of Women From Domestic Violence Act, 2005 — Section 12, 14, 18, 19, 20

Citation : (2012) 1 LW(Cri) 325

Hon'ble Judges : A. Arumughaswamy, J

Bench : Single Bench

Advocate : Prakash Goklaney, for the Appellant; V. Prakash, S.C., for the Respondent

Judgement

Honourable Mr. Justice A. Arumughaswamy

1. The petitioners are the respondents in M.C.No. 3 of 2011 on the file of the VII Metropolitan Magistrate, George Town, Chennai. The respondent herein who is the wife of the first petitioner has filed the above said petition against the petitioners herein u/s 12, 18, 19, 20 and 21 of the Protection of Women from Domestic Violence Act, 2005 for the following reliefs:

A. Order of injunction restraining the respondents from committing any acts of domestic violence.

B. Direct the Inspector of Police, Flower Bazaar Police Station to give protection to the petitioner and assist her in this regard.

C. Order of injunction restraining the respondents from interfering with the continuation of the custody of the two minor children.

D. Order of injunction restraining the respondents from entering the school attended to by Minor children.

E. Directing the respondents to stay away from the father and mother and other

- dependents/relatives of the petitioner to prohibit domestic violence against them.
- F. Order of injunction restraining the respondents from communicating with the petitioner in any manner.
- G. Direct the first respondent to return the articles and belongings of the petitioner as mentioned in the schedule to the petition.
- H. Directing the first respondent to secure the saree level of alternate accommodation for the aggrieved person as enjoyed by her in the shared house hold to pay rent for the same.
- I. The respondent has also sought for an order of consequential monetary reliefs and an order directing the first petitioner to pay the (a) Loss of earnings of Rs. 10,000/- (b) Medical expenses Rs. 22,000/- (c) Loss due to physical and mental injury Rs. 10,000/- (d) a sum of Rs. 15,000/- per month towards food, clothes, medications and other basic necessities (e) a sum of Rs. 18,000/- per month towards school fees and related expenses Rs. 50,000/- for minor children (f) a sum of Rs. 15,000/- per month towards household expenses or in the alternative; (g) to pay a monthly sum towards maintenance or lump sum payments as deemed fit and appropriate.
2. The present petitioners have filed their counter in the said Maintenance Case, inter alia denying all the allegations and prayed for dismissal of the Maintenance Petition.
3. The present petition is filed for a direction to the learned VII Metropolitan Magistrate to take up the proceedings in M.C. No. 3 of 2011 as per the provisions of Section 28(a)(b) of the Protection of Women from Domestic Violence Act permitting the petitioners to cross-examine the respondent and further opportunity to the petitioners to let in evidence in any form known to law and as contemplated under the Act. At present the evidence on the complainant side has been closed and posted the case for respondent's evidence. At this stage, the present petition has been filed.
4. The first petitioner is the husband of the respondent. The petitioners contended that the amounts claimed by the respondent on various heads towards monthly maintenance for herself and for the children and lump sum amount for household expenses are excessive and she is not entitled for the said amounts. Further, even in the counter it has been denied. Further, as per Section 14 of the Act, the learned trial Judge has called for the parties for counseling and even in that the respondent is very interest in getting the monetary benefits. Further, the procedure adopted by the learned trial Judge is not in accordance with law. Hence the petitioners pray that the petition has to be allowed.
5. Heard the learned counsel appearing for the petitioners and the learned Senior Counsel appearing for the respondent and also perused the materials placed on record.

6. The vehement contention of the learned counsel for the petitioner/husband is that during the trial fair trial was not conducted by the learned trial Magistrate. The respondent/wife has produced documents under Exs.P1 to P17 and everything has been clubbed and it has been marked without giving opportunity to the petitioners herein Hence, he prayed that the petitioners may be given opportunity to cross-examine the witnesses to substantiate his claim and that the petitioners are at liberty to prove correctness of the documents produced by the respondent/wife.

7. On the other hand, the learned Senior Counsel appearing for the respondent/wife contended that the procedure adopted by the learned trial Magistrate is well within the Act and expects only summary trial and it gives only interim protection which was sought for by the respondent/wife from her husband. The documents need not be again explained by the party concerned and then it cannot be construed as yet another statute like Dowry Prohibition Act. The procedure cannot be as per the Dowry Prohibition Act. Hence he prayed that the present petition is vexatious and it has to be dismissed.

8. It is not in dispute that the first petitioner and the respondent are husband and wife and the relationship between the parties are also admitted. It is also not in dispute that the documents filed by the respondent has been marked as Exs. P1 to P17. The apprehension in the mind of the first petitioner/husband is that he was not given opportunity to cross-examine with regard to the marking of the documents since there have been some corrections in the amounts for which he is entitled to cross-examine the respondent. Therefore, fair trial has to be conducted.

9. It is needless to say that the Act itself grants only interim protection and for clothing and maintenance such as guarding of their wards and no doubt it is a summary trial procedure where the parties are entitled to cross-examine those witnesses as per the Act. Even as provided u/s 12 of the Act, an aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person may present an application to the Magistrate for the relief they expects. The application has to be disposed of within 60 days also been mentioned in Section 12 of the Act. It appears that as provided u/s 23 of the Act if the Magistrate has satisfied that an application prima facie discloses that the respondent is committing or has committed an act of domestic violence or that there is a likelihood that the respondent may commit an act of domestic violence, he may grant an ex parte order on the basis of the affidavit in such form, as may be prescribed, by the aggrieved person u/s 18, 19, 20 and 21 or, as the case may be, Section 22 against the respondent. As per Section 28 of the Act all proceedings under Sections 12, 18, 19, 20, 21, 22 and 23 and offences u/s 31 shall be governed by the provisions of the Code of Criminal Procedure, 1973.

10. Therefore, it is needless to say that the applications filed u/s 12, 18 to 23 and 31 of the Act shall be governed by the principles of Code of Criminal Procedure. From this it is very clear that fair trial has been assured in this Act.

Further from the perusal of the averments of both sides it is seen that the first petitioner/husband is entitled to put forth his case by cross-examining the witnesses. In this case the complainant/wife examined herself as a witness and she has produced documents Exs.P1 to P17. Unless the cross-examination of the witness is allowed on the documents produced by the witness, the sanctity of the documents could not be considered. Generally, the testimony of a witness has to be relied on only after testing the veracity of the same by way of cross-examination. The cross-examination of a witness will bring out the truth or otherwise of the incident. Unless it was allowed to be cross-examined the value of the testimony could not be evolved and weighed exactly by the Court of law. Hence, it is needless to say that the parties are entitled to put forth their defence and establish their case before the Court of law for which, they are entitled to cross-examine the witnesses.

11. Fair trial is one of the fundamental right guaranteed under Article 19 of the Constitution of India. This aspect has been clearly dealt with in the case of Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, , wherein it has been held that a person concerned is entitled for a fair trial as guaranteed Article 19 of the Constitution of India. Therefore, from this it is very clear that fair trial has to be conducted.

12. In the present case the documents produced by the respondent has not been allowed to be cross-examined by the petitioners. But at the same time one cannot allow to adopt the lengthy trial and one cannot water down to dilute the concept of the Act. The Act itself grants only interim protection and for clothing and maintenance such as guarding of their wards. Under such circumstances, she cannot be allowed to undergo one more trial under this Act. Therefore, the learned trial Judge has to bear in mind that the trial has to be conducted in the nature of the summary procedure but at the same time fair trial also has to be done in accordance with the provisions of the Act.

13. Considering the above provisions of law, I am of the view that opportunity must be given to the other side to cross-examine the witness on the production of the documents but course not in the unnecessary or lengthy manner. Further in these type of cases it is not necessary for the parties to let in oral evidence and mere production of the documents itself is sufficient. If the party thinks that oral evidence is essential it is for the trial Court to permit the parties to examine necessary persons along with necessary documents.

14. Therefore, the petitioner is at liberty to cross-examine the respondent's evidence with relevant questions. With the above observation, this Criminal Original Petition is ordered accordingly. The VII Metropolitan Magistrate, George Town, Chennai, is directed to dispose of the case within 45 days from today.