

(2016) 02 CAL CK 0068
In the Calcutta High Court
Case No : CRR 982 of 2015

Aloy Kumar Chanda and Others

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 03-02-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 401(4), Section 468, Section 482
Protection of Women From Domestic Violence Act, 2005 — Section 12, Section 2(f),
Section 27, Section 28, Section 29, Section 3, Section 3(1)(a)(d), Section 32

Citation : (2016) 2 AICLR 260 : (2016) 1 CalCriLR 678

Hon'ble Judges : R.K. Bag, J.

Bench : Single Bench

Advocate : Sudipto Moitra, Angshuman Chakraborty and S.S. Saha, for the Appellant;

Final Decision : Disposed off

Judgement

R.K. Bag, J.—1. The petitioners have preferred this revision under Section 482 of the Code of Criminal Procedure praying for quashing the proceeding of complaint case No. 415822 of 2014 and order dated March 11, 2015 passed in the said complaint case by learned Metropolitan Magistrate, 14th Court, Calcutta, by which learned Magistrate dismissed the application filed by the petitioners challenging the maintainability of the proceeding under the provision of the Protection of Women from Domestic Violence Act, 2005.

2. Leave is granted to learned counsel for the petitioners to implead the sister-in-law and the brother-in-law of the opposite party No. 2 as the petitioner Nos. 2 and 3 by making amendment of cause title of the application for revision in course of this day.

3. The opposite party No. 2 filed the petition of complaint before the court of learned Magistrate under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as the "Domestic Violence Act"). The contents of the petition of complaint disclose that the opposite party No. 2 has

alleged various incidents of domestic violence during stay of the opposite party No. 2 in the matrimonial home. The opposite party No. 2 has also alleged how she was compelled to leave the matrimonial home due to domestic violence of the husband and others. The opposite party No. 2 has prayed for monetary relief, accommodation in the shared household and other reliefs under various provisions of the Domestic Violence Act.

4. The petitioners being the husband of the opposite party No. 2 challenged the said proceeding under Section 12 of the Domestic Violence Act by filing written objection before the court of learned Magistrate. On March 11, 2015 learned Magistrate rejected the application filed by the petitioners by holding that the proceeding initiated by the opposite party No. 2 under Section 12 of the Domestic Violence Act is maintainable in law. The said order is under challenge in the revision along with prayer for quashing of entire proceeding.

5. Mr. Sudipto Moitra, learned counsel appearing on behalf of the petitioners contends that the incidents of domestic violence took place in the matrimonial home at Naida in Uttar Pradesh and as such learned Metropolitan Magistrate, Calcutta has no territorial jurisdiction to entertain the petition under Section 12 of the Domestic Violence Act filed by the opposite party No. 2. By referring to various paragraphs of the petition of complaint Mr. Moitra argues that the ingredients of domestic violence as defined in Section 3 of the Domestic Violence Act are absent from the petition of complaint. He categorically submits that the opposite party No. 2 has failed to make out any domestic violence alleged to have been committed by the petitioner Nos. 2 and 3. He has relied on the decision of Andhra Pradesh High Court reported in 2015 (1) AICLR 900 in support of his above contention.

6. Mr. Moitra argues that the opposite party No. 2 voluntarily left the matrimonial home in the year 2007 and did not keep any contact with the petitioner/husband before filing the proceeding under Section 12 of the Domestic Violence Act in the court of learned Magistrate. In view of long absence of the opposite party No. 2 from the life of the petitioner/husband, Mr. Moitra contends, there is no domestic relationship between the opposite party No. 2 and the petitioner/husband within the meaning of Section 2(f) of the Domestic Violence Act. By referring to the provision of Section 28 of the Domestic Violence Act Mr. Moitra has urged this court to consider that the proceeding initiated by the opposite party No. 2 under Section 12 of the Domestic Violence Act is barred by limitation, as the opposite party No. 2 left the matrimonial home voluntarily in the year 2007. He has relied on the decision of the Supreme Court reported in 2012 (1) AICLR 210 in support of his above contention. According to Mr. Moitra, the continuation of the proceeding under Section 12 of the Domestic Violence Act against the petitioners will be an abuse of the process of the court.

7. Md. Shajahan Hossain, learned counsel for the opposite party No. 2 has referred to various paragraphs of the petition of complaint in order to impress upon the court that there are ingredients of domestic violence against all the

petitioners in general and against the petitioner/husband in particular. According to Mr. Hossain, the allegation of domestic violence is levelled against the elder brother-in-law of the opposite party No. 2 and two sisters-in-law of the opposite party No. 2, apart from the husband of the opposite party No. 2 in the petition of complaint. Mr. Hossain further submits that the provision of limitation cannot be attracted in a proceeding under Section 12 of the Domestic Violence Act as the cause of action is continuing one. He has relied on the decision of the Supreme Court reported in , (2016) 1 CAL LT 17 (SC) in support of his above contention.

8. Before dealing with the rival contentions made by learned counsel representing the respective parties I would like to decide whether this revision is maintainable against the order dated March 11, 2015 passed by learned Metropolitan Magistrate, 14th Court, Calcutta in complaint case No. 415822 of 2014. On perusal of the said order of learned Magistrate I find that learned Magistrate has decided the issue of maintainability of the proceeding under Section 12 of the Domestic Violence Act. Section 29 of the Domestic Violence Act lays down that any order passed by learned Magistrate is appealable before the Court of Sessions within a period of 30 days from the date on which the said order is served on the aggrieved party or the respondent as the case may be. It is crystal clear that the order passed by learned Metropolitan Magistrate on March 11, 2015 is an appealable order under Section 29 of the Domestic Violence Act. In view of the specific bar under Section 401(4) of the Code of Criminal Procedure, 1973 the revision against the order passed by learned Magistrate on March 11, 2015 is not maintainable in law. I can, thus, safely hold that the revision against the order dated March 11, 2015 passed by learned Metropolitan Magistrate, 14th Court, Calcutta in complaint case No. 415822 of 2014 is liable to be dismissed.

9. Now, I would like to deal with the prayer of quashing the proceeding under Section 12 of the Domestic Violence Act. The first contention of Mr. Moitra, learned counsel for the petitioners is that the incidents of domestic violence took place in the matrimonial home at Naida in Uttar Pradesh and as such learned Metropolitan Magistrate, Calcutta cannot have any territorial jurisdiction to entertain the petition under Section 12 of the Domestic Violence Act at the instance of the opposite party No. 2. It is relevant to quote the provision of Section 27 of the Domestic Violence Act, which is as follows:--

"27. Jurisdiction. - (1) The court of Judicial Magistrate of the first class or the Metropolitan Magistrate, as the case may be, within the local limits of which -

(a) the person aggrieved permanently or temporarily resides or carries on business or is employed; or

(b) the respondent resides or carries on business or is employed; or

(c) the cause of action has arisen,

shall be the competent court to grant a protection order and other orders under

this Act and to try offences under this Act.

(2) Any order made under this Act shall be enforceable throughout India."

10. On perusal of the provision of Section 27 of the Domestic Violence Act I find that any aggrieved person who is temporarily residing or carrying on business or is employed within the local limits of the jurisdiction of learned Magistrate can file a proceeding under Section 12 of the Domestic Violence Act in the court of the said learned Magistrate. In other words, learned Metropolitan Magistrate, Calcutta has the jurisdiction to entertain the petition under Section 12 of the Domestic Violence Act within the territorial jurisdiction of the learned Magistrate, if the aggrieved person resides either permanently or temporarily or carries on business or is employed within the local limits of the jurisdiction of the said learned Magistrate. The opposite party No. 2 has stated in paragraph 36 of the petition of complaint that she has been residing at Room No. 312, 3rd floor, Assam House, 8 Russel Street within Police Station Shakespeare Sarani, Kolkata - 700071. The opposite party No. 2 has also stated in the petition of complaint that she is employed in the Assam House situated in Kolkata. Since the opposite party No. 2 is residing temporarily within the territorial jurisdiction of learned Metropolitan Magistrate and since she is employed in a place within the territorial jurisdiction of learned Metropolitan Magistrate, I do not find any merit in the submission made on behalf of the petitioners. In view of my above findings I have no hesitation to hold that learned Metropolitan Magistrate has the jurisdiction to entertain the proceeding under Section 12 of the Domestic Violence Act filed by the opposite party No. 2.

11. The next submission of Mr. Moitra is that the incidents of domestic violence are absent from the petition of complaint filed by the opposite party No. 2. Domestic Violence is defined in Section 3 of the Domestic Violence Act, which is as follows:--

"Definition of domestic violence- For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it -

(a) harms or injuries or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or

(b) harasses, harms, injuries or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or

(c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or

(d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person.

Explanation I. - For the purposes of this section, -

(i) "physical abuse" means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force;

(ii) "sexual abuse" includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman;

(iii) "verbal and emotional abuse" includes -

(a) insults, ridicule, humiliation, name calling and insults or ridicule specially with regard to not having a child or a male child; and

(b) repeated threats to cause physical pain to any person in whom the aggrieved person is interested.

(iv) "economic abuse" includes -

(a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance;

(b) disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person; and

(c) prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.

Explanation II. - for the purpose of determining whether any act, omission, commission or conduct of the respondent constitutes "domestic violence" under this section, the overall facts and circumstances of the case shall be taken into consideration."

12. On perusal of the petition of complaint filed by the opposite party No. 2 I find that the allegations made against the petitioner/husband fall within the ambit of Section 3(1)(a)(d) of the Domestic Violence Act. I have also found allegations against other petitioners, namely, sisters-in-law and brother-in-law of the opposite party No. 2 in some paragraphs of the petition of complaint. The question for consideration is whether those allegations fall within the ambit of

domestic violence as defined in Section 3 of the Domestic Violence Act. While Mr. Moitra, learned counsel for the petitioners contends that those allegations do not fall within the ambit of domestic violence, Mr. Hossain, learned counsel for the opposite party No. 2 has vehemently argued that all those allegations will definitely come within the ambit of domestic violence under Section 3 of the Domestic Violence Act. Accordingly, I would like to deal with all those allegations in seriatim.

13. The allegations made in paragraph 9 of the petition of complaint is that the opposite party No. 2 entrusted her jewellery and stridhan to the petitioner/husband, two sisters-in-law of the opposite party No. 2 and mother-in-law of the opposite party No. 2 simultaneously. It passes my comprehension to believe how jewellery and stridhan can be entrusted to four persons at a time by the opposite party No. 2. This allegation, in my opinion, is considered highly improbable. The allegation made in paragraph 12 of the petition of complaint indicates that the petitioners taunted the opposite party No. 2 for bringing insufficient jewellery, gift and cash and all of them started demanding some jewellery, gift and cash. The specific date, month and year of such demand and the specific date, month and year of such taunting by the petitioners jointly are not disclosed in the petition of complaint. In my view these allegations are vague and omnibus and not sufficient to compel a person to face the proceeding under Section 12 of the Domestic Violence Act for those allegations.

14. The allegations made in paragraph 18 of the petition of complaint indicate that the sisters-in-law of the opposite party No. 2 have communicated that the petitioner/husband has zero sperm and as such the opposite party No. 2 cannot have her own child. The communication of any fact relating to stark reality of life cannot amount to domestic violence under Section 3 of the Domestic Violence Act. The allegation made in paragraph 21 of the petition of complaint discloses that the husband and sisters-in-law of the opposite party No. 2 forced her to press their heads, which according to opposite party No. 2 amounts to domestic violence. The allegation made in paragraph 23 of the petition of complaint indicates that the sisters-in-law of the opposite party No. 2 used to make snide comments that nothing happens by pressing the head. I fail to understand how this conduct and communication on the part of the sisters-in-law of the opposite party No. 2 can amount to domestic violence under Section 3 of the Domestic Violence Act.

15. The contents of paragraph 30 of the petition of complaint disclose that one sister-in-law of the opposite party No. 2, since deceased (as informed by learned counsel for the petitioners) did not give any protection when the opposite party No. 2 was not allowed to live in the matrimonial home at Naida. It is relevant to point out that the said sister-in-law used to reside in a separate flat within the same complex where the petitioner/husband used to reside. The contents of paragraph 40 of the petition of complaint discloses that the opposite party No. 2 has made vague and omnibus allegations of subjecting her to cruelty by all

members of family of the petitioner/husband including sisters-in-law and brother-in-law and mother-in-law of the opposite party No. 2.

16. On an analysis of the facts alleged by the opposite party No. 2 in above paragraphs of the petition of complaint I find that the allegations made by the opposite party No. 2 are vague and omnibus, because the specific date, month and year of the incidents are not disclosed in the petition of complaint. Moreover, some of the allegations are highly improbable and absurd. This court is not oblivious of the general tendency of the aggrieved person to rope in all members of family of the husband in any proceeding initiated by the wife, so that the wife can wreck vengeance on all members of family of the husband. On an analysis of facts alleged by the opposite party No. 2 in the petition of complaint I am of the opinion that no domestic violence is made out against the petitioner Nos. 2 and 3 who are elder brother-in-law and sister-in-law of the opposite party No. 2, though the allegation of domestic violence is made out against the petitioner/husband. In " P. Venkataram and Others V. State (A. P.)" reported in 2015 (2) AICLR 900 the allegations of domestic violence made against the father-in-law and brother-in-law of the aggrieved persons were found to be vague and omnibus. In the said report, the Andhra Pradesh High Court quashed the proceeding under Section 12 of the Domestic Violence Act against the father-in-law and brother-in-law of the aggrieved persons, as the allegations made against them were found to be vague and non-specific. By relying on the said decision I am also inclined to quash the proceeding against the petitioner Nos. 2 and 3 who happens to be the brother-in-law and sister-in-law of the opposite party No. 2.

17. The next contention of Mr. Moitra is that there is no domestic relationship between the petitioner/husband and the opposite party No. 2 and as such the proceeding under Section 12 of the Domestic Violence Act is not maintainable at the instance of the opposite party No. 2. According to Mr. Moitra, the absence of domestic relationship between the parties can be inferred due to long absence of the opposite party No. 2 from the life of the petitioner/husband. Mr. Hossain has pointed out some paragraphs of petition of complaint to urge upon this court that the domestic relationship between the parties continued till October, 2013. Admittedly the opposite party No. 2 was married to the petitioner/husband on November 19, 2001 and they lived together as husband and wife in the matrimonial home at Naida. It appears from paragraph 17 of the petition of complaint that the relationship of husband and wife continued till June, 2007. The opposite party No. 2 has specifically stated in paragraph 29 of the petition of complaint that the petitioner/husband used to stay with her in Kolkata for a period of 3 to 4 days intermittently till October, 2013. There is nothing on record to indicate that the marital tie between the petitioner/husband and the opposite party No. 2 was snapped by decree of divorce. In the absence of dissolution of marriage of the petitioner/husband and the opposite party No. 2 by any decree of divorce, the domestic relationship between the parties will subsist within the meaning of Section 2(f) of the Domestic Violence Act. In view of my above findings I do not find any merit in the submission made by learned counsel for

the petitioners.

18. Relying on paragraph 24 of "Inderjit Singh Grewal V. State of Punjab" reported in 2012 (1) AICLR 210, Mr. Moitra submits that the present proceeding under Section 12 of the Domestic Violence Act initiated by the opposite party No. 2 before the trial court is barred by limitation. According to Mr. Moitra, the period of limitation may be counted from June, 2007 when the opposite party No. 2 voluntarily left the matrimonial home. In "Inderjit Singh Grewal V. State of Punjab" (supra) the marriage between the appellant/husband and respondent/wife was dissolved by decree of mutual divorce after recording elaborate statement of the wife. Thereafter the respondent/wife started civil suit against the appellant/husband praying for declaration that the appellant husband obtained the decree of mutual divorce by practising fraud upon the court. During the pendency of the said civil suit the respondent/wife initially filed a written complaint before the Superintendent of police and thereafter started the proceeding under Section 12 of the Domestic Violence Act against the appellant/husband praying for custody of the minor son, right of residence and restoration of dowry articles. The Supreme Court quashed the said proceeding on the ground that the respondent/wife cannot invoke the jurisdiction under Section 12 of the Domestic Violence Act after the dissolution of her marriage with the appellant/husband by way of decree of mutual divorce. In the instant case the domestic relationship between the petitioner/husband and the opposite party/wife still subsists and as such the ratio of "Inderjit Singh Grewal V. State of Punjab" (supra) will not be applicable in the facts of the present case. Moreover, the incidental observation of the Supreme Court with regard to limitation in paragraph 24 of the report is mere obiter dictum having no relevance in quashing the proceeding under Section 12 of the Domestic Violence Act.

19. In "Krishna Bhattacharjee V. Sarathi Choudhury" reported in , (2016) 1 CAL LT 17 (SC) the Supreme Court has referred to the decision of "Inderjit Singh Grewal V. State of Punjab" and laid down that claim under Section 12 of the Domestic Violence Act is based on the concept of continuing offence and as such the proceeding under Section 12 of the Domestic Violence Act cannot be barred by limitation. It is pertinent to quote specific portion of paragraph 31 of the said report, which is as follows:

"31.....It has been held in "Inderjit Singh Grewal V. State of Punjab" (supra) that Section 468 of the Code of Criminal Procedure applies to the said case under the 2005 Act as envisaged under Sections 28 and 32 of the said Act read with Rule 15(6) of the Protection of Women from Domestic Violence Rules, 2006. We need not advert to the same as we are of considered opinion that as long as the status of the aggrieved person remains and stridhan remains in the custody of the husband, the wife can always put forth her claim under Section 12 of the 2005 Act. We are disposed to think so as the status between the parties is not severed because of the decree of dissolution of marriage. The concept of "continuing offence" gets attracted from the date of deprivation of

stridhan, for neither the husband nor any other family members can have any right over the stridhan and they remain the custodians... Regard being had to the said concept of ""continuing offence" and the demands made, we are disposed to think that the application was not barred by limitation and the courts below as well as the High Court had fallen into a grave error by dismissing the application being barred by limitation."

20. In view of the above proposition of law laid down by the Supreme Court in "Krishna Bhattacharjee V. Sarathi Choudhury" (supra) I am inclined to hold that the present proceeding under Section 12 of the Domestic Violence Act initiated by the opposite party No. 2 cannot be barred by limitation so long as the marital tie between the petitioner/husband and the opposite party No. 2 subsists.

21. The upshot of my entire observation is that the proceeding under Section 12 of the Domestic Violence Act initiated by the opposite party No. 2 against the petitioner/husband is maintainable in law. However, the proceeding under Section 12 of the Domestic Violence Act against the petitioner Nos. 2 and 3 is quashed and the revision is allowed to that extent.

The revision is dismissed with regard to the order dated March 11, 2015 passed by learned Metropolitan Magistrate, 14th Court, Calcutta in complaint case No. 415822 of 2014.

The criminal revision is, thus, disposed of.

Let a copy of this judgment be sent down to the learned court below for favour of information and necessary action.

Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis after compliance with all necessary formalities.