

(2018) 09 BOM CK 0053
In the Bombay High Court
Case No : Criminal Application No.208 Of 2018

B. Balachandra Rao And Anr	Vs	APPELLANT
Sanjna Navneeth Rao And Anr		RESPONDENT

Date of Decision : 06-09-2018

Acts Referred:

Protection of Women from Domestic Violence Act, 2005 — Section 2, 2(a), 2(f), 2(g), 3, 12, 17, 20, 23

Citation : (2018) 09 BOM CK 0053

Hon'ble Judges : Bharati H. Dangre, J

Bench : Single Bench

Advocate : Sarah Kapadia, Beerta Bajwa, A.P. Madhuri, Govind Solanki, S.D. Shinde

Final Decision : Allowed

Judgement

1. Rule.Â Rule returnable forthwith.Â Heard by consent of parties.

2. The present Criminal Application is filed by the two applicants, who are senior citizens, aged about 73 years andÂ 67 years of age.Â The jurisdiction of this Court is sought to be invoked for quashing and setting aside the process issued against them by the learned Judicial Magistrate First Class at Panvel in M.A.No.385 of 2017.Â The saidÂ relief is sought on the ground that the issuance of process to them is an abuse of process of the Court and it is issued for a purpose which is completely in contrast to the provisions of The Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as Domestic Violence Act) and it is the specific contention of the applicants as raised in the application that they are no way concerned with the allegations that are levelled by the Respondent No.1 in the application made by her under the provisions of the Domestic Violence

Act, 2005.

3. The learned counsel for the applicants Ms. Sarah Kapadia in support of the application would submit that perusal of the application filed under

Section 12 of the Domestic Violence Act, 2005, which is filed by Respondent No.1, who is the daughter-in-law of the applicants would reveal that

Respondent No.1 is married with the son of applicants on 14th April 2004 and the marriage was a love marriage and the parties were coming from the

different States and different caste and culture and the married couple were staying separately from the residence of Applicant Nos.1 and 2 since

the applicants never approved their son's marriage with Respondent No.1.

The learned counsel for the applicants would submit that perusal of the complaint would reveal that no allegations have been made against

the applicants and not only this, it is the specific case of the applicants in the application that she was always residing separately from Applicant Nos.1

and 2 and she was never accepted by them as a daughter-in-law. In the light of the averments that are made in the application, which learned

counsel for the applicants have taken me through, her specific submission is that this would not warrant issuance of notice to the applicants, who are

aged parents of the husband of Respondent No.1 and it amounts to an abuse of process of law. The application, therefore, seeks quashment of the

proceedings instituted in M.A.No.385 of 2017 against the present applicants, which are pending on the file of the learned Judicial Magistrate

First Class, Panvel. Another legal submission canvassed by the learned counsel for the applicants is that on perusal of the application, which is filed by

Respondent No.1, by no stretch of imagination, the applicants can be said to be in domestic relationship with Respondent No.1. She would heavily

rely on the definition of the term "domestic relationship" as defined in Section 2(f) of the Domestic Violence Act, 2005 as well as

the connotation "shared household", which is assigned a specific meaning in Section 2. Her specific submission is that in light of the

terminology employed in the Domestic Violence Act, 2005, the allegations would not make out a case for issuance of notice to the present applicants,

who have been unnecessarily roped in, on frivolous allegations and it is her submission that this surely is not the object of the enactment.

4 Per contra, the learned counsel for Respondent No.1, the daughter-in-law,

would submit that the provisions of the Domestic Violence Act, 2005 are intended to protect women who has or have been sharing the same household and where the parties are related by consanguinity, marriage, or through a relationship in the nature of marriage or adoption. The learned counsel would submit that in addition to said relationship, the family members living together as a joint family are also covered. She would submit that the object of the enactment is to effectively protect the rights of a women guaranteed under the Constitution, who are victims of violence of any kind occurring in a family and who has been subjected to violence physical, economical or mental inflicted on her at the hands of her husband and the present applicants are the parents of the husband and that is how she was constrained to approach the learned Judicial Magistrate First Class, Panvel by filing an application in the year 2017. She would submit that out of the wedlock with her husband, two sons are born who are aged 11 and 9 years and her specific submission is that the enactment intends to protect an abuse in all its form whether physical, sexual, verbal or economic and she would fall within the definition of 'aggrieved person' and is entitled to invoke the jurisdiction of the learned Magistrate and to seek protection orders, which the learned Magistrate is competent to grant. The specific submission of the learned counsel is that in terms of Section 3 of the Domestic Violence Act, 2005, which is titled as 'Definition of Domestic Violence' does not imposes any restriction to the effect that the provisions of the Enactment are to be invoked only when the parties are in 'Domestic Relationship'. Her specific submission is that when she was subjected to harassment at the instance of her husband laws i.e. the present applicants, such a harassment would fall within the ambit and scope of the Domestic Violence Act, 2005 and the said Section nowhere restricts her right to approach the learned Magistrate by invoking the provisions of the Act of 2005.

5 On hearing the learned counsel for the respondents, she was specifically asked to invite the attention of the Court to any statement made in the complaint filed by the respondent under Section 12 of the Domestic Violence Act, 2005 where she had stated that the respondent had any point of time shared a household with Applicant Nos.1 and 2, so as to enable her to avail the remedies available to the aggrieved person. The learned

counsel fairly conceded that there is no specific statement in the complaint that the respondent had at any point of time resided with Applicant Nos.1

and 2.Â However, sheÂ Â reiterates her submission that the husband had invoked theÂ proceedings for dissolution of marriage and her specific

case is that the husband was instigated by the applicants to initiate the said proceedings and that is how she is entitled for protection against the

Applicant Nos.1 and 2.

6 I have carefully perused the proceedings which are instituted before the learned Magistrate and the contentions raised in the application.Â This is a

peculiar case where the love marriage between the two parties has gone awry and has resulted into a sour relationship between them.Â Perusal of

the complaint itself would reveal that the marriage between Respondent No.1 and the son of applicants was solemnized on 14.04.2004.Â It was a

love marriage after a long courtship as Respondent No.1 was residing in the same vicinity as to that of the applicants.Â Respondent No.1 is a North

Indian whereas the applicants belong to the South Indian region and it is the specific allegation in the complaint that Applicant Nos.1 and 2 did not

support the solemnization of the said marriage and did not even attend the marriage ceremony.Â The respondent has alleged in the application

presented under Section 20 of Domestic Violence Act, 2005Â that on account of the said reason, immediately after marriage she started residing

separately with her husband in Kharghar.Â What is pertinent to note that in Para 4 of the application, respondent no.1Â herself has given the details

of various residential accommodations which the spouses changed from time to time and it is her specific case that Applicant Nos.1 and 2 did not keep

any relationship with the respondent and they were not at any point of time on visiting terms.Â The application then proceeds to give detail account of

as to how the love marriage entered between the parties was turning into a failure and in the meanwhileÂ two children were born, butÂ the

relationship did not improve.Â Though the details of the deterioratingÂ Â relationship have been narrated in the application which runs into 30 pages,

perusal of the said application would reveal that the applicant wife had made several allegations against the husband and she alleged that he is not

financially competent to maintain herself and her children.Â Thus, most of the allegations contained in the application are against the husband.Â In

the backdrop of the peculiar facts stated in the application, multiple reliefs have been sought in the said application including the relief of

maintenance, an order of residence, and also monetary relief under Section 20 of the Domestic Violence Act, 2005.

7 It is to be noted that the marriage between the respondent no.1 and the son of the applicants was solemnized in the year 2004, but the application is

instituted in the year 2017 and the learned Magistrate was pleased to issue notice to the present applicants and that is why the applicants are before

this Court. I have carefully perused the submissions of the learned counsel for the respondent and it can be only described as misconceived. Perusal

of the Domestic Violence Act, 2005 would reveal that it intends to protect, an Aggrieved person. The Domestic Violence Act, 2005 itself has

assigned a definite meaning to the term Aggrieved person under Section 2(a), which reads thus :

aggrieved person means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected

to any act of domestic violence by the respondent.

Another definition under Section 2(f) which needs reproduction is of term Domestic Relationship.

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. 8 Section 2(g) defines domestic violence and it is assigned the same meaning as mentioned in Section 3. Section 2(g)

reads as follow :

domestic violence has the same meaning as assigned to it in Section 3.

Section 3 though titled as Definition of domestic violence infact envelops several acts of omission or commission or conduct of the respondents

which would constitute Domestic violence. It covers the instances of physical abuse, sexual abuse, verbal and emotional abuse as well as

economic abuse. However, though it do not contain a specific definition, the acts of omission or commission or conduct of respondent is held to be

domestic violence if he indulges into any of the activities which find place in Section 3.

9 The submissions of the learned counsel for the respondent is that Section 3 does not mandate that the parties should be in domestic relationship.Â

The term 'domestic relationship' as defined in Section 2(f) has a definite connotation and it covers 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 a marriage, adoption or are family members living together as a joint family.

Though Section 3 does not intend to convey that the provisions of the Domestic Violence Act, 2005 can be attracted only when the parties are in

domestic relationship. However, this Section cannot be read in isolation and has to be read as a part of entire scheme of the Enactment.Â In the

scheme of Enactment, the term 'aggrieved person' as defined in Section 2(a) occupies a great importance.

Chapter IV of the Enactment confers power on the Magistrate to grant relief that is sought by an 'aggrieved person' or any other

person on behalf of the aggrieved person which includes a relief for issuance of an order for payment of compensation or damages as well as the

other reliefs that are available and enumerated from Section 17 to Section 23 of the Enactment.Â The relief available under Section 12 is only

available to aggrieved person and a person is said to be 'aggrieved person' if she is or has been in a domestic relationship with the respondents

and who alleges that in such a relationship, she has been subjected to any act of domestic violence by the respondents.Â Therefore, the

submission advanced by the learned counsel for the Respondent that 'domestic violence' is not dependent on the existence of a relationship

in terms of Section 3 of the Enactment is a completely misconceived submission.Â The term 'aggrieved person' covers any woman who is, or has

been, in a domestic relationship with the respondent and who alleges to have been subjected to the domestic violence.Â That is how the term

'domestic relationship' comes in to play and merely because the term 'domestic relationship' is not employed in Section 3 of the Act, it does

not mean that the remedy available under the Act can be invoked by a person who is not in domestic relationship.Â A common thread which runs into

the entire scheme of enactment of 2005 is that an aggrieved person who is a woman and who alleges to have been subjected to any act of domestic

violence can approach the Court of Magistrate seeking the reliefs by making an application under Section 12 of the Domestic Violence Act, 2005.

10 In this backdrop, it is clear that the applicant herself has categorically made submission in the application under Section 12 of the Domestic

Violence Act that on account of the fact that she belonged to a different community, the applicants never accepted her and she was always staying in

the separate household with her husband. In such circumstances, if this is the allegation which is levelled in the application, the applicant who is

aggrieved by the conduct of the husband, there is no impediment in proceeding against him under the provisions of the Domestic Violence Act 2005.

However, roping of the present applicants by Respondent No.1, when she has never shared any household with them and was never in a domestic

relationship them, amounts to a clear abuse of process of law. The applicants have approached this Court seeking quashment of the proceedings

and since this Court has arrived at a conclusion that there was no domestic relationship, which Respondent No.1 ever shared with the present

applicants, the provisions of Domestic Violence Act, 2005 are not attracted. Once it is concluded that the provisions of the Domestic

Violence Act, 2005 could not have been invoked and applied by Respondent No.1 against the present applicants and initiation of

proceedings against them under the said Enactment is nothing but an abuse of process of law, then to secure the ends of justice, this Court is

competent to exercise its inherent power to quash and set aside the said proceedings and to grant reliefs to the applicants.

11 For the reasons recorded above, the application filed by the applicants needs to be allowed and it is so allowed in terms of prayer clause (A).

Rule made absolute accordingly.