
(2013) 04 BOM CK 0005
In the Bombay High Court
Case No : Writ Petition No. 2738 of 2011

Chandrakant Nivruti Wagh and Others	APPELLANT
Vs	
Manisha C. Wagh and Another	RESPONDENT

Date of Decision : 04-04-2013

Acts Referred:

Citation : (2013) 5 ABR 873 : (2013) ALLMR(Cri) 4265 : (2014) 1 DMC 640

Hon'ble Judges : Roshan Dalvi, J

Bench : Single Bench

Advocate : Raju Yamgar, for the Appellant; Suvarna Gajre-Dhumal, APP, for the Respondent

Final Decision : Dismissed

Judgement

Roshan Dalvi, J.—Rule. Made returnable forthwith.

The petitioner has applied for quashing of the order dated 21st October, 2010 passed by the learned 5th Judicial Magistrate, First Class, Kalyan on 21st October, 2010 and the dismissal of the appeal therefrom on 8th August, 2011 by the Additional Sessions Judge, Kalyan.

The respondent No. 1 who is the wife of Petitioner No. 1 filed an application u/s 12 of the Protection of Women from Domestic Violence Act, 2005 (D.V. Act) for various reliefs under Sections 17 to 22 of the Act and an application u/s 23 of the Act for interim and ex parte order. The petitioners made an application for dismissal of her application on the ground that an application under the D.V. Act cannot be made against any adult female person u/s 2(q) of the Act which defines the term "respondent".

2. The petitioners also made the application that the application under the D.V. Act was not in a prescribed form which was mandatory u/s 12 as well as u/s 23 of the Act and that the applicant has not furnished details of the previous litigation required under Form II.

3. The D.V. Act is a beneficial legislation. It is meant for protection of violated women. It is upon the acceptance that such women may not have the necessary legal advice.

4. It has been held by this Court that the D.V. Act being a beneficial and protective legislation for violated women, its provisions cannot be construed strictly. Hence in the case of Vishal Damodar Patil Vs. Vishakha Vishal Patil, it has been held that an interim relief can be claimed without a separate interim application moved. Similarly in the case of Raosaheb Pandharinath Kamble and Others Vs. Shaila Raosaheb Kamble and Others, it has been held that the proceedings under Act are quasi civil nature. Amendments thereto also can be allowed.

5. This has been followed in the case of Nandkishor Vinchurkar Vs. Kavita Vinchurkar and Another and Atharva Vinchurkar in which a report of the Protection Officer is held not to be mandatorily required to grant interim relief. It is observed:

If the trial Court, who is required to pass an interim order, keeps on waiting to get the report of the Protection Officer or Service Provider, it would entail the delay and the idea of considering the case of a needy person at the interim stage will be actually defeated.

6. Consequently it is held that when the necessary material is placed before the Court in an application and the reply the provisions relating to calling for report need not be adhered.

7. Hence it is held in the case of Karimkhan Vs. State of Maharashtra and Nahid Akhtar, that the interpretation of such a protective and beneficial legislation should be to further its objects and not to be bogged down by technicalities.

8. Consequently in the case of Manoj Harikisanji Changanani v. Prema Shrinivas Changanani in Criminal Application No. 564 of 2011 decided on 11th January, 2012 it has been held that the Protection Officer's report is not mandatory and it is discretionary for the Court to call for it. Since the format of the report is devised keeping in view the exploratory aspects and approach of the Act. The Protection Officer has to explore and retrieve the information on various aspects included in the format and inquire or investigate into the ill-treatment meted out to the applicant. Various other connected matters would surface and the Protection Officer would bring the reality on record. It is also observed that there are various violated women who would claim protection under the Act. They would not be equipped to draft an application showing all the particulars. Some others could have obtained legal advice and would be able to do so on their own. The domestic violence report would be required in the former cases and not in the latter. It is observed in para 17 that:

reading the provision as regards scaling the report of Protection Officer as a mandatory rule and equipping a respondent with a device of getting the

application of a woman dismissed on the ground that Domestic Violence Report is not called would be a treatment harsher than the ailment.

9. Given that the legislation must further justice and not frustrate it and seeing that even if all particulars are not mentioned the Court can call for further particulars stated in the form set out in rules framed under the Act and accepting that as discretionary, it follows as a matter of corollary that if the application is not in the prescribed form and the required details are not furnished as per Form II it should not deter any Magistrate or Court from granting any relief. The respondent who is represented in the application would be entitled to bring on record facts as are deemed essential and which are not brought on record by the applicant. The Court would certainly consider the merits of the case when all such facts are brought on record by both the parties. If a form is filed, but contains certain blanks required in the prescribed form, also the merits would be considered.

10. The relevant aspects of the form would be considered on merits upon hearing the respondents/opponents in each application. The contention of the petitioners that those are mandatory and that any application made not upon the prescribed forms are liable to be rejected is incorrect. The beneficial legislation is required to be interpreted to enhance justice to women and not to frustrate it.

11. It may be mentioned that u/s 12(3), which was relied upon by the petitioners themselves, it is clear that the particulars to be mentioned to be in the form are as prescribed or "as nearly as possible thereto". The further Section 28(2) of the D.V. Act allows the Magistrate to lay down his own procedure for disposal of an application u/s 12 of the Act. Section 28(2) runs thus:

28. Procedure:--

(1)

(2) Nothing in sub-section (1) shall prevent the Court from laying down its own procedure for disposal of an application u/s 12 or under sub-section (2) of Section 23.

12. This would include acceptance of a form adopted by a violated woman who applies under the D.V. Act.

13. In the judgment in the case of Sagar Sudhakar Shendge Vs. Mrs. Naina Sagar Shendge and Others, it has been held that the Magistrate is free to follow his own procedure as allowed u/s 28(2) of the D.V. Act by which he can issue NBW for obtaining compliance of his own order by arresting the defaulting party in not obeying the order of maintenance even if it is not in compliance with Section 125(3) of the Cr.P.C. as required u/s 28(1) of the D.V. Act as the spirit of the beneficial legislation made for protection of women has to be maintained.

14. Hence the technical aspects insisted upon by the petitioners in their application made as opponents in the learned Magistrate's Court, therefore, are

required to be rejected and are rightly rejected by the learned Magistrate.

15. The aspect of law with regard to who the respondent should be, has been considered by the learned Magistrate upon the case law cited before me.

16. The learned Magistrate has considered the case of Archana Hemant Naik Vs. Urmilaben I. Naik and Another, of this Court directly on the issue whether a respondent to an application could be a male relative and holding that u/s 2(q) of the D.V. Act relied upon by the petitioners herein (the opponents in that application) it has been held that it is clear from the proviso to Section 2(q) that the relatives referred in the proviso would not be only a male relatives. Section 2(q) including Act runs thus:

Section 2(q) of the Act, the term respondent has been defined as under:

(q) "respondent" means any adult male person who is or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act:

Provided that an aggrieved wife or female living in a relationship in the nature of a marriage may also file a complaint against a relative of the husband or the male partner.

17. The proviso does not specify a male relative. Hence female relatives cannot be exempted therefrom. Besides, the proviso to Section 19 specifies an order under 19(1)(b) alone not to be passed against a woman. This also implies that an order under all other such clauses of Section 19 being (a), (c), (d), (e) and (f) can be passed against a woman also. Hence those women would have to be made respondents.

18. The learned Magistrate has also considered the judgment relied upon by the petitioners herein in the case of Tehmina Qureshi Vs. Shazia Qureshi, Madhya Pradesh High Court and correctly distinguished it on the ground that was in the case of Muslim parties where the concept of joint Hindu family and coparcenary parties would not apply in the relationship.

19. Consequently learned Magistrate has been within the specific framework of the law. The order of the learned Magistrate cannot be faulted. The appeal of the petitioners is, therefore, rightly dismissed considering the case of Archana Hemant Naik Vs. Urmilaben I. Naik and Another, .

20. Consequently, the petition is seen to be wholly misconceived. It is dismissed. The learned Magistrate shall proceed to decide the application on merits against all the opponents/respondents before him/her.