

(2010) 10 DEL CK 0222

In the Delhi High Court

Case No : Criminal M.C. No. 1766 of 2010

Dhupender Singh Mehra and Another

APPELLANT

Vs

State (NCT of Delhi) and Another

RESPONDENT

Date of Decision : 08-10-2010

Acts Referred:

Protection of Women From Domestic Violence Act, 2005 — Section 12, 2, 23(2), 27, 28(2)

Citation : (2011) 1 Crimes 520

Hon'ble Judges : S.N. Dhingra, J

Bench : Single Bench

Advocate : Brajesh Kumar, for the Appellant; Anurag, Advocate For the Respondent No. 2, for the Respondent

Judgement

Shiv Narayan Dhingra, J.—By the present petition, the petitioners have assailed order dated 5th November, 2009 passed by the learned Metropolitan Magistrate on an application u/s 12 of The Protection of Women from Domestic Violence Act, 2005 (in short Domestic Violence Act) made by the respondent. Petitioners are father-in-law and brother-in-law (elder brother of husband) of respondent. The husband in this case was working in New Zealand and had come to India for marriage. It seems that the marriage did not take off at all. The allegations made by the parties against each other are not relevant for deciding these petitions.

2. The respondent in her application u/s 12 of Domestic Violence Act made husband, father-in-law and brother-in-law (jeth) and another brother-in-law (nandoi) as respondents giving a common address. On making of this application, the learned Metropolitan Magistrate, on the very first day, passed the impugned order directing that the complaint be checked and registered as per rules and issued notice to the Protection Officer for filing DIR and directed respondents to be served through Protection Officer with or without help of police/Nazarat branch.

3. Section 12 of the Domestic Violence Act reads as under:

12. Application to Magistrate

(1) An aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person may present an application to the Magistrate seeking one or more reliefs under this Act: Provided that before passing any order on such application, the Magistrate shall take into consideration any domestic incident report received by him from the Protection Officer or the service provider.

(2) The relief sought for under sub-section (1) may include a relief for issuance of an order for payment of compensation or damages without prejudice to the right of such person to institute a suit for compensation or damages for the injuries caused by the acts of domestic violence committed by the respondent:

Provided that where a decree for any amount as compensation or damages has been passed by any court in favour of the aggrieved person, the amount, if any, paid or payable in pursuance of the order made by the Magistrate under this Act shall be set off against the amount payable under such decree and the decree shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), or any other law for the time being in force, be executable for the balance amount, if any, left after such set off.

(3) Every application under sub-section (1) shall be in such form and contain such particulars as may be prescribed or as nearly as possible thereto.

(4) The Magistrate shall fix the first date of hearing, which shall not ordinarily be beyond three days from the date of receipt of the application by the court.

(5) The Magistrate shall endeavour to dispose of every application made under sub-section (1) within a period of sixty days from the date of its first hearing.

4. It is apparent from the above provision of Domestic Violence Act that before passing an order on application, the Magistrate has to take into consideration the domestic incident report received from him by Protection Officer or Service Provider. The order dated 5th November, 2009 of learned MM shows that before serving notice to the respondent, the learned MM did not take into consideration anything and did not even consider the contents of the application and did not try to find out as to whether respondents mentioned in the application satisfied the definition of respondent u/s 2(q) of Domestic Violence Act. Section 2(q) reads as under:

2(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.

5. An application u/s 12 of Domestic Violence Act has to be treated in accordance with provisions given under the Domestic Violence Act. Domestic Violence Act

provides for obtaining domestic incident report. The domestic incident report proforma is given in form 1 of the schedule 2 of Domestic Violence Rules. This proforma is in detailed analytical form wherein the details of each incident of domestic violence are to be entered with date, time and place of violence and person who caused domestic violence. The purpose is that all allegations made in application must be specific and the Court should not exercise jurisdiction without considering domestic incident report since it is necessary for the Court to know before issuing any notice to respondent as to who was the respondent who caused domestic violence and what was the nature of violence and when it was committed. The proforma specifies different heads of physical violence, sexual violence, verbal and emotional abuse, economic violence, dowry related harassment and other forms of violence. The proforma also provides for filing of documents in support of the application like medico-legal certificate, list of witnesses and other documents. This domestic incident report has to be signed by the aggrieved person. The application u/s 12 is required to be made in form 2 of the Rules wherein the details of various kinds of reliefs and expenses are to be given. Section 27 of the Domestic Violence Act provides which judicial Magistrate Court can have jurisdiction to entertain an application u/s 12 of the Act. Where marriage took place outside Delhi and the parties have lived outside Delhi, it is incumbent upon the applicant invoking jurisdiction of Delhi Court to specify how jurisdiction of Delhi Court was made out. No doubt Section 28(2) gives power to the MM of laying down its own procedure for disposal of an application u/s 12 or under sub-section 23(2) but the procedure an MM can adopt cannot be violative of the Act itself or violative of principles of natural justice. The procedure adopted by the learned MM of issuing notice to the respondent without even considering domestic incident report and without going through the contents of the application and without specifying as to why each of the respondent named by the applicant was to be summoned, is contrary to the Act. Only those persons can be summoned who have been in domestic relationship with aggrieved person. Under The Protection of Women from Domestic Violence Act, 2005 an aggrieved person does not have liberty to make every relative of the husband as a respondent.

6. The order dated 5th November, 2009 passed by the learned MM is therefore set aside. The learned MM is directed to consider the domestic incident report and consider the contents of the application and find out whether the respondents (petitioners herein) had any domestic relationship with the applicant and could be fitted in the definition of the "respondent" as given in Section 2(q) of the Protection of Women from Domestic Violence Act, 2005 and then only issue notice to them.