
(2011) 09 MAD CK 0046

In the Madras High Court

Case No : Criminal RC. (MD) No. 748 of 2011

Dr. Krishna Ponnuswamy

APPELLANT

Vs

Amutha and Others

RESPONDENT

Date of Decision : 08-09-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397, 401

Protection of Women From Domestic Violence Act, 2005 — Section 12, 19, 19(1), 2

Citation : (2011) 09 MAD CK 0046

Hon'ble Judges : S. Palanivelu, J

Bench : Single Bench

Advocate : R. Anand, for the Appellant;

Final Decision : Allowed

Judgement

S. Palanivelu, J.—This petition filed u/s 397 read with 401 of Code of Criminal Procedure against the return endorsement made by the

learned Judicial Magistrate No. VI, Madurai, Madurai District in Cr.M.P. No. (unnumbered) of 2011 on 06.09.2011 and set aside the same and

consequently direct the above said learned Judicial Magistrate to number and dispose of the same in accordance with law.

2. The first Respondent is the daughter-in-law of the Petitioner. The second Respondent is the brother of the first Respondent and the third

Respondent is the mother and the fourth Respondent is the wife of the second Respondent. On 07.03.1990, marriage was celebrated between the

son of this Petitioner and the first Respondent and after their wedlock, they have got two daughters. They were staying in the house belonging to

the Petitioner for some time. There was love-lost between the Petitioner's son and the first Respondent resulting in lodging a complaint before the

police by the Petitioner. Thereafter, the first Respondent left the matrimonial house.

3. On 23.07.2011, the Respondents came to the house of the Petitioner at 01.00 p.m, along with some hooligans and started shouting to create an

ugly atmosphere. In the above said circumstances, the Petitioner preferred a petition before the learned Judicial Magistrate No. VI, Madurai, u/s

12 of the Protection of Women from Domestic Violence Act, 2005. The said Magistrate returned the petition by stating that the "respondent" does

not come within the purview of the husband of the petitioner. The order challenged before this Court is as follows:

The first Respondent is the daughter-in-law of the Petitioner and other Respondents are the relatives of the first Respondent. As per Section 2(q)

of the D.V. Act relatives of the husband are male partner can only be included as the Respondent. The citation submitted by the Petitioner's

counsel in 2011(2) MLJ (CrI) 429 (SC), 2010 (2) MLJ (CrI) 254 : 2010 (2) MLJ (CrI) 637 states that, the females members who are the

relatives of the husband can be included as the Respondent. But in the case of the Respondent does not come in the purview of the relative of the

husband of the Petitioner. Hence, this petition is returned.

4. The Learned Counsel for the Petitioner would contend that Section 2(q) of the Act would not only deal about the adult male person, but also

includes female member and hence, the daughter-in-law, namely, the first Respondent can very well be brought within the purview of the said

provision. Section 2(q) of the said Act reads as follows:

(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.

5. In support of his contention, he placed reliance upon a decision of the Hon'ble Supreme Court reported in (2011) 2 MLJ (CrI), S.M.

Wankhade v. M.B. Wankhade, in which it is held as follows:

From the above definition it would be apparent that although Section 2(q) defines a Respondent to mean any adult male person, who is or has

been in a domestic relationship with the aggrieved person, the proviso widens the scope of the said definition by including a relative of the husband

or male partner within the scope of a complaint, which may be filed by an

aggrieved wife or a female living in a relationship in the nature of a marriage.

6. He also garnered support from a Division Bench decision of this Court reported in (2010) 2 MLJ (Cri) 637, R. Nivendran v. Nivashini Mohan,

wherein, the learned Judges have observed that the word "respondent" cannot be restricted to a "male relative" and would also include a "female"

also. The following is the gist of the decision:

The "respondent" as defined u/s 2(q) of the Act would only mean any adult male person who is, or has been, in "domestic relationship" with the

aggrieved person, but the proviso therein is an exception and it provides that an aggrieved wife or female living with him in a relationship in the

nature of marriage may also file a complaint against a relative of the husband or the male partner.

... The Statement of Objects and Reasons of the Act also refers to any "relative" of the husband or the male partner and the proviso to Sub-

section (1) of Section 19 of the Act makes it clear that the word mentioned in proviso to Section 2(q), is not restricted to a "male" relative and

would include a "female" relative. But, however, whether relief can be granted against the "female" relative would depend on the facts and

circumstances of each case.

7. From the above, it is settled that the term "respondent" defined in Section 2(q) of the Act would not only mean adult male person, but also

includes a female relative. Further explaining, the Learned Counsel for the Petitioner would submit that the first Respondent is none other the

daughter-in-law of the Petitioner and naturally, she becomes relative of the son of the Petitioner. As far as the competency of the Petitioner in filing

the present application is concerned, the Learned Counsel draws attention of this Court to Section 19(c) of the Act which goes thus:

19. Residence orders:

....

(c) restraining the Respondent or any of his relatives from entering any portion of the shared household in which the aggrieved person resides;

8. The relief sought for in the petition conforms to the requirement in consonance with Section 19(c) of the Act mentioned above. Hence, in the

considered view of this Court, the application can be taken on file and the order of the Court below is liable to be set aside. Accordingly, it is set aside.

9. In the result, this Criminal Revision Petition is allowed directing the learned Judicial Magistrate No. VI, Madurai to take up the application on file and to proceed with the same in accordance with law.