

(2012) 11 CAL CK 0005
In the Calcutta High Court
Case No : CRR No. 2983 of 2010
In Re: Smita Agarwala

Date of Decision : 21-11-2012

Acts Referred:

Constitution of India, 1950 — Article 227
Criminal Procedure Code, 1973 (CrPC) — Section 482
Protection of Women From Domestic Violence Act, 2005 — Section 12, 17, 18, 19, 2

Citation : (2012) 11 CAL CK 0005

Hon'ble Judges : Toufique Uddin, J

Bench : Single Bench

Advocate : Ayan Bhattacharya and Mr. Anjan Datta, for the Appellant; Joydip Biswas, for the Respondent

Final Decision : Dismissed

Judgement

Toufique Uddin, J.—This revision arises for quashing of the proceedings of Case No. C/22, 497/10 corresponding to TR No. 2864/10 u/s 12/ 17/ 18/ 19/ 20/ 22/ 23 of Protection of Women from Domestic Violence Act, 2005 pending before the learned Metropolitan Magistrate, 3rd Court, Calcutta. In the background of this case the fact in a nutshell is that the petitioner is the mother-in-law of the Opposite Party viz. Sheweta Agarwala. On 22.7.10, the said Sheweta Agarwala, daughter of Sri Gopal Killa of 4B, Wood Street, P.S. Shakespeare Sarani, Calcutta-16 filed an application under the said Act before the court of learned Chief Metropolitan Magistrate, Calcutta alleging act of domestic violence against some persons including the present petitioner. Pursuant to such prayer vide order dated 22.7.10, the learned Metropolitan Magistrate, 3rd Court, Calcutta took cognizance. By order dated 4.8.10, the learned Metropolitan Magistrate, 3rd Court, Calcutta asked for domestic incident report and fixed 13.8.10 for further order. On 13.8.10, the learned Court was pleased to issue show cause upon the respondents including the present petitioner who was arrayed as respondent No. 3. On 24.8.10 although the other respondents appeared, the present petitioner prayed for time. On 6.9.10, the petitioner entered appearance. On 14.9.10 and 17.9.10 the parties were heard on interim relief.

2. The petitioners submitted that the instant proceeding is not maintainable against her in view of Section 2(q) of the said Act whereby the "respondent was defined to be an adult male person". The present petitioner being the mother-in-law cannot come within the sweep of this definition of respondent and for that the continuation of the instant proceedings against her is nothing but an abuse of legal process.

3. Hence the case.

4. Now, the point for consideration if the proceeding is liable to be quashed or not u/s 482 of the Code of Criminal Procedure.

5. The learned counsel for the Opposite Party submitted written argument which has been treated as part of the record.

6. It was contended by the learned counsel for the petitioner that the question of law can be taken up at any time before any forum and as such in this forum it is taken that the petitioner being a lady cannot come within the definition of Section 2(q) of the said Act and as such the case is not maintainable. In support of his case, the learned counsel for the petitioner cited before me the decisions as reported in N.M. Engineer and Others Vs. Narendra Singh Viridi and Another, and also Deepak Sarkar and Another Vs. State of Bihar and Another, .

7. On the other hand, the learned counsel for the Opposite Party/respondent vehemently raised objection against the contention of the petitioner and submitted that the plea taken by the petitioner is not tenable in view of written argument filed herein.

8. Now, it is true that the question of law can be raised under Article 227 of the Constitution of India as propounded in N.M. Engineer and Others Vs. Narendra Singh Viridi and Another, and also it is equally true that though the contention was not raised in the application earlier since 2010 but it can be taken up at the time of hearing of this case.

9. I think that the above two decisions are not coming to any aid to the petitioners for reasons recorded hereunder.

10. It was contended by the learned counsel for the petitioner that the order of cognizance is bad in law since there was no violation of any order under the said Act and in support of his contention the learned counsel cited before me the decision as reported in Mangesh Sawant Vs. Minal Vijay Bhosale and Another, (Bombay) and 2012 (2) S 699. Those cases are also distinguishable here being the facts and circumstances different in nature.

11. Lastly, it was contended by the learned counsel for the petitioner that if the initial order is bad, all subsequent orders are bad and he placed reliance on 2011 (8) S 577.

12. Let the contention of the petitioner for quashing of the proceedings be taken in the light of the law as propounded by the Hon"ble Apex Court. True it is in the

decision as reported in 2009 (4) Cri 180 (Cal), it was held that a female does not come within the ambit of expression, "respondent" against whom an order could be passed in regard to Section 2 of the Protection of Women from Domestic Violence Act, 2005. But the Hon"ble Apex Court has propounded in the decision of Sou Sandhya Manoj Wankhade vs. Manoj Bhimrao Wankhade & Ors. arising out of SLP (Crl.) No. 2854 of 2010. The Apex Court by its judgment delivered on 31.1.2011 disposed of the aforesaid matter with an authoritative pronouncement and setting all controversies at rests with the following observations:

11. Having carefully considered the submissions made on behalf of the respective parties, we are unable to sustain the decisions, both the learned Sessions Judge as also the High Court, in relation to the interpretation of the expression "respondent" in Section 2(q) of the Domestic Violence Act, 2005. For the sake of reference, Section 2(q) of the above-said Act is extracted hereinbelow:

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.

12. 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.

13. It is true that the expression "female" has not been used in the proviso to Section 2(q) also, but, on the other hand, if the legislature intended to exclude females from the ambit of the complaint, which can be filed by an aggrieved wife, females would have been specifically excluded, instead of it being provided in the proviso that a complaint could also be filed against a relative of the husband or the male partner. No restrictive meaning has been given to the expression "relative", nor has the said expression been specifically defined in the Domestic Violence Act, 2005, to make it specific to males only.

14. In such circumstances, it is clear that the legislature never intended to excluded female relatives of the husband or male partner from the ambit of a complaint that can be made under the provisions of the Domestic Violence Act, 2005.

13. So, it appears that the matter in dispute has been settled by the Hon"ble Apex Court at rest. A female can be made respondent accordingly. This being the position, there appears nothing bad in taking cognizance or continuance of the further proceedings.

14. Accordingly, I find no merit in this revision and the same stands dismissed. Urgent Photostat certified copies, if applied for, be supplied according to rules.