

(2017) 08 KAR CK 0002
In the Karnataka High Court
Case No : 539 of 2017

KASTURI W/O SUBHAS METI

APPELLANT

Vs

SUBHAS

RESPONDENT

Date of Decision : 03-08-2017

Acts Referred:

Constitution of India, Article 14, Article 21, Article 141, Article 15 - Appointment of Commission to inquire into and report on the administration of au

Citation : (2017) 08 KAR CK 0002

Hon'ble Judges : Rathnakala

Bench : SINGLE BENCH

Advocate : JAGADISH SHASTRI, S.T.BIKKANNAVAR

Final Decision : Dismissed

Judgement

1. In these petitions, the order passed by the Trial Court so also the Appellate Court in respect of proceedings under Section 12 of the Protection of Women from Domestic Violence Act, 2005 ("the Act" for short) are under challenge.

2. The husband/revision petitioner of Crl.R.P.No.195/2007 is challenging the very maintainability of the petition under the Act and is also aggrieved by the quantum of maintenance and compensation awarded in favour of the wife/revision petitioner of Crl.R.P.No.539/2017, whereas the wife is challenging the very same order of the lower appellate court whereby the amount of maintenance and compensation ordered in her favour by the trial court is reduced.

3. Succinctly stated, the wife filed a petition under Section 12 of the Act for various reliefs. Her case was, she was ill-treated by her husband, was pestered to get money from her parents, neglected without maintenance, coerced for a divorce and threatened of dire consequence. The husband had extra-marital relationship with one Basamma. He works as a Revenue Inspector; he has

monthly income of Rs.30,000/- and also has income from his family property. She has no source of income for maintaining herself; her daughter and son-in-law are assisting her and she requires Rs.15,000/- for subsistence.

4. The husband contested the petition, denied the petition allegations and contended that voluntarily she is residing at her daughter's house at Bangalore.

5. The parties entered into trial examined themselves as PW-1 and RW-1 respectively, documents Ex.P1 to P6 were marked for the wife and two documents Exs.R1 and R2 are examined on behalf of the husband.

6. On an overall consideration of the matter, the learned Magistrate allowed the petition and ordered maintenance in favour of the wife at Rs.10,000/- per month during her life time or until she re-marries and Rs.1,00,000/- as compensation for the psychological, emotional and economic violence suffered by her. The husband was also directed to set up a separate residence for her and pay litigation expenses of Rs.1,000/-.

7. In appeal by the husband, the lower appellate court modified the order of the Magistrate. The maintenance amount was reduced from Rs.10,000/- to Rs.5,000/- per month and the compensation amount was reduced by Rs.50,000/-.

8. Sri.S.T.Bikkannavar, learned Counsel for the petitioner/husband submits that, the Magistrate passed the order under Section 12 of the Act without calling for the report of protection officer or the service provider as provided in proviso to Section 12 of the Act. The appellate Court ought to have remanded the matter to follow the mandatory provision. The wife had failed to establish that she shares the common house with the husband. On that ground itself, her petition is not maintainable as per the provision of Section 2(a) & (f) of the Act. There is no cause of action to file the petition since there was no harassment/ill treatment or "domestic violence" as defined under Section 3 of the Act. The wife after the marriage had stayed only for 5-6 months in the matrimonial home. Thereafter she voluntarily left the husband and started residing with her parents. She was a privy to the second marriage of the husband and had consented for the same. After waiting for 8 years, he married the second wife with her consent. For 30 years, she had no grievance about his second marriage. The petition filed after 30 years is barred by limitation. It is he, who brought up his daughter and got her married; from the second marriage, he has children to be maintained. His pension amount is only Rs.6,104/- per month. The courts below ought to have rejected her petition.

9. In reply, Sri.Jagdish Shastri, learned Counsel appearing on behalf of the petitioner of CrI.R.P.No.539/2017/wife submits that the husband is getting pension at Rs.9,400/- per month and he received his pension benefits of Rs.16,23,434/- but the lower appellate court did not consider the other source of his income, without valid reasons scaled down the maintenance amount and compensation amount by the Trial Court. He owns agricultural properties which is

ancestral property; he is engaged in finance, sericulture and dairy businesses. His two sons are working and his wife is a working woman and his income is not less than Rs.1 lakh per month. He is leading luxurious life with his second wife and children without maintaining the wife. During the subsistence of his marriage, he has illegally married Basavannevva and entered her name in his Service Register. She is entitled for a separate residential home or payment of rent where she wants to reside since the petitioner is residing with another woman. So far he has not made any arrangement for her separate residence. Her married daughter is deserted by her husband, hence, cannot be expected to maintain the mother. She requires Rs.20,000/- per month towards her food, cloths and medical expenses and she is suffering from many ailments and the order of lower appellate court may be modified by enhancing the maintenance amount and also the compensation amount by reasonable amount.

10. With the above rival submissions and on perusal of judgments of courts below along with the lower court records, the following points arise for consideration: 1) Whether the petition filed by the wife is barred by limitation?

2) If in negative, what is the appropriate maintenance amount/compensation for her?

11. The factual aspects like relationship between the parties, the second marriage of the husband and presently his status as a retired official, are all admitted between the parties. To address the legal contention raised for the husband regarding "limitation", strong reliance is placed by the husband on the judgment of the apex court reported in (2011) 12 SCC 588 in the matter of Inderjit Singh Grewal -vs- State of Punjab and Another. The facts involved in the said case was, the wife filed the petition under the provisions of the Act and alleged that decree of divorce obtained by the parties was a sham transaction; even after getting divorce, the parties were living together as husband and wife, thereafter she was forced to leave the matrimonial home. The Apex Court upheld the contention advanced for the husband and observed that in view of provisions of Section 468 Cr.P.C., the complaint could be filed only within a period of one year from the date of the incident. The relevant portion reads thus: "24. Submissions made by Shri Ranjit Kumar on the issue of limitation, in view of the provisions of Section 468 Cr.P.C., that the complaint could be filed only within a period of one year from the date of the incident seem to be preponderous in view of the provisions of Sections 28 and 32 of the Act 2005 read with Rule 15(6) of the Protection of Women from Domestic Violence Rules, 2006. . ."

12. Per Contra, reliance is placed by the learned Counsel for the petitioner/wife on the judgment reported in 2012 AIR SCW 1515 in the matter of V.D.Bhanot -vs- Savita Bhanot to urge that, even though the husband and wife are not residing under a common roof at the time of filing the petition, the wife is entitled to invoke her remedy under Section 12 of the Act.

13. In Inderjit Singh Grewal (supra), the cause of action was stated to be, even

after getting a consent divorce decree on 5.4.2009, the parties resided together and thereafter the wife was forced to leave the matrimonial home. It is in that context, the apex court did not differ with the submission that in view of Section 468 of Cr.P.C., complaint could be filed only within a period of one year from the date of the incident in view of provisions of Sections 28 and 32 of the Act read with Rule 15(6) of the Protection of Women from Domestic Violence Rules, 2006. No law was laid down as binding principle, by the Apex Court in exercise of its power under Article 141 of Constitution of India, regarding applicability of Section 468 of Cr.P.C to seek relief under the Act. It is well settled that a decision is an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made therein (R.L.Jain -vs- DDA and Others). (See Krishena Kumar v. Union of India, Municipal Corn. Of Delhi v. Gurnam Kaur and Orient Paper and Industries Ltd. V. State of Orissa).

14. In V.D.Bhanot's case (supra), which is a later judgment by the apex court, the Delhi High Court had recorded its finding in respect of the maintainability of the petition under the Act by a woman, who was no longer residing with her husband or who was allegedly subjected to act of domestic violence prior to coming into force of the Act on 26.10.2006. After considering the constitutional safeguards under Article 21 of the Constitution, vis-a-vis the provisions of Section 31 and 33 of the Act, the learned single Judge of Delhi High Court had held that it was with the view of protecting the rights of the women under Articles 14, 15 21 of the Constitution that the Parliament enacted the Act in order to provide for some effective protection of rights guaranteed under the Constitution to the women, who are victims of any kind of violence occurring within the family and matters connected therewith and incidental thereto, and to provide an efficient and expeditious civil remedy to them. Accordingly, it was held that a petition under the provisions of the Act is maintainable even if the acts of domestic violence had been committed prior to the coming into force of the Act notwithstanding the fact that in the past the woman had lived together with her husband in a shared household, but was no more living with him, at the time when the Act came into force. The said finding was affirmed by Apex Court in the following wordings ". . . . In our view, the Delhi High Court has also rightly held that even if a wife, who had shared a household in the past, but was no longer doing so when the Act came into force, would still be entitled to the protection of the Act 2005".

15. The question of limitation raised by the husband cannot be mechanically accepted on the core point that the wife has filed this petition after decades of separation. As observed supra, the limitation question was made applicable in the case of Inderjit Singh Grewal (supra) in reference to the cause of action arising out of single incident of "Domestic violence" wherein wife was forced to leave the matrimonial home after the parties lived together under the same roof despite obtaining the decree of divorce vide order of the family court dated 20.3.2005. The parties herein are legally married couple and are required to

mutually comply the marital obligations arising out of the marriage. It has come in the cross-examination evidence of the wife that she stayed in the matrimonial home for one year after the marriage and for the last 8-9 years she is residing in the house of her daughter at Bangalore and the marriage of her daughter was performed by her husband only and she is not prepared to join him even if he provides a separate residence for her at Saundatti. During the evidence of the husband, it was brought on record that the wife voluntarily abandoned the matrimonial home. During his cross-examination he fairly admitted that during the subsistence of his marriage with the wife, he has married another lady and he is not providing for her maintenance. He has nominated the second wife in his service records as his wife. He has a house and landed property at Saundatti and ready to lead marital life with her in the said place. He has 10 acres of land and gets 2 crops per year.

16. "Domestic violence" under Section 3 of the Act among others takes into its fold "economic abuse" also. The omission of the husband in neglecting to maintain the aggrieved person, who is at the receiving end, falls within the description of Section 3 of the Act. The obligation of the husband continues throughout the matrimonial life and the husband cannot get away with an excuse that for many years no request was made by the wife for the maintenance amount. The very fact that he has led life with another woman during the subsistence of his marriage with his wife and begot children from the second wife amounts to emotional abuse as contemplated by Section 3(a) of the Act, endangering the mental and physical well-being of the aggrieved person. This is another form of domestic violence within the meaning of Section 3(a) of the Act. In that view of the matter, the petitioner is guilty of the offence of domestic violence and limitation cannot be a ground for the husband to escape his liability. Therefore, the wife is entitled for the protection under the Act.

17. With regard to the objection raised by the husband about procedural irregularity - The procedural aspect of the matter is governed by Chapter IV - Sections 12 to 29 of the Act. Without reiterating each of the statutory provisions, it suffices to draw the quintessence from the provisions of the Act/a beneficial legislature. Accordingly, an aggrieved person under Section 12 of the Act can file an application before the Magistrate to seek one or more relief under the Act. The proviso to Section 12 contemplates that before passing any order on such application, the Magistrate can take into consideration any domestic incident report received by him from the Protection Officer or the service provider. Under subsection (4) of Section 12, Magistrate can fix the first date of hearing, it shall not ordinarily be beyond three days from the date of receipt of the application by the court. Sub-section (1) of Section 13 contemplates notice of the date of hearing fixed under section 12 to the Protection Officer, who shall get it served on the respondent, within a period of two days or such further reasonable time as may be allowed by the Magistrate. The procedure of calling for the report from the Protection Officer wherefore, in the opinion of this court, is prior to passing an ex parte order, but not subsequent to service of notice to the respondent.

Once the respondent appears, the Magistrate may direct the parties for counseling or he may secure the service of welfare experts under section 15 of the Act. Since the case has gone through full fledged trial, the objection raised on the procedural aspect that Domestic Incident Report ought to have been called for by the Court etc., cannot be sustained.

18. Now coming to the question of quantum of maintenance, the trial court appreciated the allegation of the complainant that the husband at the relevant point of time was drawing a net salary of Rs.22,312/- and nominated his second wife in his service register and his family has 18 acres of land, thus ordered to pay maintenance at Rs.10,000/- per month and Rs.1 lakh towards mental, emotional and economic domestic violence with a further direction to arrange for a separate residence along with the cost of the proceeding at Rs.1,000/-.

19. In appeal, the lower appellate court observed that the husband retired on 31.5.2016 and is a pensioner and his retirement benefit was Rs.6,61,264/- and modified the monthly maintenance amount to Rs.5,000/- per month along with the compensation of Rs.50,000/- towards mental agony, hardship and loss of companionship to the respondent.

20. As such, there is no direction by the appellate court to provide a shelter. As per the cause title address, the husband is a resident of Saundatti and cannot be expected to provide a residence at Bangalore where the rent is soaring to its high. As such, the wife has denied to cohabit with the husband at the village. It will not be a burden on him out of his agricultural income and also retirement benefit, to pay maintenance at Rs.5,000/- per month and a compensation of Rs.50,000/- towards mental agony. The revisions filed by both the parties will not attract revision jurisdiction of this court, hence, are dismissed.