
(2015) 07 AHC CK 0068

In the Allahabad High Court

Case No : Application U/s. 482 No. 14918 of 2015

Reena Singh and Others

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 10-07-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Protection of Women From Domestic Violence Act, 2005 — Section 12, 12(1), 2, 2(q), 23(2)

Citation : (2015) 07 AHC CK 0068

Hon'ble Judges : Anjani Kumar Mishra, J

Bench : Single Bench

Advocate : A.K. Dwivedi, for the Appellant

Final Decision : Dismissed

Judgement

Anjani Kumar Mishra, J—Heard Sri A.K. Dwivedi learned counsel for the applicants and Sri Ajit Ray learned AGA for the State.

2. This application under Section 482 Cr.P.C. seeks quashing of the criminal Complaint Case No. 1583/IX/14 (Smt. Sarla Singh v. Raghvendra Singh and others) under Section 12(1) of Protection of Women from Domestic Violence Act, 2005, Police Station-Karvi, District Chitrakoot pending in the court of Judicial Magistrate, Karvi, Chitrakoot.

3. The contention of learned counsel for the applicants is that the applicants are the married sisters of Raghvendra Singh. They are residing separately in their marital home, although in the same city.

4. Relying upon sub-section f and (q) of Section 2 it has been submitted that the applicants are not in a domestic relationship to the opposite party No. 2 and no women can be a respondent as defined in sub-section (q).

5. It is next submitted that an application under Section 12(1) of the Act must necessarily be in form II prescribed under the Rules framed under the Act. It has

lastly been submitted that the reliefs that have been claimed in the application can only be granted once the application is accompanied by an affidavit prescribed in form III. No such affidavit has been filed and therefore, the application itself is defective and cannot be entertained also because it has not been counter signed by the Protection Officer.

6. Learned AGA has refuted the submission made by learned counsel for the applicants.

7. Perusal of the affidavit itself reveals that an allegation has been made therein against the applicants. It has been alleged that the applicants reside near the marital house of the opposite party No. 2 and that they often come and threaten the opposite party No. 2.

8. Insofar as the submission that the applicants being women are not covered by the definition of respondent as contained in sub-section (q) of Section 2, it would suffice to say that this aspect has been considered by the Apex Court in the case of *Sou. Sandhya Manoj Wankhade Vs. Manoj Bhimrao Wankhade and Others*, (2011) CriLJ 1687 : (2011) 2 CTC 455 : (2011) 2 DMC 811 : (2011) 2 JCC 717 : (2011) 3 JT 265 : (2011) 2 RCR(Civil) 1 : (2011) 1 RCR(Criminal) 884 : (2011) 2 SCALE 94 : (2011) 3 SCC 650 : (2011) 2 SCC(Cri) 21 : (2011) 2 SCR 261 : (2011) 1 UJ 571 : (2011) AIRSCW 1327 paragraphs 14 and 15 of the aforesaid judgment are relevant and conclusive and the same are extracted below:--

"14. 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.

15. 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."

9. The next submission that the application under Section 12(1) is not in the form namely Form II provided under the rules framed under the Act, it would be relevant to refer to Rule 6. Sub-rule 1 of Rule 6 provides that "every application of the aggrieved person under Section 12 shall be in Form II or as nearly as possible thereto." It is therefore, clear that although the form has been prescribed, the application should be substantially in this form and therefore minor variations with Form II shall not render the application, not maintainable. Same is the position in sub-section 3 of Section 12 which provides that "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."

10. Perusal of the application itself reveals that prima facie the application conforms with the requirement of Form II. The submission in this regard that there is no affidavit in support of the application also lacks substance. The requirement of an affidavit and its format are provided in Form III. This form has been prescribed under Rules 6 and 7. The requirement for an affidavit itself is provided under Section 23(2) of the Act which deals with the power to grant an interim/ ex parte order. This court has therefore, no hesitation in holding that an affidavit in Form III is mandatory before any interim or ex parte order can be passed. No such order has been passed by the Magistrate and therefore, in my considered opinion non-filing of an affidavit along with the application under Section 12(1) is not fatal for the application itself.

11. The next contention of learned counsel for the applicants is that the application under Section 12(1) is not counter signed by the Protection Officer. Even this submission is misconceived. An application under Section 12(1) can be filed by the aggrieved person or Protection Officer or any other person on behalf of the aggrieved person. The application in the instant case has been filed by the aggrieved person namely the opposite party No. 2. It has not been filed by the Protection Officer and therefore, I see no merit in the submission of learned counsel for the applicants that the application was necessarily required to be counter signed by the Protection Officer. In my considered opinion, the application must be counter signed if it is filed through to Protocol Officer.

12. The last contention raised is that no order can be passed on an application without taking into consideration any domestic incident report by the Protection Officer or the service provider. Since no such report is available on record, the application itself must be quashed. This argument is also misconceived inasmuch as no order has been passed on the application. The Magistrate has only issued notices to the opposite parties therein, in pursuance whereof, the husband has put in appearance through Counsel. Even otherwise, any order will necessarily be passed only after hearing the parties and even if, no report of the Protection Officer or service provider is as yet available on record, the same cannot be a ground for quashing the application itself, and the submissions in this regard are therefore premature. The applicant may have cause to be aggrieved only if some order on merits is passed without a report by the Protection Officer or service provider.

13. According and for the reasons given above the submissions of learned counsel for the applicants are without merit. The application is accordingly dismissed.