
(2019) 11 P&H CK 0102

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous Petition (M) No. 2800 Of 2016, 44526 Of 2017, 22421, 44966, 45299, 47251, 47424, 48637, 50914, 51513, 52421, 53379, 21494 Of 2018

Roop Lal & Others

APPELLANT

Vs

Manpreet Kaur

RESPONDENT

Date of Decision : 19-11-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 482

Indian Penal Code, 1860 — Section 498A

Protection Of Women from Domestic Violence Act, 2005 — Section 2(b), 2(f), 2(q), 3, 4, 5, 9, 11, 12, 13, 17, 18, 19, 25, 28, 29, 36

Protection Of Women from Domestic Violence Rules, 2006 — Rule 9

Constitution Of India, 1950 — Article 14, 15, 21

Citation : (2019) 11 P&H CK 0102

Hon'ble Judges : Fateh Deep Singh, J

Bench : Single Bench

Advocate : Sandeep Arora, Kunal Dawar, Vaibhav Narang, Rupinder Kaur Thind, Onkar Rai, Saurabh Garg, Kusum Raj, Sumeet Goel, Prince P. Rana, Navjinder S. Sidhu, Arnav Sood, Rahul Bhargava, Mohit Thakur, Narinder Kaur, J.S. Rattu, Rahul Rampal, Ankur Malik, Pawan Sharda, Amrik Narwal, Amit K. Goyal, Preetinder Singh Ahluwalia

Final Decision : Dismissed

Judgement

Fateh Deep Singh, J

The surmounting rise in the number of petitions under Section 482 Cr.P.C. challenging the processes being initiated by various Courts under the jurisdiction of this High Court for the matters dealing with the Protection of Women from Domestic Violence Act, 2005 (in short, 'the Act') and the subdued clamour that the provisions are discriminatory qua males and lopsided acknowledging of the rights of women vis-à-vis their men folk has led to the amalgamation and clubbing of all these petitions with an effort to clear the air and haze which has engulfed the interpretation of provisions of this Act since its inception and

otherwise brings about more uncertainty and confusion.

In India though there existed laws to protect women from perpetrators of violence, in fact even the legal experts felt their inadequacy in dealing with the ever burgeoning problem of domestic violence and which phenomenon was not being adequately dealt with. One cannot look the other way that even with the coming into force of the Act it has failed to cater to the needs of abuse of male child in the house though subsequently with the enlargement of definition of 'Rape' it has been addressed to some extent but not completely.

This legislation has remained in oblivion and indifferent to the Domestic Violence instances concerning men in domestic relationship and thus falls short of constitutional obligation as enshrined under Articles 14 and 15 of the Constitution and violates Legal Egalitarianism as well as Article 7 of Universal Declaration of Human Rights.

Being one in such a sphere, the Act has tried to concretely deal with the problems of domestic violence from feminist perspective of law for expeditious redressal of grievance irrespective of the economic, religious and ethnic affiliations of the women.

"Next to God we are indebted to women, first for life itself, and then for making it worth living" - Bovee C.N. Epigrammatic writer of New York who lived in the 19th century and happens to be one of the members of Literary Circle popularly called "Saturday Evening Club of Boston" has penned these famous indelible lines as a tribute to the female form of homosapiens.

Our Constitution while introducing Gandhian Socialism, Secularism did keep in mind the concept of "Equality" and which became the basic feature of the Constitution and too was acknowledged by the Supreme Court of India in 'Indira Sawhney vs. Union of India' (2000) 1 SCC 168. In league with thoughts of great thinkers, the Constituent Assembly introduced Articles 21, 14 and 15, the latter as a special tribute to women and eliminating gender based discrimination. In spite of the same, a debate over the Equality is getting complicated. Since women are often misnomered as 'Weaker Sex' and therefore in under-developed countries including developing nations like ours, there is still huge gap in Gender Equality, more dominant in Rural than Urban scenario. The approaches in gender difference broadly fall in protectionist, sameness and compensatory outlook. The Universal Declaration of Human Rights had voiced its concern against discrimination and holding out that all human beings are born free with equal rights and dignity and thus, are all entitled to equal treatment. It was stressed to ensure equal rights to men and women. That is how Declaration on the Elimination of Discrimination against Women came into being and it is with this end in view United Nations resolved the member States to adopt appropriate legislation.

The Protection of Women from Domestic Violence Act, 2005 is one of the most aggressive approach while enacting such a progressive Act which is enacted in

favour of women's rights. Though a challenge was made it being ultra-vires of the Constitution but the Delhi High Court in 2008 in 'Aruna Parmod Shah vs. Union of India' 2008 (3) RCR(Criminal) 191 brushed aside the stand that it was discriminatory to men as protection was afforded only to women. However, it cannot be ignored that less out of social need and more out of political compulsions, multiple Laws are being evolved which are lopsided heavily weighing in favour of women offering them multiple remedies for the same very grievance and for which the present Act is one. In spite of Article 15 of Part IV of 'Convention on the Elimination of All forms of Discrimination against Women' which came in force with effect from 3rd September, 1981 had resolved that all State parties shall accord to women equality with men before the law but it is not so in realm. J. Leila Seth, former Judge and member of 15th Law Commission of India, in her book "Talking of Justice" has remarked that 'International human rights has not been applied effectively to address the disadvantages and injustices experienced by women and it is primarily because they are women.' Frankly speaking, there is general failure in the application of human rights throughout the world and there is no uniform application on account of varying cultures and traditions of a society, which is still patriarchal, medieval in its outlook towards women and hence in spite of international resolve of member States putting in more than 65 years of their relentless efforts have failed to achieve the ultimate, so our country is no exception. The Parliamentary Standing Committee on Human Resource Development in its 124th Report on creation of the Act while tabling the Protection from Domestic Violence Bill 2002 (in short, 'the Bill') which was laid before both the

Houses on 12th December, 2002, too has voiced its concern over the violence against women of any kind occurring within the family and has shown concerns on existing personal or criminal laws holding that they leave certain gaps in addressing the issue of domestic violence. Differentiating of existing Law scenario, they were of the view that under Criminal Law if a husband perpetrates violence on his wife, she may file a complaint under Section 498-A IPC. Similarly under the Civil Law if there is disharmony in a family and the husband and wife cannot live together, any of them may file a suit for separation followed by divorce.

However, the intention of the Bill addresses such situation where there is some disharmony in the family but the situation has not reached a stage where either separation or divorce proceeding has become inevitable and the aggrieved woman also for some reasons does not initiate criminal proceedings against her perpetrator and therefore, the Bill seeks to give the woman an alternative avenue whereby she can insulate herself from violence without being deprived of the basic necessities of life and without disintegrating her family. The Committee while recommending suitable amendment and was so of the view expressed by the Hon'ble Supreme Court in 'Indra Sarma vs. V.K.V. Sarma' 2013(15) SCC 755, had wished quite aware of the modern concept of live-in relationship that where a man and a woman are not legally married, live together as husband and wife

and their relationship has got social sanction too and being of the view that the issue of domestic violence (as defined in Section 3 of the Act) is more proximate to basic human rights of a woman to have and lead a dignified life. Even the Law Commission in its report made in August 2012, propagated the essential provisions in the Act of appointment of Protection Officers under the control and supervision of a Judicial Magistrate of First Class and the essentiality of sending domestic incident Report to Magistrate, Police Station and service providers. The same is by way of adequate safeguard for effectively assisting the victim for shelter counseling, medical treatment, legal/monetary aid and to advice and act on her behalf. The Commission acknowledged that the Act was essentially of civil nature with a mix of penal provisions. With this background as to the genesis of the Act, the Scheme of the Act needs to have a relook at.

Section 2(b) of the Protection of Women from Domestic Violence Act, 2005 defines a child as any person below the age of 18 years and which includes adopted, step or foster child. Such a child can seek relief under the Act either through mother/ legal guardian/ Court guardian or next of friend. The term 'Domestic Relationship' in Section 2(f) of the Act is most misinterpreted and misunderstood. To the mind of this Court, it includes:-

Any relationship in nature of marriage, refers to in broader sense keeping in view the intent of the legislation and includes live-in relationship where there is no marriage under the law and yet the parties are representing to the world and the public at large as a couple and apparent is there element of stability continuous over a period of time, which may also be termed as common law marriage which is corroborated from having a common address, public utility documents etc. including commitment of the parties in respect of residence, cohabitation, dependency of finances, presence of off-springs and contribution towards them, such a relationship is legal for which support can be had from (1985) 1 SCC 637 'Sumitra Devi vs Bhikan Choudhary'. So emphasis of law is on protection of women, whether daughter, sister, mother, wife, partner or partner's child. However, right to property of the latter will still be governed by the personal or general law applicable as the case may be.

Furthermore, the woman can initiate action under the Act against any adult male perpetrator including his male and female relatives (which term is not defined in the Act) and therefore, the provisions of Section 2(q) of the Act are more so akin to Section 498-A of IPC. Therefore, there can be redressal of grievance of the woman qua father, mother, sister, uncle, brother etc. provided there is established 'domestic relationship' with exceptions to the provisions of Section 19 of the Act, which applies in case of mother-in-law of the woman. Term 'Domestic Violence' is defined in Section 3 of the Act and virtually has in its sweep entire gambit of physical, mental, psychological endangerment, deprivation against her wishes. The scheme of the Act lays down that upon information of domestic violence, any person including Police Officer, Protection Officer, Service Provider or a Magistrate can set the process into motion. The victim at any stage is

entitled to medical facilities, shelter home, financial assistance etc. as well as assistance of Protection Officer and Security Provider to enable the victim to have recourse of law as per the Act in terms of Section 9. Besides this, the Protection of Women from Domestic Violence Rules, 2006 under Rule 9 lays down steps/action that can be taken by Protection Officer/ Service Provider in case of emergency for which aid of police can be sought as well and thus the concerned courts need to be sensitized that resort to the provisions can be had throughout the year and twenty four hours every day of the week and the Magistrates can not shrug off their responsibilities from the same.

The incidence of domestic violence need not be reported by the victim but Section 4 of the Act encompasses anyone who has reason or believes that there is likelihood of its commission, can do so by informing the Protection Officer and further by virtue of Section 5 any Police Officer, Protection Officer, Service Provider or Magistrate on receipt of information of domestic violence or witnessing it, is in legal obligation to make aware its victim of the rights under the Act and for which the said person doing it in good faith is insulated from civil and criminal liability. The Act has comprehensively detailed the appointment, duties and functions of Protection Officers, provisions of medical facilities, of shelter homes, Service Providers. But it is sad to observe that in spite of the obligation having been cast upon the Central and State Governments by enacting Section 11, but it would not be encouraging to note that in the States of Punjab, Haryana and Union Territory Chandigarh, it is a dismal scenario. As is the information sought/gathered, there are only 21 Protection Officers in the State of Haryana out of which there is no male Protection Officer; in the UT there are only 5 all males while in Punjab out of total 154 Protection Officers, 30 are males while rest 124 are females, and majority out of these are having additional charges and thus unable to carry on fully their obligations under the Act. Sad to observe, there is only one specifically notified shelter home under the Act which is in UT Chandigarh and both the other States are yet to open their account on that score solely for the purposes of this Act. This is what has led the Ministry of Woman and Child Development, Government of India, requesting the States to appoint more Protection Officers with independent charge (letter dated 27th June, 2019). Further, there is totally no information readily available to the public about the provisions of the Act as well as the Protection Officers, Service Providers of an area and what recourse a distressed woman is to adopt. There is lack of due publicity as well as training to the stake-holders for furthering the purpose of the Act, which includes gender sensitization and early redressal. There is lack of experts like psychologists, psychiatrics for this purpose, including marriage counsellors, for which fixed budget allocation needs to be made as well.

The proceedings under the Act are predominantly civil in nature and in case of violation of the order it takes the character of criminal proceedings. Reliance placed on 2016 (3) RCR(Criminal) 315 'Kunapareddy @ Nookala Shanka Balaji vs. Kunapareddy Swarna Kumari & another'. Apparently, the framers of the Act of that time were of the view that application of Code of Criminal Procedure to

the proceedings would give more teeth to the Act and deter the perpetrators of violence from violating its provisions as well as to bring about more efficiency and efficacy in it. To give flexibility to the provisions and to advance the cause of justice, the Hon'ble Apex Court in 'S.R. Sukuman vs. S. Sunaad Raghuram' 2015 (3) RCR (Criminal) 570 has held that in exceptional cases power of courts to allow amendment can be exercised. With a view for providing speedy remedy, the framers of the Act have provided time bound manner of service of notice as well as disposal of the application for which provisions of Sections 13 and 12 have been enacted thus, casts upon the Courts trying such matters to ensure speedy disposal of such 'applications' which are often misnomered as 'complaints'

To ensure and prevent undue injustice to the parties, the Act has carved out right of Appeal under Section 29 as well as alteration of orders passed under the Act on the application of the respondent or the aggrieved party by the aid of Section 25. From this, it is abundantly clear that the parties need to refrain from approaching the High Court straightaway every time with the aid of Section 482 Cr.P.C. which exercise of inherent powers is to be sparingly made, for which reliance is placed on 'State of Haryana and others v. Ch.Bhajan Lal and others' 1992 AIR SC 604. Where there is manifest graveillegality and to undo it as well as to meet the ends of justice, though the Act does not bar resort to Section 482 Cr.P.C. which powers cannot be restricted but at the same time, it cannot be made to overrun the provisions of the Act even in respect of legitimate legal orders and proceedings. Moreover, till the stage of mere issuance of notice, which is a pure ministerial function, and calling for the domestic incident report, the Magistrate has yet to apply its mind and is yet to pass any judicial order, as consequent thereupon as per the scheme of the Act enjoins upon the Magistrate a duty and an obligation to make efforts at counselling and ensure if there could be a chance to repair the matrimony damage. However, as a caution though the Act does not lay down at what stage a Magistrate can pass interim orders by way of protection orders, residency orders, monetary reliefs, custody orders, compensation orders etc. (Sections 17 to 22 of the Act) under interim relief but the Courts need to be slow in doing so at the preliminary stage before taking cognizance of the application, else the provisions of reconciliation/counselling might become a casualty. However, it is made clear that such rights also run parallel to any other rights a party might have under another provision of law. Section 36 of the Act ensures provisions of the Act are not in derogation to any other law. Thus, the Courts need to ensure that the party does not get executed dual remedies upon disposal of the cases simultaneously before renouncing one of them as it might also lead to confrontation between judicial orders resulting in innocuous situation for the implementation and execution of the legal and valid orders. The Courts need to ensure there is due compliance of Section 26 of the Act before making such an order.

It is often seen and is so on mere issuance of notice, which cannot be equated with summons when the Magistrate is only dealing with its ministerial function, the respondent side gets alarmed and rush to this Court by invoking inherent

powers of this Court by the aid of Section 482 Cr.P.C. It is desired for the Courts to discourage such a practice else the very spirit and the object of the Act stands jeopardized. Only when the Magistrate passes a judicial order, a party may exercise its right under the Act and the law as already enumerated above keeping the principle of judicial hierarchy intact. The Court of Magistrate needs to be sensitized as to the requirements of the Act and to adopt the practice of counselling, requisitioning marriage counselors, welfare experts as the case may be and to ensure the entire proceedings on the application in appropriate cases are held in camera as desired by Section 16. As has come across to this Court usually at the very filing of the application under Section 12, the Courts embark upon a journey of dealing with the respondent as a "criminal" which is in fact not in the true spirit of the Act and even goes to the extent of issuing arrest warrants, thus compelling a party to seek shelter of this Court and which needs to be discouraged. Moreover, it is the bounden duty of the Chief Judicial Magistrate of the jurisdiction to sensitize the Magistrates under him and ensure uniformity in approach and the finer nuances of the Act so as to solve this tangle from varying methods and procedures being adopted by various Courts in these proceedings. Though Section 28 empowers the Courts to adopt procedure as they deem fit within the compass of Law but it needs to be ensured that the same is not made to run amuck.

Thus, in the light of the same all these petitions stand dismissed. However, this would not be construed as having any bearing on the merits of these petitions.

In view of the foregoing discussion, it has become imperative for this Court to exercise its inherent powers and thereby direct that copy of this order be circulated amongst the Judicial Courts under the jurisdiction of this Court so as to bring about uniformity in approach and outlook towards the provisions of the Act, as an effort to minimise the deviations and distortions that have come about while achieving the goals set out in this Enactment. Copy of this order be also sent to the concerned Department of Home of the States of Haryana, Punjab and Union Territory of Chandigarh so as to invite the attention of these Governments and to prod them into taking necessary and immediate steps in facilitating fulfillment of State's obligation in achieving the objects for which the Act has been envisaged.

In the end, the Court appreciates the sincere hard work and efforts of the Amicus Curiae in assisting this Court.