
(2015) 07 AHC CK 0105

In the Allahabad High Court

Case No : Application U/s. 482 No. 19236 of 2015

Santosh Kumar Yadav and Others

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 24-07-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 468

Penal Code, 1860 (IPC) — Section 498A

Protection of Women From Domestic Violence Act, 2005 — Section 12, 18, 19, 20, 21

Citation : (2016) 1 ACR 102 : (2015) 9 ADJ 400 : (2015) 5 ALJ 466 : (2016) 93 ALLCC 247

Hon'ble Judges : Manoj Misra, J

Bench : Single Bench

Advocate : A.B. Singh, for the Appellant

Final Decision : Dismissed

Judgement

Manoj Misra, J—Heard learned counsel for the applicant; the learned A.G.A. for the State; and perused the record.

2. The instant application has been filed seeking quashing of proceeding of Complaint Case No. 3099 of 2014 pending in the Court of A.C.J.M (II), Allahabad, which has been instituted on an application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as "D.V. Act, 2005") seeking various benefits//protection order under Sections 18, 19, 20 and 22 of the D.V. Act, 2005.

3. Application under Section 12 of the D.V. Act, 2005 has been filed by the opposite party No. 2 alleging that she was married to the applicant No. 1 on 07.12.2012 in accordance with Hindu Rites and Customs; that in her marriage, a large amount of money was spent and various articles were given; that the opposite parties i.e. the applicants herein were not satisfied and they raised demand for a car; that in connection with the said demand, she was harassed and even beaten; and finally on 28.12.2012, she was driven out of her

matrimonial home whereas her jewellery articles, etc. were retained by the applicants herein. In her application she has alleged that the applicants had exhibited conduct constituting domestic violence which was first committed on the date of her marriage, thereafter, on 28.12.2012, when she was driven out of her matrimonial home and continues till date. On the said application notice/summons has been issued to the applicants to put in their appearance and submit reply. At this stage, the applicants have approached this Court for quashing of the proceeding.

4. The learned counsel for the applicants has sought quashing of proceeding not on the ground that the application, under Section 12 of the D.V. Act, does not disclose any cause of action, but, on the ground that since as per the own case of the opposite party, she had been driven out of her matrimonial home on 28.12.2012, therefore, the complaint would be barred by limitation provided under Section 468 of the Code of Criminal Procedure (hereinafter referred to as the Code), inasmuch as, the maximum sentence which can be awarded under the D.V. Act is of one year. It has been submitted that by virtue of section 28 of the Act, the provisions of the Code are applicable to all proceedings under Sections 12, 18, 19, 20, 21, 22 and 23 and offences under Section 31 of the D.V. Act, therefore, the impugned proceeding, which has been instituted after one year from the date the opposite party No. 2 was allegedly driven out of her matrimonial home, is barred by time and as such liable to be quashed. In support of his submission, the learned counsel for the applicants has placed reliance on observations made by the Apex Court in paragraph 32 of its judgement in *Inderjit Singh Grewal Vs. State of Punjab and Another*, (2012) CriLJ 309 : (2011) 3 DMC 7 : (2011) 4 RCR(Civil) 129 : (2011) 9 SCALE 295 : (2011) 12 SCC 588 : (2011) 10 SCR 557 where it has been observed as follows:-

"32. 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 which make the provisions of Cr.P.C. applicable and stand fortified by the judgments of this court in *Japani Sahoo Vs. Chandra Sekhar Mohanty*, AIR 2007 SC 2762 : (2007) CriLJ 4068 : (2007) 4 CTC 740 : (2007) 9 JT 471 : (2007) 9 SCALE 400 : (2007) 8 SCR 582 : (2007) 2 UJ 941 : (2007) AIRSCW 4998 : (2007) 5 Supreme 604 ; and *Noida Entrepreneurs Association Vs. NOIDA and Others*, AIR 2011 SC 2112 : (2011) 6 JT 223 : (2011) 5 SCALE 505 : (2011) 6 SCC 508 : (2011) 8 SCR 25 : (2011) AIRSCW 5014 : (2011) AIRSCW 3154 ."

5. Before dealing with the submission of the learned counsel for the applicants it would be useful to examine the provisions of the D.V. Act, 2005. The said Act has been enacted as an Act to provide for more effective protection of the rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family and for matters connected therewith or

incidental thereto. Section 3 of the D.V. Act, 2005 defines domestic violence as follows:-

"Section 3. Definition of domestic violence.-For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it -

(a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or

(b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or

(c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or

(d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person.

Explanation I.-For the purposes of this section,-

(i) "physical abuse" means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force;

(ii) "sexual abuse" includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman;

(iii) "verbal and emotional abuse" includes-

(a) insults, ridicule, humiliation, name calling and insults or ridicule specially with regard to not having a child or a male child; and

(b) repeated threats to cause physical pain to any person in whom the aggrieved person is interested.

(iv) "economic abuse" includes-

(a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance;

(b) disposal of household effects, any alienation of assets whether movable or

immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person; and

(c) prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.

Explanation II.-For the purpose of determining whether any act, omission, commission or conduct of the respondent constitutes "domestic violence" under this section, the overall facts and circumstances of the case shall be taken into consideration."

6. From a perusal of clause (a) of section 3 it becomes clear that even economic abuse of the aggrieved person by the respondent would constitute domestic violence. Clause (iv) of Explanation I to section 3 defines "economic abuse". Sub-clause (a) of clause (iv) of the Explanation I to Section 3 of the Act provides that economic abuse would include deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance. Under the circumstances, if the wife/aggrieved person alleges that she has been deprived of all or any economic or financial resources to which she is entitled under the law, it would amount to an economic abuse within the meaning of the aforesaid clause. Continued deprivation thereof would give recurring cause of action and, therefore, an application under Section 12 of the D.V. Act, 2005 seeking protection orders by such an aggrieved person cannot be said to be barred by limitation. In fact, the Apex Court in the case of V.D. Bhanot Vs. Savita Bhanot, AIR 2012 SC 965 : (2012) 1 DMC 482 : (2012) 3 JCC 1854 : (2012) 1 RCR(Civil) 972 : (2012) 1 RCR(Criminal) 834 : (2012) 2 SCALE 367 : (2012) 3 SCC 183 : (2012) AIRSCW 1515 : (2012) 1 Supreme 716 had observed that the conduct of the parties even prior to the coming into force of the D.V. Act, 2005 could be taken into consideration while passing an order under Sections 18, 19 and 20 thereof. The apex court in that case observed that the High Court 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 D.V. Act, 2005. Under the circumstances, there being no limitation provided for filing an application under section 12 of the D.V. Act, 2005, the application of the opposite party No. 2 seeking various protection orders on ground of being deprived of the benefits of matrimonial home, which she shared with the applicants till the date she was driven out of her matrimonial home, as well her Stridhan, cannot be said

to barred by limitation or bad in law.

7. The observations made by the apex court in the case of Inderjit Singh Grewal (supra) would not help the applicants in any manner inasmuch as they relate to a complaint under the D.V. Act, 2005, which may be for an offence punishable under section 31 of the said Act. An application under section 12 of the D.V. Act, 2005 is not a complaint of any offence, but it is in the form of a petition for seeking various reliefs available to an aggrieved person under the said Act, which would be clear from a bare perusal of the section. The same is being reproduced herein below:

"12. Application to Magistrate.--(1) An aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person may present an application to the Magistrate seeking one or more reliefs under this Act:

Provided that before passing any order on such application, the Magistrate shall take into consideration any domestic incident report received by him from the Protection Officer or the service provider.

(2) The relief sought for under sub-section (1) may include a relief for issuance of an order for payment of compensation or damages without prejudice to the right of such person to institute a suit for compensation or damages for the injuries caused by the acts of domestic violence committed by the respondent:

Provided that where a decree for any amount as compensation or damages has been passed by any court in favour of the aggrieved person, the amount, if any, paid or payable in pursuance of the order made by the Magistrate under this Act shall be set off against the amount payable under such decree and the shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), or any other law for the time being in force, be executable for the balance amount, if any, left after such set off.

(3) 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.

(4) The Magistrate shall fix the first date of hearing, which shall not ordinarily be beyond three days from the date of receipt of the application by the court.

(5) The Magistrate shall endeavour to dispose of every application made under sub-section (1) within a period of sixty days from the date of its first hearing."

An application under Section 12 of the D.V. Act is not a complaint of an offence for filing of which there would be a limitation by virtue of the provisions of Section 468 of the Code of Criminal Procedure read with Section 28 of the D.V. Act.

8. It would be worthwhile to observe that Section 468 of the Code of Criminal Procedure provides that except as otherwise provided elsewhere in the Code, no Court shall take cognizance of an offence after the expiry of the period of limitation. Clause (b) of sub section (2) of section 468 of the Code provides that

the period of limitation shall be one year, if the offence is punishable with imprisonment for a term not exceeding one year. Section 31 of the D.V. Act provides that a breach of protection order or of an interim protection order by the respondents shall be an offence under the Act punishable with imprisonment of either description for a term which may extend to one year or with fine which may extend to Rs. 25,000/- or with both. Since an offence punishable under section 31 of the D.V. Act, 2005 is punishable with a maximum sentence of one year, the limitation to file a complaint seeking prosecution for an offence punishable under section 31 of the D.V. Act would be one year.

9. Rule 15 of the Protection of Women from Domestic Violence Rules, 2006 (hereinafter referred to as "D.V. Rules, 2006") provides for the procedure as to how breach of protection orders is to be dealt with. For ready reference, Rule 15 of D.V. Rules, 2006, is being reproduced herein below:-

"15. Breach of Protection Orders.- (1) An aggrieved person may report a breach of protection order or an interim protection order to the Protection Officer.

(2) Every report referred to in sub-rule (1) shall be in writing by the informant and duly signed by her.

(3) The Protection Officer shall forward a copy of such complaint with a copy of the protection order of which a breach is alleged to have taken place to the concerned Magistrate for appropriate orders.

(4) The Aggrieved person may, if she so desires, make a complaint of breach of protection order or interim protection order directly to the Magistrate or the Police, if she so chooses.

(5) If, at any time after a protection order has been breached, the aggrieved person seeks his assistance, the protection officer shall immediately rescue her by seeking help from the local police station and assist the aggrieved person to lodge a report to the local police authorities in appropriate cases.

(6) When charges are framed under section 31 or in respect of offences under section 498A of the Indian Penal Code, 1860 (45 of 1860), or any other offence not summarily triable, the Court may separate the proceedings for such offences to be tried in the manner prescribed under Code of Criminal Procedure, 1973 (2 of 1974) and proceed to summarily try the offence of the breach of Protection Order under section 31, in accordance with the provisions of Chapter XXI of the Code of Criminal Procedure, 1973, (2 of 1974).

(7) Any resistance to the enforcement of the orders of the Court under the Act by the respondent or any other person purportedly acting on his behalf shall be deemed to be a breach of protection order or an interim protection order covered under the Act.

(8) A breach of a protection order or an interim protection order shall immediately be reported to the local police station having territorial jurisdiction

and shall be dealt with as a cognizable offence as provided under sections 31 and 32.

(9) While enlarging the person on bail arrested under the Act, the Court may, by order, impose the following conditions to protect the aggrieved person and to ensure the presence of the accused before the court, which may include-

- (a) an order restraining the accused from threatening to commit or committing an act of domestic violence;
- (b) an order preventing the accused from harassing, telephoning or making any contact with the aggrieved person;
- (c) an order directing the accused to vacate and stay away from the residence of the aggrieved person or any place she is likely to visit;
- (d) an order prohibiting the possession or use of firearm or any other dangerous weapon;
- (e) an order prohibiting the consumption of alcohol or other drugs;
- (f) any other order required for protection, safety and adequate relief to the aggrieved person."

10. A perusal of Rule 15 would go to show that a complaint can be filed by an aggrieved person in respect of breach of a protection order. Sub-rule (6) provides that the charge of an offence punishable under Section 31 of the D.V. Act is to be tried in accordance with the provisions of Chapter XXI of the Code of Criminal Procedure which relates to summary trials.

11. In the instant case, it is not a complaint which has been filed by the opposite party No. 2 for breach of any protection order to which limitation, by virtue of section 468 of the Code of Criminal Procedure read with Sections 28 and 32 of the D.V. Act, 2005, may be applicable but it is only an application for seeking protection orders for which no limitation is prescribed.

12. In view of the above, the contention of the learned counsel for the applicants that the complaint of the opposite party No. 2 is barred by limitation is completely misconceived. No other point has been pressed. The application is dismissed.