

(2008) 10 DEL CK 0072

In the Delhi High Court

Case No : Criminal MC No. : 3358 of 2008

Smt. Dipika Bhardwaj

APPELLANT

Vs

Smt. Ruchita Sharma Bhardwaj

RESPONDENT

Date of Decision : 21-10-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Protection of Women From Domestic Violence Act, 2005 — Section 12, 12(3), 18, 19, 2(a)

Citation : (2008) 12 ILR Delhi 195 Supp

Hon'ble Judges : Kailash Gambhir, J

Bench : Single Bench

Advocate : Vaibhav Gaggar, for the Appellant;

Final Decision : Dismissed

Judgement

Kailash Gambhir, J.—By way of the present petition filed under Art. 227 of the constitution of India read with Section 482 CrPC the petitioner seeks quashing of order dated 3/10/2008 passed by the learned ASJ, Delhi. The brief fact of the case as set out in the petition and necessary for deciding the instant petition are as under:

2. The petitioner aged 66 years is the mother-law of the respondent, Smt. Ruchita Sharma Bhardwaj, who was married to the son of the petitioner Sh. Roshan Bhardwaj for over 6 years. With the passage of time relations between the petitioner and the respondent deteriorated and the respondent on 24/07/2008 filed an application bearing No. 4348/1/08 u/s 12 of the protection of Women from Domestic Violence Act, 2005; praying inter alia for monetary relief and access to the place of their residence. The petitioner was served with the summon in the said application dated 12/8/2008 on the night of 13/8/2008, asking her to appear on 14/8/2008 wherein the petitioner was made a respondent party. Not just the petitioner, the petitioner's son, her sister and one Ms. Juhi Sharma were also made party to the said application.

3. Mr. Vaibhav Gaggar counsel for the petitioner contends that the Ld.ASJ dismissed the appeal filed by the petitioner assailing the order dated 12/8/2008 and 14/8/2008 as the Ld. MM Sh. Tarun Shehrawat. without considering the definition of the term "respondent" provided in Section 2 (q) of the protection of Women from Domestic Violence Act, 2005. The counsel submits that the impugned order is perverse and against the settled law laid down by the Hon"ble Madhya Pradesh High Court in Ajay Kant and Others Vs. Smt. Alka Sharma, The counsel maintains that the present petitioner was erroneously summoned by the court of Ld. MM Sh. Tarun Shehrawat when as per the mandate of Section 2(q) of the protection of Women from Domestic violence Act, 2005; she cannot be brought within the definition of a "respondent" as a woman cannot be impleaded as respondent in an application u/s 12 of the Act. The counsel urges that Ms. Juhi Sharma filed an appeal on the same ground and her name was dropped from the array of respondents in the application u/s 12 of the Act but appeal of the petitioner was dismissed by the Ld. ASJ. Another contention raised by the counsel is that even if the definition of "respondent" under the Act encompasses a woman then also only a complaint can be filed against her as per the mandate of proviso to Section 2 (q) and an application under the Act, as is the case herein, can be filed only against an adult male person. Another line of argument taken by the counsel is that the Learned ASJ, failed to appreciate that the ratio laid down by the Hon"ble Privy Council in the case entitled Nazir Ahmad v. King-Emperor, AIR 1936 Privy Council 253 wherein the Hon"ble Privy Council held that if law enjoins a particular thing to be done then it shall be done in that particular manner or not at all, but the Ld. ASJ erred in not following the said judgment and in not deleting the name of the petitioner from the array of parties.

4. I have heard learned counsel for the petitioner at considerable length at the stage of admission and have gone through the impugned judgment.

5. The protection of Women from Domestic Violence Act, 2005 is a piece of legislation brought in by the Parliament as the Parliament felt that the civil law does not provide reliefs to a victim women subjected to domestic violence. It is in these circumstances, to provide for a remedy under the civil law for protection of women from being victims of domestic violence that the Domestic Violence Act was brought in by the parliament. It will be apposite to take note of the fact that though it is a piece of civil law, evidently in the interests of expedition and to cut down procedural delays, the forum provided for enforcement of right under Domestic Violence Act is that of the Magistrate Courts constituted under the provisions of the Cr.P.C.

6. The Act seeks to cover those women who are or have been in a relationship with the abuser where both parties have lived together in a shared household and are related by consanguinity, marriage or a relationship in the nature of marriage, or adoption; in addition relationship with family members living together as a joint family are also included. Even those women who are sisters, widow, mothers, single women, or living with the abuser are entitled to get

legal protection under the Act.

7. Before dealing with the contentions of the learned counsel for the petitioner it would be worthwhile to reproduce Sections 12, 2(a) and 2(q) of the protection of Women from Domestic Violence Act, 2005, which are as under:

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 decree 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.

Section 2 (a) "aggrieved person" means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent;

Section 2 (q) "respondent" means any adult male persons 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.

8. A perusal of the above provisions clearly bring forth the fact that any woman who is or has been in a domestic or family relationship, if subjected to any act of

domestic violence can complain to a Magistrate u/s 12 of the Act and for the purpose of the said Act, she will be an "aggrieved person" as defined u/s 2 (a) of the Act. As regards the definition of Sections 2 (q) "respondent" means any adult male member who has been or is in a domestic relationship with the aggrieved person. The respondent can also be a relative of the husband or male partner as postulated in proviso to Section 2 (q) of the Act, provided the aggrieved person is a wife or a female having an existing relationship with the respondent at the time of filing a complaint, thus, a father-in-law, mother-in-law, or even siblings of the husband and other relatives can be proceeded against and are covered in the definition of "respondent".

9. It is no more res Integra that as a general rule a proviso is added to an enactment to qualify or create an exception to what is in the enactment. The well established rule of interpretation of a proviso is that a proviso may have three separate functions. Normally, a proviso is meant to be an exception to something within the main enactment or to qualify something enacted therein which but for the proviso would be within the purview of the enactment. In other words, a proviso cannot be torn apart from the main enactment nor can it be used to nullify or set at naught the real object of the main enactment. While interpreting a proviso care must be taken that it is used to remove special cases from the general enactment and provide for them separately. In short, generally speaking, a proviso is intended to limit the enacted provision so as to except something which would have otherwise been within it or in some measure to modify the enacting clause. Sometimes a proviso may be embedded in the main provision and becomes an integral part of it so as to amount to a substantive provision itself. In this regard in *Kush Sahgal and Others Vs. M. C. Mitter and Others*, the Hon"ble Apex Court observed as under:

This we say because the normal function of a proviso is to except something out of the enactment or to qualify something enacted therein which but for the proviso would be within the purview of the enactment. (See *Kedarnath Jute Mfg. Co. Ltd. v. CTO.*) Since the natural presumption is that but for the proviso, the enacting part of the section would have included the subject-matter of the enacting part has to be given such a construction which would make the exceptions carved out by the proviso necessary and a construction which would make the exceptions unnecessary and redundant should be avoided (see Justice G.P. Singh's principle of Statutory Interpretation, 7th Edn., 1999, p. 163). This principle has been deduced from the decision of the privy Council in *Govt, of the province of Bombay v. Hormusji Manekji* as also the decision of this Court in *Durga Dutt Sharma v. Navaratna Pharmaceutical Laboratories*.

10. Further, in *S. Sundaram Pillai and Others Vs. `R. Pattabiraman and Others*, , the Hon"ble Supreme Court explained the purpose of a proviso, the relevant paragraph of the said judgment is referred below:

43. We need not multiply authorities after authorities on this point because the legal position seems to be clearly and manifestly well established. To sum up, a

proviso may serve four different purposes:

- (1) qualifying or excepting certain provisions from the main enactment:
- (2) It may entirely change the very concept of the intendment of the enactment by insisting on certain mandatory conditions to be fulfilled in order to make the enactment workable:
- (3) It may be so embedded in the Act itself as to become an integral part of the enactment and thus acquire the tenor and colour of the substantive enactment itself; and
- (4) It may be used merely to act as optional addenda to the enactment with the sole object of explaining the real intendment of the statutory provision.

44. These seem to be by and large the main purport and parameters of a proviso.

11. The Hon''ble Madhya Pradesh High Court in Ajay Kant's case (Supra), due to inadvertence failed to take in to account the fact that the proviso to Section 2(q) carves out an exception and such an exception will become operational only when the Conditions preceding therein are satisfied. With due respect I do not subscribe to the view of the Madhya Pradesh High Court in Ajay Kant's case (supra). Considering the entire provision of Section 2(q) it is manifest that for the proviso to be operational it is essential that a woman or a female should be living in a marital relationship with her husband or a female should be living in a marriage like relationship with a male and should be aggrieved of domestic violence then, a complaint can be filed even against a relative of the husband or male partner.

12. In the instant case also, by virtue of proviso to Section 2(q) of the Act, the petitioner falls in the definition of "respondent" and thus, there is infirmity in the order dated 3/10/2008 passed by the Learned ASJ, Delhi.

13. As regards the contention of the counsel for the petitioner that the Learned ASJ failed to appreciate that the ratio laid down by the Hon''ble privy Council in the case entitled Nazir Ahmad v. King-Emperor, AIR 1936 Privy Council 253 the said contention is also no help to the petitioner as it is trite that if the statute requires a particular things to be done in a particular manner then it shall be done either in that manner or not at all. In the instant case as well the law requires that any women who is or has been in a domestic or family relationship. If Subjected to any act of domestic violence can complain to a Magistrate u/s 12 and the said person against whom a complaint is made can also be a female if the prerequisites as required under proviso to S.2 (q) are satisfied, thus in the case at hand the Ld. ASJ committed no error in not deleting the name of the petitioner from the array of party.

14. As regards the other contention of the counsel that only a complaint can be filed against a female as per the mandate of proviso to Section 2 (q) and an application u/s 12 of the Act, as is the case herein, can be field only against an

adult male person. At the first blush the said argument appeared to be convincing as in proviso to Section 2 (q), word "complaint" is used, whereas in section 12 of the Act the word "application" is used, but on perusal of the form II to the Schedule I as enshrined in The Protection of Women From Domestic Violence Rules in which the application is to be made as is mandated by Section 12 (3) read with Rule 5, it is manifest that the words "application" and "complaint", although are two different expressions and have been used in two different provisions of the same Act but have been used interchangeably and synonymously and the purpose for which the said expressions have been used are the same. Any other interpretation of the said expressions would defeat the purpose of the enactment which has been enacted solely for bringing relief and respite to a woman from domestic violence. The form II is reproduced as under:

Form No. II

Petition/Application to the Magistrate u/s 9 (1) read with Section 12 of the Act and Section 37 (2) (d), (e) and (h) of the Act.

To

The Learned Magistrate

.....

.....

Application under the.....Act

SHEWETH:

1. That the application under Section.....of.....Act is being filed along with

Copy of (Domestic Incident Report) by the:-

(a) Aggrieved person

(b) Protection Officer

(c) Any person on behalf of the aggrieved person

(Tick whichever is applicable)

2. It is prayed that the Hon"ble Court may take cognizance of the complaint/ Domestic Incident Report & pass all/any of the orders, as deemed fit,

in the circumstances of the case.

(a) pass protection orders u/s 18 of the Act and /or

(b) Pass residence orders u/s 19 of the Act and /or

(c) Direct the respondent to pay monetary relief u/s 20 of the Act and/or

(d) Pass orders u/s 21 of the Act and/or

(e) Direct the respondent to grant compensation/damages u/s 22 of the Act and/or

(f) Pass such interim orders as the court deems just and proper;

(g) Pass any order as deems fit in the circumstances of the case;

15. In view of the above discussion, "Respondent" as defined in section 2 (q) of the Act cannot be constructed to mean only an adult male but it will also include a woman. Also, the words "application" and "complaint" have been used interchangeably in the said Act as regards Ss. 2 (q) & 12 of the Act are concerned. Thus, an application made under S. 12 to a Magistrate would be taken to be a complaint under the Act and if the prerequisites for the operations of proviso to S. 2 (q) are satisfied then an application can also be filed against a female under the Act. As a result of the above discussion, the present petition is dismissed and the order dated 3/10/2008 passed by the Learned ASJ, Delhi is not interfered with.