
(2009) 10 OHC CK 0027
In the Orissa High Court

Smt. Kumari Behera

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 14-10-2009

Acts Referred:

Family Courts Act, 1984 — Section 20(1), 20(3)

Protection of Women from Domestic Violence Act, 2005 — Section 26, 27

Citation : AIR 2010 Ori 68 : (2010) CLT 185 (Suppl CrI) : (2009) 44 OCR 697 : (2010) OLR 185 (Suppl CrI) : (2009) 2 OLR 340 Supp

Hon'ble Judges : M.M. Das, J

Bench : Single Bench

Judgement

M.M. Das, J.—"Amittere Legem Terrce" (To be put out of the protection of the law) is the grievance of the petitioner in this application u/s 482, Cr.P.C.

2. The petitioner is the daughter-in-law of the opposite party No. 2 married to one of the sons of the opposite party No. 2, namely, Ramesh Chandra Behera, who is stated to be born through the first wife of the opposite party No. 2. The opposite party Nos. 3 and 4 are the younger brothers of the husband of the petitioner being the sons of opposite party No. 2 through his second wife.

3. Alleging that the petitioner and her children were tortured physically and mentally by the opposite parties and her ornaments were forcibly removed from her by them and she was thrown out of her matrimonial house on 6-11-2006 along with her three minor children in the absence of her husband, she filed an application before the learned J.M.F.C. Pattamundai u/s 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as "the Act 2005"). In the said complaint petition numbered as I.C.C. Case No. 152 of 2006, the petitioner sought for the following reliefs.

i) Protection order u/s 18

Prohibiting acts of Domestic Violence by granting an injunction against Respondents for repeating any such acts and prohibiting Respondents for

alienations of any of assets by the Respondents and pay compensation and also the amount as aforesaid towards loss of earnings and ornaments of applicant.

ii) Residence order u/s 19

An order restraining Respondents from dispossessing or throwing applicant out from her shared house hold and alienating or disposing or encumbering the said shared house of applicant and an order directing Respondents to put applicant into possession in respect of her said matrimonial shared house or secured some level of alternate accommodation or pay rent for same.

iii) Monetary reliefs u/s 20.

The respondents be directed to pay applicant following amount:

Loss of earnings, amount claimed Rs. 05,000/- Loss of Ornaments Rs. 20,000/- Compensation towards physical and Mental torture Rs. 15,000/- Total amount claimed Rs. 40,000/- (Rupees forty thousand only)

iv) Monetary reliefs u/s 20

As aforesaid.

v) Custody order u/s 21 Not applicable.

vi) Compensation Order u/s 22 As aforesaid.

vii) Any other order please specify.

That, the applicant along with her minor children may please be put into their possession in respect of their matrimonial shared house at the instance of the OIC, Pattamundai P.S. after obtaining undertaking from Respondents for said custody of applicant and her minor children located over Plot No. 243 of Village Tatana, P.S. Pattamundai, Dist. Kendrapara.

4. The learned Magistrate by his order dated 20-1-2007 perusing the complaint petition and observing that the complainant has prayed to pass orders under Sections 15/19/20/21 of the 2005 Act, came to a conclusion that since the area of the said Court comes under the judgeship of Cuttack and there is existence of Family Court in the judgeship, in view of Sections 7 and 8 of the Family Courts Act, 1984 and u/s 26 of Act, 2005 returned the complaint petition to the complainant to file the same in the appropriate Court of law.

5. The petitioner finding no other alternative approached the Judge, Family Court, Cuttack in Criminal Proceeding No. 148 of 2007. By order dated 1-5-2007, the learned Judge, Family Court, Cuttack referring to Section 2(1) of the Act, 2005 and Section 7(2) of the Family Courts Act. 1984 (hereinafter referred to as "the Act, 1984") came to a conclusion that as no relief for maintenance is sought for by the petitioner according to Section 20(1)(d) and Section 20(3) of the Act, 1984, the Family Court has no jurisdiction to entertain the proceeding.

6. Being, thus, placed between the horns of dilemma, the petitioner has approached this Court in the present case. The only question to be addressed by this Court is with regard to, where the petition filed by the petitioner would be maintainable? The various sections of the Act, 2005, which are relevant for the purpose of deciding the case, are quoted hereunder:

2. Definitions.

(a) to (h) xxx xxx xxx (i) "Magistrate" means the Judicial Magistrate of the first class, or as the case may be, the Metropolitan Magistrate, exercising jurisdiction under the Code of Criminal Procedure, 1973 (2 of 1974), in the area where the aggrieved person resides temporarily or otherwise or the respondent resides or the domestic violence is alleged to have taken place.

26. Relief in other suits and legal proceedings (1) Any relief available under Sections 18, 19, 20, 21, and 22 may also be sought in any legal proceeding, before a civil Court, family Court or a criminal Court, affecting the aggrieved person and the respondent whether such proceeding was initiated before or after the commencement of this Act.

(2) Any relief referred to in Sub-section (1) may be sought for in addition to and along with any other relief that the aggrieved person may seek in such suit or legal proceeding before a civil or criminal Court.

(3) In case any relief has been obtained by the aggrieved person in any proceedings other than a proceeding under this Act, she shall be bound to inform the Magistrate of the grant of such relief.

27. Jurisdiction.-(1) the Court of Judicial Magistrate of the first class or the Metropolitan Magistrate, as the case may be, within the local limits of which-

(a) the person aggrieved permanently or temporarily resides or carries on business or is employed; or

(b) the respondent resides or carries on business or is employed; or

(c) the cause of action has arisen,

shall be the competent Court to grant a protection order and other orders under this Act and to try offences under this Act.

(2) Any order made under this Act shall be enforceable throughout India.

7. A bare reading of Section 27 of the Act clearly shows that the Court of Judicial Magistrate of the First Class or the Metropolitan Magistrate, as the case may be, shall be the competent Court to grant protection order and other orders and to try offences under the said Act. Section 2(i) defines "Magistrate" whereunder Judicial Magistrate of the First Class is also a Magistrate for the purpose of the Act. Section 26(1) of the Act clearly envisages that if any legal proceeding is pending before a Civil Court, the Family Court, or a Criminal Court, such Court can grant any relief available under Sections 18, 19, 20, 21 and 22, if such reliefs

are sought for in the pending proceeding. Section 26(2) similarly provides that any relief under Sub-section (1) may be sought in addition to and along with any other relief that the aggrieved person may seek in such suit or legal proceeding before a civil or criminal Court.

8. The intention of Legislature is, therefore, clear that reliefs under Sections 18 to 22 of Act, 2005 can also be granted in a pending proceeding before a Family Court, but, however, for filing an independent proceeding seeking reliefs under the aforesaid sections the aggrieved party has to approach the concerned Magistrate having jurisdiction as per the provisions of Section 27 of the Act.

9. In view of the above analysis, the learned Judge, Family Court, Cuttack was right in passing the order dated 1-5-2007 in Criminal Proceeding No. 148 of 2007 holding that the proceeding is not maintainable before him. However, the order passed by the learned J.M.F.C. in I.C.C. Case No. 152 of 2006 is found to be palpably erroneous and the learned Magistrate has failed to exercise jurisdiction vested in him under Act, 2005.

10. In the result, therefore, the order dated 20-1-2007 passed by the learned J.M.F.C., Pattamundai in I.C.C. Case No. 152 of 2006 is quashed and the learned J.M.F.C. is directed to proceed with the said complaint petition in accordance with the procedures laid down in the Act, 2005. Since this matter is of the year 2006, the petitioner is directed to appear before the learned J.M.F.C., Pattamundai and produce a certified copy of this order before him within a period of three weeks from today. The learned Magistrate thereafter shall proceed with the matter so as to conclude the case expeditiously.

The CRLMC is accordingly allowed.