
(2010) 09 KAR CK 0149

In the Karnataka High Court

Case No : Criminal Revision Petition No. 56 of 2010

Smt. Leelavathi S.

APPELLANT

Vs

Shri Murgesh and Others

RESPONDENT

Date of Decision : 09-09-2010

Acts Referred:

Protection of Women from Domestic Violence Act, 2005 — Section 2 (q), 5, 5 (e), 9

Citation : (2010) ILR (Kar) 4673 : (2010) 4 KCCR 2973 : (2011) 8 RCR(Criminal) 321

Hon'ble Judges : K.L. Manjunath, J;B.S. Patil, J

Bench : Division Bench

Advocate : R.P. Somashekaraiah, for the Appellant; S. Balan, for Balan and Associates, for the Respondent

Judgement

B.S. Patil, J.—This matter is referred by the learned Single Judge to the Division Bench raising the following legal question.

Whether the "Respondent" as referred to u/s 2(q) of the Protection of Women from Domestic Violence Act, 2005 ("the Act", for short), would include a female "relative"?

2. In the opinion of the learned Single Judge, the reference of the matter to the Division Bench was necessitated as there were different opinions expressed by different High Courts with regard to the definition of the expression "Respondent", particularly as regards the tenor and purport of the proviso to Section 2(q) of the Act, regarding the understanding of the expression "Respondent" as defined u/s 2(q). The learned Single Judge has noticed a judgment rendered by another learned Single Judge of this Court in the case of Amruth Kumar and Anr. v. Smt. Chithra Shetty and Anr. 2010 (1) KCCR 459, wherein it is held that the definition of the term "Respondent" contained u/s 2(q) of the Act, will not include "female relatives". The learned Single Judge has expressed that this view expressed in Chitra's case requires consideration by the Division Bench, particularly in the light of the decisions of various other High

Courts on the point.

3. It is necessary to notice the context in which the definition of the term "Respondent" is incorporated in the Act u/s 2. The scheme of the Act provides a mechanism to protect women against violence of any kind occurring within the family. In the statement of objects and reasons appended to the enactment, after referring to Vienna Accord of 1994 and the Beijing Declaration of 1995, and the recommendation made by The United Nations Committee on Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) recommending that the State parties should act to protect women against violence within the family, it is stated that though Section 498A of the Indian Penal Code makes it an offence where a woman is subjected to cruelty by her husband or his relative, the civil law does not however address this phenomenon in its entirety and hence, keeping in mind the right guaranteed under Articles 14, 15 & 21 of the Constitution of India, this law was proposed to be enacted.

4. The Act assures and provides to the victims of domestic violence maximum protection against physical, sexual, economic and psychological violence. The expression "domestic violence" is defined u/s 3 to encompass physical abuse, sexual abuse, verbal and emotional abuse and economic abuse. Each one of these abuses is further defined in Section

5. The definition of "domestic violence" is contained in Chapter II of the Act. Chapter-II of the Act provides for powers and duties of Protection Officers, Service Providers, etc. Wherever an act of domestic violence has been or is being or is likely to be committed, any person may give information about it to the concerned Protection Officer.

6. As per Section 5, certain duties are cast on the Police Officers, Service Providers and Magistrate who has received a complaint of domestic violence or who was otherwise present at the place of incident of domestic violence to inform the aggrieved person of the right to make an application for obtaining reliefs by way of (a) protection order; (b) for monetary relief; (c) for custody order; (d) residence order; or (e) a compensation order. A duty is also cast on these authorities to inform the aggrieved person about the availability of the services of service providers, protection officers and of her right to avail free legal services. Section 5(e) specifically mentions that the Police Officers, Service Providers and Magistrate who has received the complaint or has come to know of the domestic violence or to whom the domestic violence is reported, to inform the aggrieved person of her right to file a complaint u/s 498A of the Indian Penal Code wherever relevant. Proviso to Section 5 states that nothing in the Act shall be construed in any manner to relieve a Police Officer from his duty to proceed in accordance with law upon receipt of information as to the commission of a cognizable offence.

7. The Protection Officers appointed u/s 8 of the Act are enjoined with certain duties and functions as per Section 9 which includes duty to make an application

in the prescribed form to the Magistrate as desired by the aggrieved person claiming the relief of protection order.

8. Chapter-IV deals with the procedure for obtaining orders of relief. Section 12 provides for presenting an application to the Magistrate by an aggrieved person or by a Protection Officer or any other person on behalf of the aggrieved person, seeking one or more of the reliefs provided under the Act as per Sections 17 - 22. As per Section 28, the proceedings under Sections 12 - 22 and the offences mentioned u/s 31 shall be governed by the provisions of Code of Criminal Procedure, 1973. An appeal is provided to the Court of Sessions against the order passed by the Magistrate under the aforementioned provisions. Chapter-V which is the last chapter in the Act deals with miscellaneous matters.

9. As per Section 31, any breach of protection order is declared as an offence and is made punishable. Section 37 provides power for the Central Government to make rules in respect of several matters including the manner in which a domestic incident report may be made and the form and the manner in which an application for protection order may be made to the Magistrate and also the form in which the complaint is to be filed under Clause (d) of Sub-section (1) of Section 9. Pursuant to the power given u/s 37, the Central Government has framed the rules known as the Protection of Women from Domestic Violence Rules, 2006.

10. Section 2 of the Act contains definition clauses. It defines among others, the expressions "aggrieved person" u/s 2(a), "domestic relationship" u/s 2(f), "Respondent" u/s 2(q), "shared household" u/s 2(s).

11. As per Section 12, it is only the aggrieved person or any other person including a protection officer on behalf of the aggrieved person who can present an application to the Magistrate seeking one or more of the reliefs. Therefore, it is necessary to know who is an aggrieved person.

12. As defined u/s 2(a), an 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. A perusal of the definition of "aggrieved person", makes it clear that only women in a domestic relationship with the Respondent in the past or at present with the Respondent and who are subjected to domestic violence by the Respondent can seek various reliefs as provided in Chapter-IV by making an application u/s 12 to the Magistrate. Therefore, it now becomes necessary to know who is the woman who can be said to be in a "domestic relationship" with the "Respondent".

13. The term "domestic relationship" is defined u/s 2(f), it reads as under:

2(f) "domestic relationship" means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family.

14. By a reading of the definition of the expression "aggrieved person", domestic relationship along with the definition of the term "domestic violence" as contained in Section 3 which means an act, commission or omission or conduct of "the Respondent" amounting to harm, injury or physical, sexual, verbal, economic abuse, it is manifest that the domestic violence is committed by the Respondent as defined u/s 2(q) and the "aggrieved person" can file an application for the alleged act of domestic violence against the Respondent seeking various reliefs as per Section 12. Now we come to the important task of understanding the meaning and scope of the term "Respondent" as defined u/s 2(q). Section 2(q) defines the term "Respondent" as under:

2(q) "Respondent" means any adult male person 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.

15. There is absolutely no difficulty in understanding the first part of the section which defines the term "Respondent". As per this part of the provision, Respondent means any adult male person in a domestic relationship either in the past or at present with the aggrieved person against whom the aggrieved person has sought the relief under the Act. In other words, in order to bring a person within the ambit of the definition "Respondent", it should be shown (a) he is an adult male person, (b) he has been or is in a domestic relationship with the aggrieved person, (c) the aggrieved person has sought any relief under the Act against such Respondent.

16. The complication is presented because of the proviso to Section 2(q). The effect of the proviso is that if the aggrieved woman subjected to domestic violence is a wife or a female living in a relationship in the nature of marriage, she may also file a complaint against a relative of the husband or the male partner. An argument is canvassed by the Petitioner that by virtue of the proviso to Section 2(q), wherever an aggrieved person is a wife or a female living in a relationship which is in the nature of a marriage, she may seek all the reliefs available to an aggrieved person under the provisions of the Act by filing an application invoking Section 12 against not only an adult male person who is or has been in a domestic relationship with her, but also against any female relative of the husband or the male partner of such an aggrieved woman. This contention is urged stating that the proviso to the definition of the term "Respondent", If read, keeping in mind the purpose and object of the Act and the role of the proviso which finds place in any section, wherever the aggrieved person is a wife or a person having similar relationship in the nature of marriage, the term "Respondent" is given expanded meaning to include even a female relative of her husband or male partner.

17. There are different views expressed by various High Courts in this regard. The Division Bench of Madras High Court has held in the case of *R. Nivendran and Ors. v. Nivashini Mohan @ M. Nivashani* 2010 ILM 1264, decided on 17.02.2010, that the expression "relative of the husband" or "male partner" used in the proviso to Section 2(q) will include a female relative also. In reaching this conclusion, the Madras High Court has referred to the intention of the legislature as reflected in the proviso to Sub-section (1) of Section 19 of the Act dealing with residence orders, wherein it is stipulated that no order under Clause (b) shall be passed against any person who is a woman. It is therefore contended that an order under other clauses of Sub-section (1) of Section 19 can be passed against a woman who is a relative of the husband or the male partner. It is also urged that if no order can be granted u/s 19 against a woman, the proviso to Sub-section (1) of Section 19 would be redundant. It is further contended that the term "relative" used in the proviso to Section 2(q) must be assigned its common meaning and if commonly understood, it would include father, mother, son, daughter, brother, sister nephew or niece, grandson or granddaughter of an individual or the spouse of any person. In this regard, reliance is placed on the judgment of the Apex Court in *U. Suvetha v. State* (2009) 6 SCC 787, wherein the meaning of the term "relative" with reference to Section 498A of the Indian Penal Code is considered. Reliance is also placed on the judgment of the Division Bench of the Andhra Pradesh High Court in the case of *Afzalunissa Begum v. State of A.P.* AIR 2009 (NOC) 2840 (AP), wherein it is held that the proviso to Section 2(q) gives an expanded meaning enabling filing of a complaint against the relative of the husband or the male partner and that in the background of the definition of the expression "domestic relationship", the statement of objects and reasons, if the definition of the term "Respondent" is examined, it will include a female relative of the husband depending upon the nature of reliefs claimed against the Respondent in the domestic violence case.

18. A Division Bench of the Delhi High Court in the case of *Varsha Kapoor v. Union of India and Ors.* 2010 ILD 1526, has also considered the conspectus of provisions contained under Sections 12, 19 & 31 of the Act providing basis of redressal machinery to the aggrieved persons and has held that the provision is not satisfactorily worded and there is ambiguity in the definition of the term "Respondent". It is also observed that in such situation, the Courts are not supposed to throw their hands up in air expressing their helplessness as, it becomes the duty of the Court to give correct interpretation to such a provision having regard to the purpose sought to be achieved by the legislation. Based on this judgment, it is contended that the proviso to Section 2(q) caters for wife or a female in live-in relationship. In their case, the definition of the term "Respondent" is widened by not limiting it to adult male person only, but by including a relative of husband or the male partner, as the case may be. Hence, it is held that on the one hand, aggrieved persons other than wife or female living in a relationship in the nature of marriage i.e., sister, mother, daughter or sister-in-law can file applications as aggrieved person against adult male person only,

but on the other hand, wife or a female living in a relationship in the nature of marriage is given right to file complaint not only against husband or male partner, but also against his relatives. Emphasis is also laid on Section 19(1)(b) apart from referring to Section 21 of the Act which deals with grant of temporary custody of any child or children to the aggrieved person or other person making an application on her behalf and to specify necessary arrangements for visit of such child or children by the Respondent to urge that if the children are under the custody of mother-in-law of an aggrieved person, then no order for giving temporary custody of the child can be given against such a female relative of the husband if a restricted interpretation is given to the term "Respondent".

19. Referring to Section 31(1), it is argued taking support from the decision of the Delhi High Court, that a breach of protection order committed by the Respondent is an offence under the Act and shall be punishable. Therefore, unless the Respondent could be a female person, an offence cannot be committed by breach of the protection order. If such an interpretation is adopted, it is urged the expression "complaint" which is used under the proviso to Clause (q) of Section 2, cannot be given any meaning and that the expression complaint used in the proviso cannot be termed as a complaint conceived or provided for u/s 31(1). In fact it is to be noticed here that the decision of the Division Bench of the Kerala High Court in *Dr. Vijayalakshmi Amma v. Bindu* ILR 2010 Ker 60 is referred to by the Delhi High Court in this regard, wherein it is held that unless the proviso is understood as enabling an application to be filed by the wife against any relative, male or female of her husband, the provision made for filing a complaint as per the proviso would be redundant. It is also canvassed that if this interpretation is not adopted, then the provisions contained under Sections 19 & 31 shall be rendered otiose.

20. The Respondent has placed reliance on the decision of the Apex Court in the case of *S.R. Batra and Another Vs. Smt. Taruna Batra*, . Reliance is also placed on the judgment of the Calcutta High Court in the case of *Smt. Rina Mukherjee and Anr. v. State of West Bengal and Anr.* 2009 (4) Crimes 180 (Cal); *Ajay Kant and Others Vs. Smt. Alka Sharma*, Strong reliance is also placed on the Single Judge judgment of this Court in *Amruth Kumar and Anr. v. Smt. Chithra Shetty and Anr.* 2010 (1) KCCR 459.

21. Keeping in mind the entire scheme of the Act and the judgments rendered by the various High Courts on the point as referred to above, the true meaning and purport of the proviso to 2(q) of the Act is required to be considered.

22. It is a very well established norm of statutory construction that a provision in a statute or words and expressions found therein have to be given their plain and literal meaning and unless such meaning leads to absurd or irreconcilable results or results which are against the intention of the legislature in enacting the provision or the legislation in question, the Courts shall not venture upon undertaking a proactive role of setting off with an expedition to discern the real intention of the parliament ending up in supplementing the written words of the

statute or in supplying the so-called omissions. This does not, however, mean that the Court will close its eyes to the obvious drafting errors or ambiguities and ignore them by adopting only literal or rigid rules of construction. If, apparent ambiguity is found in any provision, the Courts are bound to call in aid the recognized rules of construction of a statute to discern the true intention of the parliament. Keeping in mind this subtle but delicate task, let us now examine whether the proviso to Section 2(q) has any ambiguity.

23. The main part of the definition of the term "Respondent" means that only an adult male person who is or has been in a domestic relationship with the aggrieved person against whom relief is sought under the Act falls within the definition of "Respondent". But, as per the proviso, it is made clear that in case of an aggrieved wife or female having live in relationship akin to marriage, she may also file a complaint against a relative of her husband or the male partner.

24. By this proviso, it cannot be construed that parliament intended to expand the meaning and scope of the term "Respondent" so as to encompass even female relatives of the husband/male partner of the aggrieved wife or lady with live-in relationship. If that were to be the intention, then the provision would have been clear and specific, worded in a different way. It would have simply and clearly stated that in case where the aggrieved person seeking relief under the Act is wife or a female living in a relationship in the nature of marriage, then the term "Respondent" would include any relative of her husband or male partner. Thus, the definition section would have incorporated an inclusive clause to include the relatives of the husband/male partner within the ambit of the definition of the term "Respondent".

25. The proviso to Section 2(q) is couched in a language that does not admit of a construction by which against all relatives of the husband/male partner of the aggrieved wife/lady in live- in relationship can seek relief under the Act bringing them within the ambit of the term "Respondent". The meaning and definition of the term "Respondent" assumes a very significant importance in the scheme and setting of the provisions of the Act. It is only the act of the "Respondent" or omission, commission or conduct of the Respondent that constitutes domestic violence in case it causes harm, injuries, etc.", or results in physical, sexual, verbal and emotional and economic abuse as per Section 3.

26. Similarly, relief under the Act that can be sought against a Respondent is by way of an application presented to the Magistrate by the aggrieved person or by a protection officer or any other person on her behalf u/s 12 of the Act. The reliefs to be sought against a Respondent may include relief of issuance of an order for payment of compensation or damages as is made clear in Sub-clause (2) of Section 12. As per Section 13, a notice of the date of hearing of the application shall be given by the Magistrate to the police officer to be served on the Respondent and other persons as directed by the Magistrate. As per Section 17(1), every woman in a domestic relationship has the right to reside in the shared household. Thus, this right to residence is extended to every woman in a

domestic relationship. However, as per Section 17(2), prohibition order from eviction or exclusion of the aggrieved person can be issued only against a Respondent.

27. As per the provisions of Section 18 of the Act, protection orders can be passed by a Magistrate in favour of an aggrieved person to prohibit the "Respondent" from doing the following acts.

- (a) any act of domestic violence;
- (b) aiding or abetting in the commission of acts of violence;
- (c) entering the place of employment of the aggrieved person;
- (d) communicating with the aggrieved person:
- (e) alienating any assets, operating bank lockers, bank accounts, held jointly by the aggrieved person and the Respondent or singly by the Respondent
- (f) causing violence to the dependents or other relatives of the aggrieved person;
- (g) committing any other act as specified the protection order.

28. As per Section 19(1) the Magistrate is empowered to pass residence orders on the application filed u/s 12(1) when he is satisfied that domestic violence has taken place.

- (a) restraining the "Respondent" from dispossession or disturbing the possession of the aggrieved person from the shared household whether or not a Respondent has legal interest in the shared household.
- (b) directing the Respondent to remove himself from the shared household,
- (c) restraining the Respondent or any of his relatives from entering any portion of the shared household in which the aggrieved person resides;
- (d) restraining the Respondent from alienating or disposing of the shared household or encumbering the same;
- (e) restraining the Respondent from renouncing his rights in the shared household except with the leave of the Magistrate;
- (f) directing the Respondent to secure same level of alternate accommodation as enjoyed by the aggrieved in the shared household or to pay rent for the same;

Provided that no order under Clause (b) shall be passed against any person who is a woman.

29. It is thus clear from the various provisions contained in Sections 18 & 19 that protection orders as per Section 18 can be passed by the Magistrate against the "Respondent" prohibiting from committing acts of domestic violence, aiding or abetting the commission of such acts. Hence, even where the Respondent abets the commission or aids such commission of domestic violence through his female

relatives, a protection order can be passed in favour of the aggrieved person. Therefore, it is not necessary to proceed under the impression that unless the proviso to Section 2(q) is given expanded meaning to extend the reach of the main definition clause defining the term "Respondent", the intention and purpose of the Act will not be served. On the other hand, looking at the nature and sweep of the protection orders and residence orders that can be passed under Sections 18 & 19 of the Act and their impact on the Respondent", the term "Respondent" as defined u/s 2(q) cannot be loosely interpreted or understood by expanding its extent, sweep and reach that too by placing such a construction on the proviso.

30. The protection orders, the residence orders, monetary reliefs, custody orders and compensation orders that can be passed under the provisions contained in Section 18 - 22 of the Act, are though in the nature of civil reliefs granted to the aggrieved person against the Respondent, the proceedings conducted under these provisions are to be governed by the provisions of the Code of Criminal Procedure, 1973, as per Section 28 of the Act. More over, breach of protection order by the Respondent is made an offence as per Section 31 of the Act and is made punishable with imprisonment for a term which may extend to one year or with fine which may extend to Rs. 20,000/- or with both. It is therefore clear that when an enactment provides serious reliefs and measures in favour of the aggrieved person directed against the "Respondent" by clearly defining the term "Respondent". It is not open to expand the meaning of the term "Respondent" by a process of statutory construction of the proviso so as to include the female relatives of the husband or the male partner sacrificing the rules of strict construction.

31. Even the provisions contained u/s 19 providing for grant of residence orders do not provide any indication that the definition of the term "Respondent" can be so construed to include the female relatives of the husband or the male partner of the aggrieved person. In fact, Section 19(1)(b) provides that a residence order can be passed directing the Respondent to remove himself from the shared household. Section 19(1)(c) provides for passing a residence order restraining the Respondent or any of his relatives from entering any portion of the shared household. Thus, the use of the expression "remove himself in Section 19(1)(b) or "his relatives" in Section 19(1)(c) and the expression from renouncing his rights in the shared household in Section 19(1)(e) have to be kept in mind. In such an event, the mere fact that in the proviso to Section 19(1), it is made clear that no order under Clause (b) shall be passed against any person who is a woman, cannot be made use of to hold that the definition of the term "Respondent" Includes a woman. In fact, in the wake of the language of Section 19(1)(b) which states that a direction can be issued to the Respondent to remove himself from the shared household it did not warrant any clarification by enacting the proviso to Section 19(1) making it clear that such a direction shall not be issued against any person who is a woman. This being the position, the argument advanced stating that in the light of the language of the proviso referring to a woman in the proceedings where residence orders are passed, the

definition of the term "Respondent" can be construed to include female relatives of the husband in appropriate cases is wholly untenable.

32. Coming back to the language used in the proviso to Section 2(q), it is apparent that what is sought to be made clear by the proviso is that an aggrieved wife or a female living in a relationship in the nature of marriage may also file a complaint against a relative of the husband or the male partner. Thus, the reference made in the proviso is to the filing of a complaint against the relative of the husband/male partner. This cannot be construed to mean that she is clothed with a right to seek relief under the various provisions of the Act against the female relatives of the husband. What the proviso says is that the aggrieved wife or female partner is also given an option to file a complaint against the relatives of the husband or male partner. The reference to "complaint" in the proviso has to be understood in the light of the provisions contained under Chapter-III of the Act whereunder powers and duties of protection officers and police officers/service providers and magistrates are enumerated. For example, in Section 5, reference is made to the complaint received of domestic violence by the police officer, protection officer, service provider or magistrate whereupon he is enjoined with a duty to inform the aggrieved person of her right to file a complaint u/s 498A of the IPC. Section 5, 5(e) and proviso to Section 5 are required to be usefully referred at this stage. They are extracted hereunder.

5. Duties of police officers, service providers and Magistrate: A police officer, Protection Officer, service provider or Magistrate who has received a complaint of domestic violence or is otherwise present at the place of an incident of domestic violence or when the incident of domestic violence is reported to him, shall inform the aggrieved person.--

(a).....

(b).....

(c).....

(d).....

(e) of her right to file a complaint u/s 498A of the Indian Penal Code (45 of 1860), wherever relevant;

PROVIDED that, nothing in this Act shall be constructed in any manner as to relieve a police officer from his duty to proceed in accordance with upon receipt of information as to the commission of a cognizable offence.

33. It is thus clear from the above provisions that the purport of the proviso to Section 2(q) is that wherever the aggrieved person is a wife or a female living in a relationship akin to marriage she may file a complaint against a relative of her husband or male partner regarding the domestic violence. Such an opportunity is provided in the context of the duties and obligations cast on the police officers,

service provider and magistrate to inform her about her right u/s 498A of the IPC and of the obligation of the police officer to proceed in accordance with law for the commission of cognizable offence against such persons as is clear from Section 5, 5(e) and the proviso appended to Section 5. Reference may be made to the provisions of Section 498A of the IPC at this juncture, which reads as under:

498-A. Husband or relative of Husband of a woman subjecting her to cruelty.--Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.--For the purpose of this section, "cruelty" means

(a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

34. If the proviso to Section 2(q) of the present Act is read keeping in mind Section 5, 5(e) and the proviso to Section 5 in the background of Section 498A of the IPC, to which reference is expressly made in Section 5 of the present Act, the purpose and intent in providing an opportunity to the wife or the female who is living in a relationship akin to marriage to file a complaint against a relative of her husband or the male partner becomes very clear. In fact, the very expression "the relative of the husband" is used in Section 498A of IPC making such acts of cruelty from such relative of the husband punishable with imprisonment. Therefore, it is totally unnecessary to give any other meaning to the proviso to Section 2(q) which only provides for an option to the wife to file a complaint against a relative of the husband. It is wholly impermissible to read this provision so as to expand the meaning of the term "Respondent" as defined in Section 2(q) to include the female relatives of the husband. Such an exercise will be directly contrary to the canons of construction of statutory provisions particularly regarding a proviso. Following Judgments of the Apex Court may be usefully referred in this regard, where the principles pertaining to construction of a proviso appended to a provision are laid down.

35. In the case of Dwarka Prasad Vs. Dwarka Das Saraf, , the Apex Court has laid down the following principles while interpreting a proviso.

..... If on a fair construction, the principal provision is clear, a proviso cannot expand or limit it. A proviso must be limited to the subject matter of the enacting clause. A proviso must prima facie be read and considered in relation to the principal matter to which it is a proviso. It is not a separate or independent

enactment.

36. In the case of Vishesh Kumar Vs. Shanti Prasad, , considering the role of proviso, the Apex Court held that a proviso cannot be construed to defeat the basic intent of substantive provision.

37. In the case of the The Commissioner of Income Tax, Mysore, Travancore-cochin and Coorg, Bangalore Vs. The Indo Mercantile Bank Limited, , dealing with the function of a proviso appended to the provision, the Apex Court has laid down at para 10 as under:

The proper function of a proviso is to except and deal with a case which would otherwise fall within the general language of the main enactment, and its effect is confined to that case. Where, as in the present case, the language of the main enactment is clear and unambiguous, a proviso can have no repercussion on the interpretation of the main enactment, so as to exclude from it by implication what clearly falls within its express terms.

The territory of a proviso therefore is to carve out an exception to the main enactment and exclude something which otherwise would have been within the section. It has to operate in the same field and if the language of the main enactment is clear it cannot be used for the purpose of interpreting the main enactment or to exclude by implication what the enactment clearly says unless the words of the proviso are such that, that is its necessary effect.

38. Again in the case of A.N. Sehgal and others Vs. Raje Ram Sheoram and others, , dealing with the role of proviso to a Section, the Apex Court has observed in paragraphs 14 & 15 as under:

14. It is a cardinal rule of interpretation that a proviso to a particular provision of a statute only embraces the field which is covered by the main provision. It carves out an exception to the main provision to which it has been enacted by the proviso and to no other. The proper function of a proviso is to except and deal with a case which would otherwise fall within the general language of the main enactment, and its effect is to confine to that case. Where the language of the main enactment is explicit and unambiguous, the proviso can have no repercussion on the interpretation of the main enactment, so as to exclude from it, by implication what clearly falls within its express terms.

15. The scope of the proviso, therefore, is to carve out an exception to the main enactment and it excludes something which otherwise would have been within the rule. It has to operate in the same field and if the language of the main enactment is clear, the proviso cannot be torn apart from the main enactment nor can it be used to nullify by implication nor can it be used to nullify by implication what the enactment clearly says nor set at naught the real object of the main enactment, unless the words of the proviso are such that it is its necessary effect.

39. It is further useful to emphasize here that the basic and cardinal principle of

interpretation of statute is that the language of the provision must be understood giving it the full meaning that the literal construction admits. It shall be always presumed that the legislature uses the precise words and makes a choice of the same with a purpose and that the Court cannot read anything into a statutory provision which is plain and unambiguous. A language employed in a statute is determinative of the legislative intent. Where the language of an enactment is clear and unambiguous, it is not proper for the Courts to add any words to the statute and evolve some legislative intent not found in the statute. This is the proposition of law reiterated by the Apex Court in the latest decision in the case of Md. Shahabuddin Vs. State of Bihar and Others, . The Apex Court has also observed in this case that where the legislature prescribes a condition at one place, but not at some other places in the same provision, the only reasonable interpretation possible is that such was the intention of the legislature. In the said case, provision contained u/s 9(6) of the Code of Civil Procedure, 1973, fell for interpretation.

40. In the instant case, in the definition clause of the term "Respondent", the substantive part of the definition clearly states that "Respondent" means any adult person who is or has been in domestic relationship with the aggrieved person and against whom the aggrieved person has sought relief under the Act. The proviso does not intend either to except or include any person or class of persons from the purview of the definition nor does it expand the scope of the definition by including any other class other than what is mentioned in the substantive part of the provision. In clear and unambiguous language, it provides that the aggrieved wife or female living in a relationship akin to marriage may also file a complaint against the relative of her husband or the male partner. In such a situation, there is absolutely no room to expand the meaning and definition of the term "Respondent" by reading into the proviso, the alleged intention of the legislature to provide for relief to the aggrieved wife under the provisions of the Act against the relatives of her husband, which will tantamount to saying that the wife can file applications u/s 12 against any female relatives of her husband such as his mother, sister, sister-in-law, etc., seeking various orders such as protection orders, residence orders, custody orders, compensation orders.

41. It is necessary to refer to the decision of the Apex Court in the case of S.R. Batra and Anr. v. Taruna Batra AIR 2007 SC 1118 at this Juncture. Though the Apex Court in this decision had no occasion to consider the scope and ambit of the definition of the term "Respondent" u/s 2(q) of the Act, but the provisions of Sections 2(s), 17 & 19 fell for consideration in this case. That was a case where the daughter-in-law initiated a suit against her husband and mother-in-law in respect of the house property owned by the mother-in-law, wherein temporary injunction was granted restraining the mother-in-law from interfering with the possession of the daughter-in-law. Contentions were advanced taking support from the provisions of Sections 2(s), 17 & 19(1) of the Act in support of the order granting temporary injunction. Paragraphs 19, 21, 25, 28 & 29 of the

aforementioned decision which are relevant are extracted hereunder:

19. Learned Counsel for the Respondent then relied upon the Protection of women from Domestic Violence Act, 2005. He stated that in view of the said Act Respondent Smt. Taruna Batra cannot be dispossessed from the second floor of the property in question.

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21. Apart from the above, we are of the opinion that the house in question cannot be said to be a "shared household" within the meaning of Section 2(s) of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as the "Act").

Section 2(s) states:

shared household" means a household where the person aggrieved lives or at any stage have lived in a domestic relationship either singly or along with the Respondent and include such a household whether owned or tenanted either jointly by the aggrieved person and the Respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the Respondent or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the Respondent is a member, irrespective of whether the Respondent or the aggrieved person has any right, title or interest in the shared household.

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25. If the aforesaid submission is accepted, then it will mean that wherever the husband and wife lived together in the past that property becomes a shared household it is quite possible that the husband and wife may have, lived together in dozens of places e.g., with the husband's father, husband's paternal grand parents, his maternal parents, uncles, aunts,, brothers, sisters, nephews, nieces, etc. If the interpretation canvassed by the learned Counsel for the Respondent is accepted, all these houses of the husband's relatives will be shared households and the wife can well insist in living in the all these houses of her husband's relatives merely because she had stayed with her husband for some time in those houses in the past. Such a view would lead to chaos and would be absurd.

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27.

28. As regards Section 17(1) of the Act, in our opinion the wife is only entitled to claim a right to residence in a shared household, and a "shared household" would only mean the house belonging to or taken on rent by the husband, or the house which belongs to the joint family of which the husband is a member. The

property in question in the present case neither belongs to Amruti Batra nor was it taken on rent by him nor is it a joint family property of which the husband Amit Batra is a member. It is exclusive property of Appellant No. 2 mother of Amit Batra. Hence, it cannot be called a "shared household".

29. No doubt, the definition of "shared household" in Section 2(s) of the Act is not very happily worded, and appears to be the result of clumsy drafting, but we have to give it an interpretation which is sensible and which does not lead to chaos in society.

42. In the background of the facts involved in the aforementioned case of S.R. Batra and referring to the observations made by the High Court of Delhi in the decision under challenge before the Apex Court to the effect that "change of situation and complex problems arising required giving the wife or the husband, the right of occupation in a truly matrimonial home, in case of marriage breaking up or in case of strained relationship between the husband and the wife, the Apex Court has observed in paragraph 15 as under:

15. In our opinion, the above observation is merely an expression of hope and it does not lay down any law, It is only the legislature which can create a law and not the Court. This Courts do not legislate, and whatever may be the personal view of a Judge, he cannot create or amend the law, and must maintain Judicial restraint

43. Thus, viewed from all angles, the definition clause contained u/s 2(q) cannot be construed to extend its meaning as contended by the Petitioner. On The Court has to avoid reading into the provision, anything that is not expressly provided and anything that is likely to create confusion and chaos.

44. Hence, with great respect we are not persuaded to accept the contrary view expressed in other cases. We respectfully disagree with the interpretation and construction laid on the proviso to Section 2(q) in the cases referred to above and relied on by the Petitioner. We agree with the view expressed by the learned Single Judge of this Court in the case of Amruth Kumar and Anr. v. Smt. Chithra Shetty and Anr. 2010 (1) KCCR 459, though for various separate and detailed reasons assigned by us in the order.

45. Accordingly, the reference is answered making it clear that the definition of the term "Respondent" as defined u/s 2(q) of the Act does not include a female relative of the husband or the female relative of the male partner of an aggrieved wife or female living in a relationship in the nature of marriage.

46. Registry is directed to place the papers before the learned Single Judge for deciding the revision petition on merits.