

(2017) 02 MP CK 0045

In the Madhya Pradesh High Court

Case No : Misc. Criminal Case No. 2388 of 2016

Sweta Maheshwari

APPELLANT

Vs

Smt. Pooja Maheshwari

RESPONDENT

Date of Decision : 08-02-2017

Acts Referred:

Code Of Criminal Procedure, 1973 (CrPC) — Section 482

Constitution Of India, 1950 — Article 14

Protection Of Women From Domestic Violence Act, 2005 — Section 2(q), 12

Citation : (2017) CJ 25 (MP) : (2017) 2 CCC 313 : (2017) 2 Crimes(MP) 330 :
(2017) 2 DMC 246 MP : (2017) 3 MPLJ 353

Hon'ble Judges : G.S. Ahluwalia, J.

Bench : Single Bench

Advocate : Shri Pawan Kumar, Advocate, for the Applicants; None, for the Respondent though served

Final Decision : Disposed Off

Judgement

G.S. Ahluwalia, J.—This petition under Section 482 of CrPC has been filed against the order dated 04.01.2015 passed by ACJM, Gwalior in Case No.125/2015.

2. The facts necessary for the disposal of the present case are that the respondent had filed an application under Section 12 of Protection of Women from Domestic Violence Act, 2005 on the ground that she is married to Vishal Maheshwari on 29.01.2014 as per Hindu Rites and Rituals. Several gold and diamond ornaments, one titan watch, a silver idol of Ganesh Ji, Rs.2 lacs in cash were given at the time of engagement and Rs. 50,000/- were transferred in the account of Smt. Suman Jakotiya. At the time of marriage, several gold and diamond ornaments were given apart from the household articles and in all Rs.25 lacs were spent by the father of the complainant for performing the marriage. Silver gifts were given to the in-laws of the complainant. After her marriage, when she shifted to Jamshedpur, her mother-in-law started passing taunts and

when the complainant objected to her husband that why the taunts are being passed then he also supported his mother. On 01.02.2014, the mother-in-law of the complainant instructed that the complainant should do the entire work of dusting and moping in the house. Again when an objection was raised by the complainant, the husband of the complainant also supported his mother. The father-in-law of the complainant also passed taunts and he also used to shout at the complainant. When the complainant along with her husband went to honeymoon, the father-in-law, mother-in-law and applicants used to provoke her husband on mobile for hours together. The complainant also disclosed her E-mail account, face book code, bank account number etc to her husband. The behaviour of the husband of the complainant was not good towards her. After coming back from honeymoon, on 08.02.2014, the husband of the complainant informed her that on 10th he will be going back to Gurgaon to join his service. When the complainant also insisted that she would also go with him to Gurgaon, the father-in-law and mother-in-law shouted at her and said that she would not be allowed to go along with him and as nothing has been given in dowry. The father-in-law of the complainant also slapped her and she was turned out of the room.

3. On 10.02.2014, the husband of the complainant went to Gurgaon, after leaving the complainant in her matrimonial house. From 10.02.2014 to 10.03.2014, the father-in-law, mother-in-law and applicants continuously tortured her mentally. Initially, they were conspiring to kill the complainant but as they were apprehensive of their arrest, therefore, she survived. The husband, father-in-law and mother-in-law of the complainant used to say her that if she wants to stay alive in the house then she should bring an amount of Rs.7 lacs and one car, only then she will be allowed to live with her husband. It is alleged that the applicants were also extending the same threat to the complainant on phone. The complainant also tried to convince her in-laws that now she is not having any thing and also requested her husband to convince her in-laws not to harass her but neither the husband came back nor he stopped the in-laws and the applicants. On 09.03.2014, when the brother of the complainant came to Jamshedpur to take her back to Gwalior, again a demand of dowry was made and he was informed that if the complainant wants to reside with her husband then she should bring an amount of Rs.7 lacs and a car. She was also not allowed to take her ornaments back with her. From 10.03.2014 to 05.04.2014 on several occasions telephonic calls were made to the husband, father-in-law, mother-in-law of the complainant to take her back to the matrimonial house but all the time they said that unless and until an amount of Rs.7 lacs and a car is given, she will not be taken back to her matrimonial house. With great difficulty her husband agreed to take her along with him and on 05.04.2014 he came to Gwalior to take her to Delhi and at that time, again he had made a demand of Rs.7 lacs and a car. At that time, an amount of Rs.60,000/- was given by the father of the complainant to her husband but the atrocities at the hands of the husband, father-in-law and mother-in-law continued. On 19.05.2014, she came to Gwalior

along with her father and the ATM Card, Aadhar Card were kept by his husband with him. On 23.06.2015 (as it is mentioned in complaint), the husband and father-in-law came to Gwalior and made the demand. Accordingly, on 25.11.2014, the complainant lodged a FIR against her husband and her in-laws. Thus, an application under Section 12 of Protection of Women from Domestic Violence Act, 2005 was filed against the applicants as well as the husband and parents in laws.

4. This petition has been filed for quashing the proceedings against the applicants on the ground that the applicant No.2 is residing at Bangalore and the applicants have nothing to do with the family affairs of the complainant and her husband. It is further mentioned that the applicant No.2 is a married lady and she has not committed any act which may fall under the category of Domestic Violence. The only allegation against the applicants are that they had instigated the husband of the complainant on telephone. It was further submitted by the applicants that since the applicants are females therefore the provision of Protection of Women from Domestic Violence Act, 2005 would not apply.

5. None appeared for the respondent, though served.

6. This Court by order dated 21.11.2016 has sought the status report from the Court of ACJM, Gwalior. In report dated 15.12.2016, it is mentioned that as the complainant has not given the process fee to serve the applicants, therefore, no notices could be issued to them. Even in this proceeding, the complainant has neither engaged any lawyer nor is present in person. Thus, it appears that so far as the applicants are concerned, the complainant is not very serious.

7. So far as, the contention of the applicants that the provisions of Protection of Women from Domestic Violence Act, 2005 are not applicable to female is concerned, suffice it to say that the Supreme Court in the case of Hiral P. Harsora & Ors. v. Kusum Narottamdas Harsora reported in (2016) 10 SCC 165 has struck down the definition of "Male Adult" in Section 2(q) of Act, 2005 and has held as under :-

"5. We, therefore, set aside the impugned judgment of the Bombay High Court and declare that the words "adult male" in Section 2 (q) of the 2005 Act will stand deleted since these words do not square with Article 14 of the Constitution of India. Consequently, the proviso to Section 2 (q), being rendered otiose, also stands deleted."

8. Thus, it is clear that the application under Section 12 of Protection of Women from Domestic Violence Act, 2005 is maintainable even against the female members of the family.

9. From the plain reading of the complaint as well as the documents which have been filed along with the petition, it is clear that no specific allegations have been made against the applicants. The applicant No.2 is a resident of Bangalore whereas the applicant No.1 is an unmarried girl. In absence of any specific

allegation against the applicants that they have committed any domestic violence against the complainant, in the considered view of this Court, the proceedings against the applicants which are pending in the Court of ACJM, Gwalior are liable to be quashed.

10. Hence, this application succeeds and the further proceedings against the applicants in case No.125/2015 pending in the Court of ACJM, Gwalior qua the applicants are hereby quashed.