

Court No. - 84

Case :- APPLICATION U/S 482 No. - 6947 of 2021

Applicant :- Nivesh Gupta @ Ankur Gupta And 2 Others

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Shri Krishna Mishra, Shri Krishna Mishra

Counsel for Opposite Party :- G.A.

Hon'ble Dr. Yogendra Kumar Srivastava, J.

1. Heard Sri Shri Krishna Mishra, learned counsel for the applicants through video link and Ms. Sushma Soni, learned Additional Government Advocate for the State-opposite party.

2. The present application seeks to challenge the order dated 7.11.2020, by means of which, the complaint registered as Complaint Case No. 1777 of 2020 (Shambhavi Kesharwani vs. Nivesh Gupta) filed by the opposite party no. 2, has been directed to be registered fixing a date and the subsequent orders, in terms of which, further dates have been fixed in the case. The applicants have also sought quashing of the proceedings of the complaint case.

3. The only ground, which is sought to be canvassed to challenge the order registering the case and also seeking quashing of the proceedings, is that the applicants are not living with the opposite party no. 2 in a 'shared household' and, therefore, the proceedings under 'The Protection of Women from Domestic Violence Act, 2005', would not be maintainable.

4. Learned A.G.A., appearing for the State-opposite party, submits that the contention, which is sought to be raised by the applicants with regard to the parties not living together in

a shared household, would require adjudication by the competent court and the applicants can raise their defence in the proceedings before the court below. Learned A.G.A. further submits that in the facts of the present case, the complaint filed by the opposite party no. 2 has merely been registered, and the present application seeking quashing of the proceedings, is clearly premature and is not liable to be entertained at this stage.

5. The proceedings, which are sought to be challenged in the present case relate to 'The Protection of Women from Domestic Violence Act, 2005¹, which was enacted to provide for a 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.

6. The Statement of Objects and Reasons of the enactment contains reference to the Vienna Accord of 1994 and the Beijing Declaration and the Platform for Action (1995), wherein domestic violence was acknowledged as a human right issue and serious deterrent to development. The United Nations Committee on Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) also recommended that State parties should act to protect women against violence of any kind especially that occurring within the family.

7. The provisions under the DV Act seek 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' or related by consanguinity or marriage or through a relationship in the nature of marriage or adoption.

1. DV Act

Relationship with family members living together as a joint family are also included. In addition, women who are sisters, widows, mothers, single women, or living with the abuser are entitled to legal protection.

8. The expression 'domestic violence' under the Act has been defined in a manner so as to include actual abuse or threat or abuse that is physical, sexual, verbal, emotional or economic. Harassment by way of unlawful dowry demands have also been covered under the definition. In order to effectively ensure the protection of women, the DV Act empowers the Magistrate concerned to pass protection orders, residence orders, custody orders, compensation orders and also issue directions for mandatory reliefs. The Magistrate is further empowered to grant an ex-parte order and also to pass such ad-interim order as he may deem just and proper.

9. The DV Act was enacted keeping in view the rights guaranteed under Articles 14, 15 and 21 of the Constitution to provide for a remedy under the civil law intended to protect the women from being victims of domestic violence and to prevent the occurrence of domestic violence in the society.

10. The beneficial and affirmative nature of the legislation was considered in *Krishna Bhattacharjee v. Sarathi Choudhury*², wherein it was held that regard being had to the nature of the legislation, the courts are expected to have a sensitive approach and before throwing a petition at the threshold on the ground of maintainability, there has to be an apposite discussion and thorough deliberation on the issues raised. The relevant observations made in the judgement are as follows :-

2. (2016) 2 SCC 705

“3. Regard being had to the nature of the legislation, a more sensitive approach is expected from the courts whereunder the 2005 Act no relief can be granted, it should never be conceived of but, before throwing a petition at the threshold on the ground of maintainability, there has to be an apposite discussion and thorough deliberation on the issues raised. It should be borne in mind that helpless and hapless “aggrieved person” under the 2005 Act approaches the court under the compelling circumstances. It is the duty of the court to scrutinise the facts from all angles whether a plea advanced by the respondent to nullify the grievance of the aggrieved person is really legally sound and correct. The principle “justice to the cause is equivalent to the salt of ocean” should be kept in mind. The court of law is bound to uphold the truth which sparkles when justice is done. Before throwing a petition at the threshold, it is obligatory to see that the person aggrieved under such a legislation is not faced with a situation of non-adjudication, for the 2005 Act as we have stated is a beneficial as well as assertively affirmative enactment for the realisation of the constitutional rights of women and to ensure that they do not become victims of any kind of domestic violence.”

11. Taking a similar view in *Vaishali Abhimanyu Joshi vs. Nanasaheb Gopal Joshi*³, it was held that looking to the beneficial nature of the provisions contained under the DV Act, its interpretation should be in a manner to effectuate its objects and purpose. The observations made in the judgement while interpreting Section 26 of the Act are as follows :-

“40. Section 26 of the 2005 Act has to be interpreted in a manner to effectuate the very purpose and object of the Act. Unless the determination of claim by an aggrieved person seeking any order as contemplated by the 2005 Act is expressly barred from consideration by a civil court, this Court shall be loath to read in bar in consideration of any such claim in any legal proceeding before the civil court.”

12. The question as to whether a woman would be entitled to claim protection of right in a 'shared household', would be required to be adjudicated taking into view the meaning of the

3. (2017) 14 SCC 373

expression as defined under Section 2(s) of the Act, which would go to show that while considering a claim for protection of the right to live in a 'shared household', the words 'lives' or 'at any stage has lived', in a domestic relationship, would have to be included within the purview. The question as to whether a claim for protection of right in a 'shared household' can be sustained, would have to be, therefore, based upon a consideration of the case in its entirety.

13. The DV Act has been held to be a beneficial and an affirmative legislation for more effective protection of constitutional rights of women and to ensure that they do not become victims of any kind of domestic violence and while interpreting the provisions of the Act, a sensitive approach towards the rights of women is required to be taken.

14. It would be obligatory on the Court in a given case to scrutinise the facts from all angles so as to examine whether the plea advanced with regard to maintainability is on a sound legal basis or has been raised solely with a view to nullify the grievance of the aggrieved person. The beneficial and the affirmative object of the enactment would be required to be taken into view while dealing with such questions relating to maintainability and a narrow interpretation, which may leave the aggrieved woman in distress, remediless or in a situation of non-adjudication, would have to be eschewed.

15. Having regard to the aforesaid and looking to the beneficial nature of the statute and its affirmative purpose, a claim for protection under the DV Act may not be thrown out at the threshold and the question of maintainability would require a proper appreciation of facts of the case and a thorough deliberation of the issues raised.

16. Learned counsel for the applicants, at this stage, fairly submits that the applicants would appear before the court below and file their objections and contest the case on merits.

17. Having regard to the aforesaid facts and circumstances of the case, this Court is not inclined to exercise its inherent jurisdiction, at this stage.

18. It is made clear that the observations made hereinabove, are *prima facie* in nature and the dismissal of the present application would not preclude the applicants from raising all objections, which may be available to them, including the point with regard to maintainability of the proceedings.

19. Subject to the aforesaid observations, the application stands dismissed.

Order Date :- 6.7.2021

Shalini

(Dr. Y.K.Srivastava,J.)