



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (APL) NO.1576 OF 2022

...APPLICANT

// VERSUS //

...NON-APPLICANT

Mrs Jyoti D. Dharmadhikari, Advocate for the petitioner.
Shri M.K. Mishra, Advocate for the non-applicant.

CORAM : G. A. SANAP, J.
DATE:- 29/03/2023

JUDGMENT

1. In this criminal application, challenge is to the order dated 21.10.2022 below Exh.13 passed by the learned Additional Chief Judicial Magistrate, Nagpur whereby, the learned Additional Chief Judicial Magistrate rejected the application at Exh. 13 made by the applicant for dismissal of the proceedings initiated by the non-applicant/complainant as per the provisions of Section 12 of the Protection of Women from Domestic Violence Act, 2005 (for short “ the D.V. Act).

2. The facts are as follows:-

The applicant is the respondent in the complaint filed before the Magistrate. The non-applicant is the complainant. In this judgment they would be referred by their nomenclature in the complaint. The complainant and the respondent No.1 got married in the year 2020. The respondent No.1 on 12.12.2020 left for Germany. After getting the visa, the complainant also joined the respondent No.1. The respondent Nos.2 and 3 in the complaint are the

in-laws of the complainant. According to the complainant, during her stay with the in-laws in the matrimonial home at Mumbai they used to make nasty, humiliating and insulting comments over the complainant and her parents. According to them, marriage was not performed as per their expectation and befitting their status. It is stated that in Germany the respondent No.1 for few days behaved properly with her. However, later on the respondent No.1 subjected her to mental and physical torture. She was not allowed to talk with her parents. She was forced to do extra household work. The complainant was forced to undergo the abortion against her wish. The complainant suffered mental and physical torture. The respondent No.1 ultimately forced the complainant to leave Germany. The complainant therefore, came to Nagpur under a lot of physical and mental stress and trauma. She has been residing with her parents. After coming to Nagpur she filed the complaint under the Protection of Women from Domestic Violence Act, 2005.

3. The respondent No.1 filed his written statement/reply and opposed the application. The respondent No.1 made the application for dismissal of the complaint on the ground that the alleged acts of domestic violence have taken place in Germany and not within the extent of the provisions of the D.V. Act. According to him the Court in India has no jurisdiction to entertain the complaint of the complainant.

4. The complainant filed the reply and opposed this application. According to her, the mental stress and trauma carried by her from Germany continued in India. She has suffered mental pain and agony. According to her, as per the provisions of Section 27 of the D.V. Act the Court of Magistrate at Nagpur is having the jurisdiction.

5. Learned Additional Chief Judicial Magistrate rejected the application made by the respondent No.1 holding that the issue raised by the respondent No.1 has been fully addressed by the Hon'ble Apex Court in the case of *Rupali Devi Vs. State of Uttar Pradesh* reported in *AIR*

2019 SC 1790. Learned Additional Chief Judicial Magistrate further observed that the mental trauma and physical distress caused by the acts of the husband which ultimately compelled her to leave matrimonial home and take a shelter with her parents would continue to persist at the parental home. Against this order, the respondent No.1 is before this Court.

6. I have heard Mrs. Jyoti Dharmadhikari, learned Advocate for the applicant and Shri A.K. Mishra, learned Advocate for the non-applicant/complainant. Perused the record and proceedings.

7. The learned Advocate for the respondent No.1 submitted that the decision in the case of ***Rupali Devi Vs. State of Uttar Pradesh*** (supra) is not at all applicable to the facts of this case and as such, the reliance placed on this decision by the learned Additional Chief Judicial Magistrate was totally misplaced. Learned Advocate pointed out that the alleged domestic violence according to the complaint, was caused while she was residing with the respondent No.1

in Germany. Learned Advocate, therefore, submitted that the provisions of the D.V. Act would not be applicable to those acts allegedly committed on the soil of Germany. In the submission of learned Advocate in terms of Section 1 of the D.V. Act, the said act extends to the whole of India except the State of Jammu and Kashmir. Learned Advocate submitted that it does not extend to the Indian subjects residing abroad for the alleged acts of domestic violence. Learned Advocate further submitted that in terms of subsection 2 of Section 27 the order made under the D.V. Act shall be enforceable through out India. Learned Advocate, therefore, submitted that the order which cannot be executed beyond India even if passed, would be meaningless. Learned Advocate therefore, submitted that learned Additional Chief Judicial Magistrate has committed the patent illegality.

8. Learned Advocate for the complainant submitted that the decision in the case of *Rupali Devi Vs. State of Uttar Pradesh (supra)* is applicable to the facts of the case and therefore, learned Magistrate was right in relying upon the

same. Learned Advocate further submitted that Co-ordinate Bench of this Court in Criminal Writ Petition No.3398 of 2017 dated 25.09.2019 *Mohammad Zuber Farooqi Vs. State of Maharashtra and another* and the Delhi High Court in the case of *Hima Chugh Vs. Pritam Ashok Sadaphule and Ors.* reported in *2013 Cri. L.J. 2182* has considered a somewhat similar factual situation and held that in terms of the provisions of Section 27 (2) of the D.V. Act the Court of Judicial Magistrate or the Metropolitan Magistrate, within the local limits of which the person aggrieved permanently or temporarily resides or carries on business or is employed or the respondent resides or carries on business or is employed or the place where the cause of action has arisen, shall be competent to entertain the application. Learned Advocate submitted that apart from the actual domestic violence caused to the complainant in Germany, the complainant carried with her trauma and distress of the said domestic violence. Learned Advocate submitted that in view of this continuous suffering of the domestic violence by the complainant would be sufficient to reject the application.

9. In order to appreciate the rival submissions, I have gone through the record and proceedings. I have also gone through the judgments relied upon by both the parties. It is true that as per Section 1 of the D.V. Act, the D.V. Act extends to the whole of India except the State of Jammu and Kashmir. It does not extend beyond the limits of India. The question therefore, is whether for the domestic violence caused to the aggrieved person on the foreign soil can be taken cognizance of by the Court of Magistrate in India at any of the places provided in clause (a) to (c) of Section 27. It is to be noted that subsection 1 and Section 27 of the D.V. Act will have to be harmoniously construed. The D.V. Act is a social beneficial legislation. The object and intention of the legislature behind this enactment is writ large from the statement of the object and reasons of the Act. Section 27 of the Act provides for the jurisdiction of a Court of Magistrate of First Class or Metropolitan Magistrate to entertain the application under this Act. The provisions of Section 27(1) (a) and (b) are applicable irrespective of the place of cause of action. It is to be noted that clause (a) and (b) of Section

27 (1) of the D.V. Act has, therefore, no direct nexus or co relation with the place where the domestic violence was actually caused. In my view, these two clauses namely (a) and (b) of sub section (1) of Section 27 have to be harmoniously construed with sub section 1 of Section 27 of the Act. If it is so done then it would show that the law makers were mindful of such a situation and therefore, Section 27 have been worded in this form. It therefore goes without saying that though the Domestic Violence Act extend to the whole of India as provided under Section 1 of the D.V. Act, the domestic violence caused on the foreign soil could also be taken cognizance by invoking Section 27 (1) (a) and (b).

10. It is to be noted at this stage that on this ground learned Magistrate was right in rejecting the application. At this stage, it would be necessary to consider the decisions relied upon by the learned Advocate for the complainant. In the case of *Hima Chugh Vs. Pritam Ashok Sadaphule* (supra), the facts were identical to the facts of the case in hand. The wife was permanent resident of U.K. She was

subjected to domestic violence in U.K. She came to India and started living with her parents at Delhi. She filed an application under the D.V. Act in the Court of Metropolitan Magistrate, Delhi. The Metropolitan Magistrate Delhi held that since the complainant was subjected to domestic violence on the soil of U.K, he will have no jurisdiction to entertain the complaint. Delhi High Court in this case has held that in view of the provisions of Section 27 of the D.V. Act, the Metropolitan Magistrate will have the jurisdiction to entertain the complaint inasmuch as the complainant had started permanently residing with her parents at Delhi.

11. In the case of *Mohammad Zuber Farooqi Vs. State of Maharashtra and another (supra)* the facts are somewhat similar. The complainant(wife) and the husband resided in USA. She was subjected to domestic violence in USA. She came to India and started residing at Meerut. She shifted to Mumbai. In Mumbai, she filed complaint under Section 12 of the D.V. Act. The jurisdiction of the Metropolitan Magistrate Court at Mumbai was challenged before the High Court in a petition arising out of the maintenance order. The

Co-ordinate Bench after considering the law laid down in the case of *Rupali Devi Vs. State of Uttar Pradesh (supra)* held that the Court at Mumbai will have jurisdiction to entertain the complaint.

12. It would be necessary at this stage to consider the decision in the case of *Rupali Devi Vs. State of Uttar Pradesh (supra)*. It is true that issue involved before the Apex Court was with regard to the jurisdiction of criminal Court to entertain the criminal case under Section 498-A of the Indian Penal Code. The Hon'ble Apex Court in para 15 of this decision has considered the close nexus between the cruelty as defined under Section 498-A of the Indian Penal Code and the acts of the domestic violence as defined under the D.V. Act. In my view, it would be appropriate to reproduce para No.15 of this decision. It reads thus:-

“15. The Protection of Women from Domestic Violence Act, as the object behind its enactment would indicate, is to provide a civil remedy to victims of domestic violence as against the remedy in criminal law which is what is provided under Section 498-A of the Penal Code. The definition of “domestic violence” in the

Protection of Women from Domestic Violence Act, 2005 contemplates harm or injuries that endanger the health, safety, life, limb or well-being, whether mental or physical, as well as emotional abuse. The said definition would certainly, for reasons stated above, have a close connection with Explanations (a) & (b) to Section 498-A of the Penal Code which define "cruelty". The provisions contained in Section 498-A of the Penal Code, undoubtedly, encompass both mental as well as the physical well-being of the wife. Even the silence of the wife may have an underlying element of an emotional distress and mental agony. Her sufferings at the parental home though may be directly attributable to commission of acts of cruelty by the husband at the matrimonial home would, undoubtedly, be the consequences of the acts committed at the matrimonial home. Such consequences, by itself, would amount to distinct offences committed at the parental home where she has taken shelter. The adverse effects on the mental health in the parental home though on account of the acts committed in the matrimonial home would, in our considered view, amount to commission of cruelty within the meaning of Section 498-A at the parental home. The consequences of the cruelty committed at the matrimonial home results in repeated offences being committed at

the parental home. This is the kind of offences contemplated under Section 179 CrPC which would squarely be applicable to the present case as an answer to the question raised.”

13. The Hon'ble Apex Court has observed that sufferings of the wife at parental home though may not be directly attributable to commission of acts of cruelty by the husband at matrimonial home but the same would undoubtedly be the consequences of the acts committed at the matrimonial home. It is observed that such consequences, by itself, would amount to distinct offences committed at parental home where she has taken shelter. It is further observed that adverse effects on the mental health in the parental home though on account of acts committed in the matrimonial home would amount to commission of cruelty.

14. In my view, by drawing the analogy from these observations, it has to be held that apart from the express provisions of Section 27, in my view, the consequence of trauma, suffering and distress carried by the complainant to

her parental home would be sufficient to reject the submissions advanced by relying upon Section 1 of the D.V. Act. It is further pertinent to note that the reliance on subsection 2 of Section 27 is totally misplaced inasmuch as the question of execution of order would arise depending upon the nature of the order. Therefore, relying on subsection 2 of Section 27, the issue of jurisdiction cannot be answered in favour of the respondent No.1.

15. Therefore, in my view, there is no substance in this application. The application stands rejected.

JUDGE

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