Neutral Citation No. - 2025:AHC:11572

A.F.R.

Court No. - 77

Case :- APPLICATION U/S 482 No. - 14626 of 2019

Applicant :- Krishnawati Devi And 06 Others
Opposite Party :- State of U.P. and Another
Counsel for Applicant :- Om Prakash Shukla
Counsel for Opposite Party :- G.A.

Hon'ble Arun Kumar Singh Deshwal,J.

1. Heard Sri Om Prakash Shukla, learned counsel for the applicants and Sri Pankaj Srivastava, learned A.G.A. for the State, but no one appeared on behalf of the opposite party no. 2 despite service of notice.

2. The present 482 Cr.P.C. application has been filed to quash the entire proceeding/complaint in Case No. 59 of 2016 (Smrita Srivastava Vs. Rajiv Kumar Srivastava and others) under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as 'the Domestic Violence Act'), pending in the court of Additional Chief Judicial Magistrate, Sonbhadra.

3. Facts giving rise to the present controversy is that applicant no. 7 is the husband of opposite party no. 2 and matrimonial discord between them has culminated into this proceeding as well as other proceeding between them.

4. Learned counsel for the applicants has submitted that applicant no. 1 is the mother-in-law of opposite party no. 2 while applicant nos. 2, 3, 4 and 5 are married sisters of applicant no. 7 while applicant no. 6 is the husband of applicant no. 3. Applicant nos. 2, 3, 4, 5 and 6 have been residing separately with their family at different places which is clear from their addresses. Therefore, they are not in a domestic relationship with opposite party no. 2. Therefore, applicant nos. 2 to 6 will not come within the definition of respondents as per Section 2(q) of the Domestic Violence Act and they have been falsely implicated in the impugned proceeding. Therefore, the impugned proceeding is nothing but an abuse of the process of the Court. It is further submitted that this Court has rejected the present application at the instance of applicant no. 7 vide order dated 16.04.2019 but the proceeding against applicant no. 1, mother-in-law of the opposite party no. 2, is also erroneous. It is lastly submitted that the impugned proceeding is absolutely malicious and liable to be quashed.

5. Per contra, learned A.G.A. has submitted that applicant no. 1, mother-in-law of opposite party no. 2 has been in a domestic relationship with opposite party no. 2 at the relevant time. Therefore, applicant no. 1 would come within the definition of the respondent as per Section 2(q) of the Domestic Violence Act.

6. After hearing the submissions of parties and on perusal of record, it appears that the marriage of the applicant no. 7 and opposite party no. 2 has been solemnized in the year 02.06.2011. Subsequently, on the rising of matrimonial discord between them, they have filed cases against each other, including the impugned proceeding.

7. From the perusal of the record, it appears that the applicant nos. 2 to 6 are relatives of applicant no. 7 and they have been residing separately. Therefore, as per Section 2(q) of the Domestic Violence Act, they cannot be termed as respondents as they have not been residing in a shared household with the opposite party no. 2.

8. Section 2(q) of Domestic Violence Act is being quoted as under:-

> *(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;*

9. The proceeding under Domestic Violence Act can be initiated when the domestic violence as mentioned in Section 3 of Domestic Violence Act is committed by the respondent who is living in domestic relationship with the aggrieved person. The word "domestic relationship" has been defined in Section 2(f) of Domestic Violence Act which is being reproduced as follows :

> *(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;*

10. The above definition of domestic relationship shows that it will be presumed when two persons are related to each other by consanguinity, marriage, or through a relationship in the nature of marriage, adoption, or are family members of a joint family living together in a shared household. The definition of shared household is being provided u/s 2(s) of Domestic Violence Act which is being reproduced as follows :

> *(s) "shared household" means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes 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;*

11. From the above definition of shared household, it is clear that this is a household where aggrieved person lives or at any stage has lived in a domestic relationship with the respondent.

12. From the definition of respondent given in Section 2(q) of the Domestic Violence Act, it is also clear that the respondent will be a person who is or has been in a domestic relationship with an aggrieved person.

13. From the above analysis, it is clear for holding a person liable u/s 3 of Domestic Violence Act, the following condition must be satisfied :

"The respondent must be related to the aggrieved person in the manner as mentioned in Section 2(f) and he lived or has been living together with aggrieved person in a shared household and then commits domestic violence in the manner mentioned in Section 3 of Domestic Violence Act."

14. This Court came across number of cases where just to harass the family of husband or the person in domestic relationship, aggrieved party used to implicate the relatives of other side who are not even living or lived with the aggrieved person in shared household and they have been residing at separate places. Therefore, courts below while issuing notice u/s 12 of the Domestic Violence Act must look into this fact from the perusal of the application filed u/s 12 of the Domestic Violence Act along with other available record including the report of the Protection Officer, if available on record. It is further observed that the concerned courts before issuing notices to the persons impleaded as respondents in the application under Domestic Violence Act should satisfy about the fulfilment of the conditions mentioned in paragraph no. 13 of this judgment.

15. This issue also came into light before the Apex Court in the case of **Hiral P. Harsora and Others Vs. Kusum Narottamdas Harsora and Others, (2016) 10 SCC 165** wherein the Apex Court considered the definition of respondent mentioned in Section 2(q) of Domestic Violence Act and declared that word “adult male” mentioned in Section 2(q) of Domestic Violence Act as well as the proviso to Section 2(q) will stand deleted and observed that respondent for the purpose of domestic violence could be any person who is in domestic relationship with the aggrieved person. Paragraph nos. 20, 21 and 50 of **Hiral P. Harsora (supra)** are being quoted as under :

> *20. It will be noticed that the definition of "domestic relationship" contained in Section 2(f) is a very wide one. It is a relationship between persons who live or have lived together in a shared household and are related in any one of the four ways-blood, marriage or a relationship in the nature of marriage, adoption, or family members of a joint family. A reading of these definitions makes it clear that domestic relationships involve persons belonging to both sexes and includes persons related by blood or marriage. This necessarily brings within such domestic relationships male as well as female in-laws, quite apart from male and female members of a family related by blood. Equally, a shared household includes a household which belongs to a joint family of which the respondent is a member. As has been rightly pointed out by Ms Arora, even before the 2005 Act was brought into force on 26-10-2006, the Hindu Succession Act, 1956 was amended, by which Section 6 was amended, with effect from 9-9-2005, to make females coparceners of a joint Hindu family and so have a right by birth in the property of such joint family. This being the case, when a member of a joint Hindu family will now include a female coparcener as well, the restricted definition contained in Section 2(q) has necessarily to be given a relook, given that the definition of "shared household" in Section 2(5) of the Act would include a household which may belong to a joint family of which the respondent is a member. The aggrieved person can therefore make, after 2006, her sister, for example, a respondent, if the Hindu Succession Act g amendment is to be looked at. But such is not the case under Section 2(q) of the 2005 Act, as the main part of Section 2(q) continues to read "adult male person", while Section 2(s) would include such female coparcener as a respondent, being a member of a joint family. This is one glaring anomaly which we have to address in the course of our judgment.*
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> *21. When Section 3 of the Act defines "domestic violence", it is clear that such violence is gender neutral. It is also clear that physical abuse, verbal abuse, emotional abuse and economic abuse can all be by women against other women. Even sexual abuse may, in a given fact circumstance, he by one woman on another. Section 3, therefore, in tune with the general object of the Act, seeks to outlaw domestic violence of any kind against a woman, and is gender neutral. When one goes to the remedies that the Act*

provides, things become even clearer. Section 17(2) makes it clear that the aggrieved person cannot be evicted bor excluded from a shared household or any part of it by the "respondent" save in accordance with the procedure established by law. If "respondent" is to be read as only an adult male person, it is clear that women who evict or exclude the aggrieved person are not within its coverage, and if that is so, the object of the Act can very easily be defeated by an adult male person not standing in the forefront, but putting forward female persons who can therefore evict or exclude the aggrieved person from the shared household. This again is an important indicator that the object of the Act will not be subserved by reading "adult male person" as "respondent".

50. 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(4), being rendered d otiose, also stands deleted. We may only add that the impugned judgment has ultimately held, in para 27. that the two complaints of 2010. in which the three female respondents were discharged finally, were purported to be revived, despite there being no prayer in Writ Petition No. 300 of 2013 for the same. When this was pointed out, Ms Meenakshi Arora very fairly stated that she would not be pursuing those complaints, and would be content to have a declaration from this Court as to the constitutional validity of Section 2(q) of the 2005 Act. We, therefore, record the statement of the learned counsel, in which case it becomes clear that nothing survives in the aforesaid complaints of October 2010. With this additional observation, this appeal stands disposed of.

16. Coming back to the present case, from the perusal of the impugned application filed u/s 12 of the Domestic Violence Act, it is clear that no specific allegation has been made against applicant nos. 2 to 6 that they have been residing in a shared household with the opposite party no. 2. Therefore, they cannot be said to be in a domestic relationship with opposite party no. 2.

17. From the perusal of the statement of opposite party no.2 recorded u/s 200 Cr.P.C. in Case No. 1594 of 2015 u/s 498-A I.P.C. which has been annexed at page 16 of the supplementary affidavit dated 01.11.2022 filed by the applicants, it is clear that the allegation of domestic violence was made against applicant nos. 1 and 7 and it was also not mentioned that applicant nos. 2 to 6 have been residing with her in a shared household. Therefore, impugned proceeding against applicant nos.2 to 6 is malicious, hence deserves to be quashed.

18. However, considering the fact that applicant no.1 who is the mother-in-law of opposite party no. 2 has been residing in shared household, will fall within the

definition of respondent and there is the allegation that opposite party no. 2 has been harassed for demand of dowry and she was also extended threat to evict her from the shared household by the applicant no. 1, therefore, no case for quashing is made out at the instance of applicant no. 1. As the present application has already been rejected at the instance of applicant no. 7, therefore, the present application is also rejected at the instance of applicant no. 1.

19. In view of the above observation, the impugned proceeding/complaint in Case No. 59 of 2016 (Smrita Srivastava Vs. Rajiv Kumar Srivastava and others) under Section 12 of the Domestic Violence Act, against applicant nos. 2 to 6 is hereby quashed.

20. The court below is free to proceed against applicant nos. 1 and 7 and decide Case No. 59 of 2016 (Smrita Srivastava Vs. Rajiv Kumar Srivastava and others) expeditiously within a period of 60 days from the date of receiving the copy of this order.

21. With the aforesaid direction, the present application is **partly allowed**.

22. The Registrar (Compliance) is directed to send a copy of this order to the concerned court.

Order Date :- 22.1.2025
KS

Digitally signed by :-
KISHAN SINHA
High Court of Judicature at Allahabad