

Delhi High Court
Delhi High Court
Sharad Kumar Pandey vs Mamta Pandey on 1 September, 2010
Author: Shiv Narayan Dhingra
* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve: August 10th, 2010

Date of Order: September 01, 2010

+ CrI.M.C.No.4044 of 2009

% 01.09.2010 Sharad Kumar Pandey ...Petitioner Versus

Mamta Pandey ...Respondent Counsels:

Mr. S. Biswajit Meitei for petitioner.

Ms. Liyi Marli Noshi for respondent.

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment? Yes.
2. To be referred to the reporter or not? Yes.
3. Whether judgment should be reported in Digest? Yes. JUDGMENT

1. This petition under Section 482 Cr.P.C and under Article 227 of the Constitution of India has been preferred by the petitioner for quashing/ setting aside the order and judgment dated 3rd November 2009 passed by learned Additional Sessions Judge, Delhi dismissing the revision petition of the petitioner against an order passed by learned Magistrate taking cognizance of a complaint under Section 12 of The Protection of Women from Domestic Violence Act, 2005 (in short, "the Act").

2. The contention raised by the learned counsel for the petitioner before the court of Magistrate and before the court of learned ASJ was that the marriage between the parties was solemnized in Lucknow on 22nd February 2004. Before marriage, the complainant/ respondent was living in Lucknow at her parental house and was doing CrI.MC No.4044/2009 Sharad Kumar Pandey v Mamta Pandey Page 1 Of 8 Ph.D. research work in Lucknow under supervision of Mr. R. C. Tripathi. After marriage, the respondent/wife remained at Lucknow, occasionally, she went to Shillong where petitioner i.e. husband of the complainant wife/ was posted. The incident of domestic violence, if any, had taken place in Lucknow and nothing happened at Delhi. However, the complaint against the petitioner was lodged at Delhi. He submitted that the complainant/ wife had given address of 175, Gulmohar Enclave, New Delhi, a house where brother-in-law of complainant/ wife namely Mr. Rajesh Ojha was residing. The Court at Delhi would have no jurisdiction.

3. The facts regarding place of marriage and residence are not in dispute. The learned Sessions Judge relying on Bhagwan Das and another v Kamal Abrol and others (2005) 11 SCC 66 observed that since the temporary residence being one of the incident of jurisdiction the controversy whether the residence of the wife at Delhi was a temporary residence or not, can be decided only after the evidence. He also observed that the Domestic Violence Act being a new Act, there was lack of judgments given by the superior courts on the issue and the issue would be clarified only when some decisions of superior courts come on this point. He observed that if the wife was able to prove that her temporary residence was in Delhi with her sister within the meaning of

Section 27 of the Act, the trial court would have jurisdiction to decide the matter. However, this fact can be decided only on the basis of evidence, he left the question open.

4. Learned counsel for the petitioner submits that the residence of the wife with her sister at Delhi cannot give jurisdiction to the Court at Delhi when none of the incidents of domestic violence had taken place at Delhi nor the marriage took place in Delhi nor the wife ever, before filing the petition lived at Delhi nor the parents of the wife were living in Delhi nor the parties lived together at Delhi. It is submitted that this Court should clarify the position.

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5. Section 27 of the Domestic Violence Act, which is about jurisdiction reads as under:

"27. Jurisdiction.-

(1) The court of Judicial Magistrate of the first class or the Metropolitan Magistrate, as the case may be, within the local limits of which-

(a) the person aggrieved permanently or temporarily resides or carries on business or is employed; or

(b) the respondent resides or carries on business or is employed; or

(c) the cause of action has arisen, shall be the competent court to grant a protection order and other orders under this Act and to try offences under this Act.

(2) Any order made under this Act shall be enforceable throughout India."

6. Every statute has to be interpreted keeping in mind the purpose for which it has been enacted and the interpretation must be such so as to advance the purpose of the act and should not be such as to defeat the intention of the legislature.

7. Under Domestic Violence Act, a complaint can be made by an aggrieved person or any other person (section 4) against the respondent and prayer can be made for obtaining various interim orders and reliefs as given in various provisions of the Act. Section 5 of the Act provides that when a complaint of domestic violence is received by a police officer/ protection officer/ service provider or Magistrate and any of them is present at the place of incident of domestic violence, he shall give information to an aggrieved person on various rights and facilities available in terms of Section 5(a) to 5(e). This section is followed by Section 6 where the service provider can request a shelter service provider to provide shelter to her. Section 6 envisages that as a result of domestic violence, if the aggrieved person has lost home or is not being allowed to reside in the Crl.MC No.4044/2009 Sharad Kumar Pandey v Mamta Pandey Page 3 Of 8 shared household, a request is to be made to the incharge of shelter home for shelter. Section 7 provides for duties of medical facility provider. This section also envisages commission of physical cruelty on the aggrieved person and providing of medical facilities to her. Section 9 is about the duties and functions of protection officer. Section 9(b) again provides for preparation of domestic incident report by protection officer and submitting it to the Magistrate, upon receipt of a complaint of domestic violence, and forwarding the copies of this report to the incharge police station within the local limits of whose jurisdiction domestic violence is alleged to have been committed and to the service providers in that area. It is apparent that the protection officer's duties envisage preparation of a report of incident of domestic violence at the place of violence and sending copies to police station incharge and service provider so that the victim of domestic violence can be provided different services as available under the provisions of the Act. Section 9 (g) casts a duty on the protection officer to get the aggrieved person medically examined for bodily injuries and forwarding a copy of the report to the police station and the Magistrate having jurisdiction over the area where domestic violence is alleged to have taken

place and section 9(f) of the Act envisages to make available a safe shelter home to the aggrieved person, if she so requires. Section 9(h) requires protection officer to ensure that the order for monetary relief under section 20 of the Act is complied with and executed, in accordance with the procedure prescribed under Cr.P.C. Section 10 gives duties/ powers of service providers and service provider has powers to record domestic violence report if the aggrieved person so desires and forward it to the protection officer and Magistrate and get the aggrieved person medically examined and to provide shelter in a shelter home. Section 12 provides that an aggrieved person can make an application to Magistrate for seeking one or more reliefs and the Magistrate before passing an order on such application, shall take into consideration the domestic incident report, if any, filed before him by the protection officer or service provider. Section 12(4) provides that the Magistrate shall fix the first CrI.MC No.4044/2009 Sharad Kumar Pandey v Mamta Pandey Page 4 Of 8 date of hearing, which shall not ordinarily be beyond three days from the date of receipt of the application by the court. Section 13 provides that a notice of date of hearing fixed under Section 12 shall be given by the Magistrate to the protection officer who shall get it served by such means as may be prescribed, on the respondent and on any other person within a maximum period of two days or such further reasonable time as may be allowed. Section 14 provides that the Magistrate at such stage of the proceedings, direct the respondent and the aggrieved person either singly or jointly to undergo counseling with any member of a service provider who possess such qualifications and experience in counseling as may be prescribed. Section 18 provides that a Magistrate, after hearing the aggrieved person and the respondent, on being prima facie satisfied about domestic violence having taken place, may pass a protection order in favour of the aggrieved person and prohibit the respondent from committing certain acts as given in this section. Section 19 gives powers to the Magistrate for passing residence orders and put conditions on respondent in the residence order. Section 19(5) provides that while passing orders under Section 19(1) to (5), the Court has power to pass an order directing the officer incharge of the nearest police station to go for the protection of the aggrieved person and to assist person making an application on her behalf. Sub section 7 provides that Magistrate may direct the officer incharge of the police station in whose jurisdiction the Magistrate is approached, to assist in implementation of the protection order.

8. From different provisions of this Act, it is apparent that the scheme of the Act provides that protection officer, service provider and police to help the aggrieved person in not only approaching the court for redressal but to ensure that the domestic violence is not further perpetuated and an aggrieved person gets shelter either in the shelter home or after the residence order in the shared household. Thus, the place of domestic violence and the place of respondent are two places which are the places of actions under the Act which the Magistrate can take and give directions to other bodies created CrI.MC No.4044/2009 Sharad Kumar Pandey v Mamta Pandey Page 5 Of 8 under the Act. However, still the Legislature provided that the jurisdiction can be invoked by an aggrieved person on the basis of temporary residence. It seems that this provision has been made for such aggrieved person who has lost her family residence and is compelled to take residence, though temporarily, either with one of her relatives or with one of her friends at a place where the domestic violence was not committed or her matrimonial home was not there. Such a woman can invoke jurisdiction of the court where she is compelled to reside in view of commission of domestic violence, this temporary residence must be one which an aggrieved person takes under the circumstances of domestic violence. It may also be there that after domestic violence; an employed aggrieved person decides to take job at some other place and has to shift her residence. Section 27 provides that the court where an aggrieved person carries on business or has employment also has jurisdiction. The jurisdiction of the court would not be there where an aggrieved person starts residing deliberately only for the purpose of filing a case under domestic violence against respondent while the place has no relevance i.e. neither she has a relative or friend there neither a business nor a job and she is helped by parents or other well-wishers to go to a place and hire a house and lodge a report under Domestic Violence Act. Say domestic violence is committed in Chennai, the woman comes to Delhi, she does not have job in Delhi, she does not have business in Delhi, she has no relative or friends in Delhi but she hires a house and files an application under Domestic Violence Act. Exercise of jurisdiction by the Magistrate in such cases would be contrary to the Act as the Act envisages help from police of the local area where domestic violence had taken place and it envisages visit by the protection officer to the share household and to the place of incident. Such providers may also find it difficult to serve

respondent if she moves far away from the place of Domestic Violence and the Magistrate may find it difficult to ask the protection officer and other service providers of far off places to help.

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9. All legislative enactments on matrimonial disputes or custody matters make ordinary residence or residence or the place where parties lived together or the place of cause of action as a ground for invocation of jurisdiction of the Court. Domestic Violence Act is the first Act where a temporary residence of the aggrieved person has also been made a ground for invoking the jurisdiction of court. The expression "residence" means "to make abode" - a place for dwelling. Normally place for dwelling is made with an intention to live there for considerable time or to settle there. It is a place where a person has a home. In Webster Dictionary, the residence means to dwell for length of time. The words "dwelling place" or abode are synonyms. A temporary residence, therefore, must be a temporary dwelling place of the person who has for the time being decided to make the place as his home. Although he may not have decided to reside there permanently or for a considerable length of time but for the time being, this must be place of her residence and this cannot be considered a place where the person has gone on a casual visit, or a fleeing visit for change of climate or simply for the purpose of filing a case against another person.

10. I, therefore, consider that the temporary residence, as envisaged under the Act is such residence where an aggrieved person is compelled to take shelter or compelled to take job or do some business, in view of domestic violence perpetuated on her or she either been turned out of the matrimonial home or has to leave the matrimonial home. This temporary residence does not include residence in a lodge or hostel or an inn or residence at a place only for the purpose of filing a domestic violence case. This temporary residence must also be a continuing residence from the date of acquiring residence till the application under Section 12 is disposed of and it must not be a fleeing residence where a woman comes only for the purpose of contesting the case and otherwise does not reside there.

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11. In the present case, the aggrieved person is residing with her sister and has filed the petition under Domestic Violence Act. It cannot be said that her residence with her sister was a fleeing residence or was a temporary residence acquired for lodging the complaint of domestic violence. Her sister's house is a place where she has taken shelter and temporarily resides. I, therefore, find that there is no force in this petition. The petition is hereby dismissed with no orders to costs.

September 01, 2010 SHIV NARAYAN DHINGRA, J rd

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