

Madras High Court

R.Nivendran vs Nivashini Mohan @ M.Nivashini on 17 February, 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 17.2.2010

Coram:

The Hon'ble Mr.JUSTICE C.NAGAPPAN  
and  
The Hon'ble Mr.JUSTICE P.R.SHIVAKUMAR

CrI.O.P. No. 24598 of 2008  
(Reference)

1. R.Nivendran  
2. B.Ranjan  
3. Saroja Ranjan  
4. R.Sowbarnika  
5. A.Saravana Bhavan  
6. Viji @ Vijayakumari Saravana .. Petitioners

Vs.

Nivashini Mohan @ M.Nivashini .. Respondent

Petition filed under Section 482 Cr.P.C. praying to call for records in C.C.No. 356 of

For Petitioners : Mr.Thomas T.Jacob  
for Ms.P.Lakshmi Devi

For Respondent : Mr.R.Vijaya Raghavan  
.....  
Mr.P. Kumaresan  
Public Prosecutor  
.....

ORDER

C.NAGAPPAN, J.

The petitioners have sought for a direction to call for the records in the case in C.C.No.356 of 2008, on the file of Judicial Magistrate Court No.II, Chengalpattu, initiated by the wife of the first petitioner seeking various reliefs under the provisions of the Protection of Women from Domestic Violence Act, 2005. The respondent herein wife filed application under Section 12 of the Protection of Women from Domestic Violence Act, 2005, against the first respondent husband, his parents, his sister and other family members. In the present petition seeking to quash the proceedings, one of the grounds raised is that respondents 3, 4 and 6 in the application under Section 12 of the Act are women and Section 2(q) of the Protection of Women from Domestic Violence Act, would require the respondent to be an adult male person and women could not be added as respondents in the application. When this point was urged, it was found that there was a conflict of views on whether women could be added as respondents in an application under Section 12 of the Act, in the decisions in UMA NARAYANAN V.. PRIYA KRISHNA PRASAD [(2008) 3 MLJ (CrI) 756] and K.KAMALA AND OTHERS V.. M.PARIMALA AND ANOTHER [(2009) 3 MLJ (CrI) 450]. Therefore the matter was directed to be placed before the Honourable Chief Justice for appropriate direction and accordingly this Division Bench heard the matter.

2. We heard the submissions of the learned counsel for the petitioners, the learned counsel for the respondent and also the learned Public Prosecutor of the State.

3. Besides the decisions of this Court expressing divergent views leading to Reference, the decision of a Division Bench of Andhra Pradesh High Court in AFZALUNNISA BEGUM & ETC. V. STATE OF A. P. & ANR. (2009 CRL. L. J. 4191) and the following decisions rendered by learned single Judge of various High Courts on the subject matter were brought to our notice.

"(1) AJAY KANT AND OTHERS VS. SMT.ALKA SHARMA (2008) Cri. L. J. 264) (High C

(2) NAND KISHORE AND ORS. VS. STATE OF RAJASTHAN AND ANR. (MANU/RH/0636/2008) (High

(3) REMADEVI VS. STATE OF KERALA (I (2009) DMC 297) (High Court of Kerala)

(4) ARCHANA HEMANT NAIK VS. URMILABEN I. NAIK AND ANOTHER (CDJ 2009 BHC 1960) (High C

4. The learned counsel for the petitioners contended that 'respondent' defined under Section 2(q) of the Protection of Women from Domestic Violence Act, 2005 will mean only an adult male person and not a woman and the application under Section 12 of the Act seeking for one or more reliefs under the Act is civil in nature and there are only two penal provisions, one under Section 31 of the Act providing penalty for breach of protection order by respondent and other under Section 33 of the Act providing penalty for not discharging duty by Protection Officer and those proceedings can be initiated on complaint and application under Section 12 of the Act is not maintainable as against a woman. His contention is based on the decisions in AJAY KANT'S CASE and UMA NARAYANAN'S CASE (referred to above).

5. The learned counsel for the respondent contended that as per the definition of "respondent" in Section 2(q) of the Protection of Women from Domestic Violence Act, 2005, it would mean any adult male person, but the proviso to the Section would go to show that an aggrieved wife or a female partner may also file a complaint against a relative of the husband or the male partner and the term "relative" would include woman also and no restricted meaning can be given to it.

6. The learned Public Prosecutor submitted that the Statement of Objects and Reasons of the Protection of Women from Domestic Violence Act, 2005, refers to any "relative" of the husband or the male partner and "relative" mentioned in the proviso to Section 2(q) of the Act cannot be only a "male" relative and can also be a "female" relative of the husband or the male partner as the case may be and women can be respondents in the application under Section 12.

7. The relevant part of the Statement of Objects and Reasons of the Act reads thus.

"..... The United Nations Committee on Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) in its General Recommendation No. XII (1989) has recommended that State parties should act to protect women against violence of any kind especially that occurring within the family.

2. The phenomenon of domestic violence is widely prevalent but has remained largely invisible.

3. It is, therefore, proposed to enact a law keeping in view the rights guaranteed under the Constitution.

4. The Bill, inter alia, seeks to provide for the following:-

(i) It covers those women who are or have been in a relationship with the abuser where both are living together.

8. The initiation of proceedings under the Protection of Women from Domestic Violence Act, 2005, shall be by the aggrieved person.

"Sec. 2(q). "respondent" means any adult male person who is, or has been, in a domestic relationship with the aggrieved person; Provided that an aggrieved wife or female living in a relationship in the nature of a marriage may also file a complaint against a relative of her husband or the male partner.

9. The reliefs provided under the Act to the aggrieved person are Protection orders, Residence orders, Monetary relief, Compensation and Damages, and Criminal Proceedings.

10. The "respondent" as defined under Section 2(q) of the Act would only mean any adult male person who is, or has been, in a domestic relationship with the aggrieved person.

11. Proceeding is initiated by the aggrieved person who is in domestic relationship with the respondent by filing an application under Section 12 of the Act seeking for one or more reliefs. The "Domestic Relationship" defined under Section 2(f) of the Act is wide. Aggrieved person being wife or female living in a relationship in the nature of marriage may also file a complaint against a relative of her husband or the male partner. In other words, the relationship of "marriage" or in the "nature of marriage", would enable an aggrieved wife or female to file a complaint against a relative of her husband or the male partner.

12. The next question is as to whether a "relative" referred to in the proviso to Section 2(q) of the Act can only be a 'male' relative. First of all, it has to be noted that the definition of "respondent" uses

the word male and the proviso refers to "male" partner. But while referring to a "relative", the word "male" is not used. If it is the intention of the Legislature that "relative" mentioned in the proviso can only be a "male" relative, it would have mentioned so, but it is absent.

13. On the contrary, the intention of the Legislature is reflected in the proviso to sub-section (1) of Section 19 of the Act dealing with "Residence orders". Under Clause (b) of sub-section (1) of Section 19, the Magistrate may pass 'residence orders' directing the respondent to remove himself from the shared household. In the proviso to sub-section (1) of Section 19 of the Act, it is stipulated that no order under Clause (b) shall be passed against any person, who is a woman. This would show that an order under other Clauses of Sub-section (1) can be passed against a woman, who is a relative of the husband or the male partner. If no order at all can be granted under Section 19 of the Act against a woman, the proviso to sub-section (1) of Section 19 would become redundant and that is not the Legislature intended to.

14. It is competent to the Magistrate under Section 19(1)(a) of the Act to restrain the respondent from dispossessing or disturbing the possession of the aggrieved person from the shared household, whether or not the respondent has any legal or equitable interest in it and under Clause (c), to restrain the respondent or any of his relatives from entering any portion of the shared household, in which the aggrieved person resides. If it is construed that proviso to Section 2(q) of the Act would include only the "male" relative, the issuance of "Residence orders" would become redundant, since it would not bind the female relatives of the husband or the male partner, as the case may be, who are residing in the shared household. No such restricted meaning can be given to the word "relative", mentioned in proviso to Section 2(q) of the Act.

15. The Supreme Court in the recent decision in U. SUVETHA VS. STATE BY INSPECTOR OF POLICE AND ANOTHER (2009) 6 Supreme Court Cases 757) has considered the term "Relative" with reference to Section 498-A of Indian Penal Code and has observed that in the absence of any statutory definition, the term "relative" must be assigned a meaning as it is commonly understood and it would include father, mother, son, daughter, brother, sister, nephew or niece, grandson or granddaughter of an individual or the spouse of any person. In this context, it is pertinent to note that while framing charge for the breach of protection order by the respondent, the Magistrate is authorised under Section 31(3) of the Act to frame charge under Section 498-A of Indian Penal Code, if the facts disclose commission of such an offence.

16. As already seen, the Statement of Objects and Reasons of the Act also refers to any 'relative' of the husband or the male partner and the proviso to sub-section (1) of Section 19 of the Act makes it clear that the word mentioned in proviso to Section 2(q), is not restricted to a "male" relative and would include a "female" relative. But, however, whether relief can be granted against the 'female' relative would depend on the facts and circumstances of each case.

17. We are in entire agreement with the view taken by the Division Bench of the Andhra Pradesh High Court and the High Courts of Bombay, Kerala and Rajasthan as well as this Court in the decision in K.KAMALA'S CASE (referred to above). The view taken by Madhya Pradesh High Court in AJAY KANT'S CASE and this Court in UMA NARAYANAN'S CASE (cited supra), are not correct.

18. In the result, we hold that the "respondent" as defined under Section 2(q) of the Act includes a female relative of the husband or the male partner and women could be added as respondents in an application under Section 12 of the Protection of Women from Domestic Violence Act, 2005. The Reference is answered accordingly.

19. The Criminal Original Petition seeking for quashing the proceedings may be listed before the concerned Court for disposal.

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