

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
JAI PUR BENCH, JAI PUR

O R D E R

D. B. CRIMINAL MISC. PETITION NO. 476/2010
KANIZ FATIMA Vs. STATE OF RAJASTHAN & ANR.

DATE: 13.05.2011

HON' BLE MR. JUSTICE NARENDRA KUMAR JAIN
HON' BLE MR. JUSTICE R. S. CHAUHAN

Mr. Raunak Singhvi on behalf of
Mr. Sharad Purohit, for the petitioner.
Mr. Peeyush Kumar, Public Prosecutor
for the State.

REPORTABLE

(PER HON' BLE MR. JAIN, J.)

Heard Learned counsel for the
parties.

2. Hon' ble the Chief Justice has
constituted this Bench to answer the
following question referred by the Learned
Single Judge: -

"Whether under the provisions
of Protection of Women from
Domestic Violence Act, 2005,
complaint can be maintained
against female ignoring the
definition of "respondent" as
given under Section 2(q) of the
Act of 2005.

3. Briefly stated the facts of the case are that Complainant/Respondent No.2 Smt. Sagir Bano filed a complaint under Sections 12, 18, 19, 20, 21, 22, 23(2) of the Protection of Women From Domestic Violence Act, 2005 (for short 'the Act of 2005') in the Court of Additional Chief Judicial Magistrate No.4, Kota against six accused persons, wherein petitioner Smt. Kani z Fatima was impleaded as accused No.3. Petitioner filed an application before the trial Court on 22.01.2008 to delete her name on the ground that no complaint under the provisions of the Act of 2005 can be filed against female as female does not fall within the meaning of "respondent" as defined under Section 2(q) of the Act.

4. The trial Court on the basis of judgment of this Court in Smt. Sarita Vs. Smt. Umrao, 2008(1) Rajasthan Criminal Decisions, Page- 97, wherein the Learned Single Judge of this Court took a view that term "relative" under proviso to Section 2(q) is quite broad and it includes all relations of husband irrespective of gender or sex, female can be a party to proceedings as "respondent" under the Act of 2005, dismissed

petitioner's application dated 22.01.2008 vide order dated 25.07.2008.

5. Being aggrieved with the above order, an appeal was preferred by petitioner, but the same was also dismissed by the Special Court, Women Atrocities and Dowry Cases, Kota, vide judgment dated 05.11.2008. Thereafter, petitioner preferred present petition under Section 482 Cr.P.C. before this Court.

6. When this petition came up for hearing before the Learned Single Judge, an argument was advanced on behalf of petitioner that an another co-ordinate Single Bench of this Court in subsequent case i.e. **Vijay Singh & Ors. Vs. State of Rajasthan & Anr.**, reported in 2009 WLC(Raj.) UC 495, quashed the proceedings against female under the provisions of the Act of 2005 on the basis of definition of "respondent" as defined under Section 2(q) of the Act.

7. Since there were two conflicting views of two different Single Bench of this Court in the case of **Smt. Sarita Vs. Smt. Umrao (supra)** and **Vijay Singh & Ors. Vs.**

State of Rajasthan & Anr. (supra), as referred above, the Learned Single Judge, vide its order dated 19.03.2010, was of the view that matter requires to be referred to Larger Bench to answer the question formulated by him and consequently directed the Registry to place this matter before Hon'ble the Chief Justice. The order of reference dated 19.03.2010 is reproduced as under: -

"It is brought to my notice that there exists two judgments of this Court on one and the same issue pertaining to the provisions of Protection of Women From Domestic violence Act, 2005. In case of Vijay Singh & Ors. Vs. State of Rajasthan & Anr. reported in 2009 WLC(Raj.) UC 495, it is held that 'Respondent' means an adult male having relation with complainant. This is in reference of the definition of "Respondent" given under Section 2(q) of the Act of 2005. The respondent Nos.3 and 5 therein were female, thus proceedings against them were quashed. As against aforesaid, in the case of Smt. Sarita Vs. Smt. Umrao reported in 2008(1) RcrD 97 (Raj), this Court held that term "relative" is quite broad and it includes all relatives of husband irrespective of gender, female can be a party to proceedings as "respondents" under the Act of 2005.

Looking to conflicting judgments, the matter is required to be referred to the Larger Bench. Following question is framed for answer by the Larger Bench:

"Whether under the provisions of Protection of Women

from Domestic Violence Act, 2005, complaint can be maintained against female ignoring the definition of "respondent" as given under Section 2(q) of the Act of 2005.

The Registry is directed to place this case before Hon'ble the Chief Justice for constitution of Larger Bench for answering the question framed above."

8. Recently, the Hon'ble Apex Court in **Sandhya Manoj Wankhade Vs. Manoj Bhimrao Wankhade And Others**, reported in (2011) 3 SCC 650, considered the definition of "Respondent" defined under Section 2(q) of the Act of 2005, and held that "although section 2(q) defines a respondent to mean any adult male person, who is or has been in a domestic relationship with the aggrieved person, the proviso widens the scope of the said definition by including a relative of the husband or male partner within the scope of a complaint. Hon'ble Apex Court further held that Legislature never intended to exclude female relatives of the husband or male partner from the ambit of complaint that can be made under the provisions of 2005 Act. It is true that expression "female" has not been used in the proviso to Section 2(q) also, but, no restrictive meaning can be given to expression "relative" nor has said

expression been defined to make it specific to males only. Paras 13 to 18 are reproduced as under: -

"13. Having carefully considered the submissions made on behalf of the respective parties, we are unable to sustain the decisions, both of the Learned Sessions Judge as also the High Court, in relation to the interpretation of the expression "respondent" in Section 2 (q) of the Domestic Violence Act, 2005. For the sake of reference, Section 2(q) of the abovesaid Act is extracted herei nbelow:

"2. (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:

Provided that an aggrieved wife or female living in a relationship in the nature of marriage may also file a complaint against the relative of the husband or the male partner, "

14. From the above definition it would be apparent that although Section 2(q) defines a respondent to mean any adult male person, who is or has been in a domestic relationship with the aggrieved person, the proviso widens the scope of the said definition by including a relative of the husband or male partner within the scope of a complaint, which may be filed by an aggrieved wife or a female living in a relationship in the nature of a marriage.

15. It is true that the expression "female" has not been used in the proviso to Section 2(q) also, but, on the other hand, if the

Legislature intended to exclude females from the ambit of the complaint, which can be filed by an aggrieved wife, females would have been specifically excluded, instead of it being provided in the proviso that a complaint could also be filed against a relative of the husband or the male partner.

16. No restrictive meaning has been given to the expression "relative", nor has the said expression been specifically defined in the Domestic Violence Act, 2005, to make it specific to males only. In such circumstances, it is clear that the Legislature never intended to exclude female relatives of the husband or male partner from the ambit of a complaint that can be made under the provisions of the Domestic Violence Act, 2005.

17. In our view, both the Sessions Judge and the High Court went wrong in holding otherwise, possibly being influenced by the definition of the expression "respondent" in the main body of Section 2(q) of the aforesaid Act.

18. The appeal, therefore, succeeds. The judgments and orders, both of the learned Sessions Judge, Amravati, dated 15-7-2009 and the Nagpur Bench of the Bombay High Court dated 5-3-2010, in Crl. Writ Petition No.588 of 2009 are set aside. Consequently, the trial court shall also proceed against the said Respondents 2 and 3 on the complaint filed by the appellant."

9. Since the question formulated in the present case has already been considered and decided by the Hon'ble Apex Court in **Sandhya Manoj Wankhade's** case (supra), therefore, reference is answered, "that a complaint can

be maintained under the provisions of the Act of 2005 against females relatives of the husband or male partner”.

10. Let this petition may now be listed before the Learned Single Bench for decision on merits.

(R. S. CHAUHAN), J.

(NARENDRA KUMAR JAIN), J.

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