

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

JAIPUR BENCH AT JAIPUR

JUDGMENT

Om Prakash Vs. State of Rajasthan & Anr.

(S.B. Criminal Revision Petition No.1220/2010)

S.B. Criminal Revision Petition under Section 397 read with Section 401 Cr.P.C.

Date of Order :- April 29, 2011

PRESENT

HON'BLE MR. JUSTICE R.S. CHAUHAN

Mr.Arvind Gupta, for the petitioner.

Mrs.Alka Bhatnagar, Public Prosecutor.

Mr.Laxmi Kant Sandilya, for the respondent.

REPORTABLE

BY THE COURT:

Aggrieved by the order dated 07.02.2009, passed by the Additional Chief Judicial Magistrate No.2, Jaipur District, Jaipur, whereby the learned Magistrate has allowed the application of the respondent-wife under Section 12 of the Protection of Women from Domestic Violence Act, 2005 ('the Act', for short) and aggrieved by the order dated 23.10.2010, passed by the Additional District and Session Judge No.2, Jaipur District Jaipur, whereby the learned Judge has upheld the former order, the petitioner has approached this Court.

The brief facts of the case are that the respondent-wife filed an application under Section 12 of the Act against the petitioner-husband before the trial court wherein she claimed that she got married with the petitioner twelve years back in Jaipur. But ever since her marriage, her in-laws and husband have tortured her for dowry demands. She further claimed that due to the torture committed on her, she is living separately from the petitioner since last seven years. Thus, she prayed for maintenance. The respondent-husband filed reply to the application and denied the contents thereof. After hearing both the parties, vide order dated 07.02.2009, the learned trial court allowed the application and directed the petitioner to pay Rs.800/- per month as maintenance to the respondent-wife. Being aggrieved by the said order, the petitioner-husband filed an appeal before the appellate court. However, vide order dated 23.10.2010, the learned appellate court upheld the order dated 07.02.2009 and dismissed the appeal. Hence, this petition before this Court.

Mr. Arvind Gupta, the learned counsel for the petitioner, has vehemently contended that according to the complainant herself, she was married with the petitioner twelve years prior to 2008. Moreover, according to her, the petitioner and the respondent are living separately ever since 2001. Therefore, ever since 2001, no act of domestic violence has been committed. Yet, both the learned courts below have allowed an application under Section 12 of the Act. Since the Act came into force on October 26, 2006, the Act cannot be given a retrospective effect and cannot be made applicable to the alleged acts of domestic violence, which may have taken place prior to 2001. In order to buttress this contention, the learned counsel has relied upon the case of

Hema @ Hemlata (Smt.) & Anr. Vs. Jitender & Anr. [2009 (1) Cr.L.R. (Raj.) 291].

On the other hand, Mr. Laxmi Kant Sandilya, the learned counsel for the respondent-wife, has strenuously contended that Section 3 of the Act defines the term domestic violence which includes economic abuse. An explanation in Section 3 of the Act defines the term economic abuse as the denial of maintenance and denial of Stridhan. Although it is true that the parties have been living separately since 2001, but the fact remains that after the Act came into force in 2006, even thereafter, the respondent-wife is not being maintained by the petitioner-husband. Therefore, her economic right to maintenance is being violated. Since the civil wrong is continuously being violated, therefore the Act is certainly applicable. Hence, the question of retrospective application of the Act does not even arise. In rejoinder, Mr. Gupta has contended that since the respondent-wife is not living with him, the Act cannot be applied upon him. Moreover, since he happens to be a handicapped person, the direction to pay Rs.800/- per month, imposes a harsh financial burden upon him, which he cannot possibly discharge.

Heard the learned counsel for the parties, perused the impugned order as well as the case law cited at the Bar.

Section 3 of the Act defines the term domestic violence as under :

### 3. Definition of domestic violence.-

For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it -

(a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or (b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or (c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or

(d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person.

Explanation I.-For the purposes of this section,-

(i) "physical abuse" means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force;

(ii) "sexual abuse" includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman;

(iii) "verbal and emotional abuse" includes-

(a) insults, ridicule, humiliation, name calling and insults or ridicule specially with regard to not having a child or a male child; and

(b) repeated threats to cause physical pain to any person in whom the aggrieved person is interested.

(iv) "economic abuse" includes-

(a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person

requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance; (b) disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person; and (c) prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.

#### Explanation II.-

For the purpose of determining whether any act, omission, commission or conduct of the respondent constitutes "domestic violence" under this section, the overall facts and circumstances of the case shall be taken into consideration.

A bare perusal of Section 3 of the Act clearly reveals that the law recognizes the right of women to the finances of the husband, as well as, economic right of having the Stridhan and the right to be maintained by the husband. In case the said right is violated as a civil wrong the Act provides a remedy to the aggrieved person. Admittedly, even after coming into force of the Act on October 26, 2006, the respondent-wife is not being maintained by the petitioner-husband. Therefore, she is being subjected to economic abuse. Since a civil wrong is continuously being committed after October 26, 2006, obviously the Act would apply to the petitioner. Therefore, the question of retrospective application of the Act does not even arise in the present case. The case of Hema @ Hemlata (Smt.) (Supra), does not come to the rescue of the petitioner-husband. For, the case of Hema @ Hemlata (Smt.) (Supra) and the present case are distinguishable on the factual matrix itself. In the case of Hema @ Hemlata (Smt.) (Supra), admittedly the couple was divorced in the year 2003 and the act of domestic violence alleged against the husband was prior to the year 2003. Since the couple was divorced in 2003, since the couple was living separately since 2003, the question of committing domestic violence post 2006 did not even arise. Therefore, this Court had opined that the Act cannot be given retrospective effect and cannot be applied to pre-2006 acts and omissions. However, in the present case, the marriage continues to subsist; the parties are living separately since 2001. But the facts remains that after 2006, no maintenance is being paid by the respondent-husband to the respondent-wife. Thus, as stated above, the economic rights are being violated by the petitioner-husband post-2006. Hence, the Act is certainly applicable in the present case. Therefore, the ratio laid down in the case of Hema @ Hemlata (Smt.) (Supra) is inapplicable to the present case. The Act does not make any exception in favour of those who are physically challenged. The Act recognizes the right of a women to be maintained even from a physically challenged husband. Therefore, the contention that merely because the petitioner-husband happens to be a physically challenged person, the Act is inapplicable to him, the said contention is unsustainable.

Moreover, poverty is not a defence against the right of a woman. Therefore, the petitioner is both legally and morally bound to pay maintenance of Rs.800/- per month to the respondent-wife.

Furthermore, the Act does not require that the aggrieved person must stay with the offending husband. Hence, merely because the respondent-wife is not staying with the petitioner-husband, it would not absolve the husband from his liability under the Act. Therefore, the contention raised by the learned counsel for the petitioner is without any foundation.

For the reasons stated above, this Court does not find any illegality or perversity in the impugned orders. This petition, being devoid of any merit is, hereby, dismissed. The stay petition also stands dismissed.

(R.S. CHAUHAN) J.

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