

MANU/MH/1893/2014

Equivalent Citation: 

IN THE HIGH COURT OF BOMBAY

Writ Petition No. 300 of 2013

Decided On: 25.09.2014

Appellants: Kusum Narottam Harsora  
Vs.

Respondent: Union of India

Hon'ble Judges/Coram:

M.S. Shah, C.J. and M.S. Sonak, J.

Counsels:

For Appellant/Petitioner/Plaintiff: Party-in-Person

For Respondents/Defendant: Dhiren H. Shah, Naren Thakore and Ritesh Jain i/b Purnanand & Co.

Subject: Criminal

Subject: Constitution

Acts/Rules/Orders:

Constitution Of India - Article 14, Constitution Of India - Article 15, Constitution Of India - Article 21, Constitution Of India - Article 226; Indian Penal Code 1860, (IPC) - Section 498A; Protection Of Women From Domestic Violence Act, 2005 - Section 2, Protection Of Women From Domestic Violence Act, 2005 - Section 2(a), Protection Of Women From Domestic Violence Act, 2005 - Section 2(q), Protection Of Women From Domestic Violence Act, 2005 - Section 20, Protection Of Women From Domestic Violence Act, 2005 - Section 22, Protection Of Women From Domestic Violence Act, 2005 - Section 3

Cases Referred:

Sou. Sandhya Manoj Wankhade vs. Manoj Bhimrao Wankhade and Ors. MANU/SC/0081/2011

Disposition:

Petition Allowed

Citing Reference:

Affirmed 1

Discussed 1

Case Note:

Criminal - Domestic relationship - Determination thereof - Sections 2(q) and 3 of Protection of Women from Domestic Violence Act, 2005 - Present petition filed against order whereby, Respondents were discharged from proceedings initiated under Act on basis that Respondents were not fell in domestic relationship as provided in definition of Section 2(q) of Act - Whether Respondents were rightly held that they were not in domestic relationship with Petitioners - Held, Petitioners were sisters and mothers of

abuser - Provisions of Section 3 of Act may indicate that most of acts of domestic violence referred to in Section 3 of Act may be committed by husband - However, as per Section 3 of Act, acts of violence could be committed by any person in domestic relationship with complainant when abuser and complainant are living together - Such acts of domestic violence could also be committed by sister or daughter of complainant - Definitions of "aggrieved person", "domestic relationship" and "shared household" are wide enough to include mother and sisters as victims of domestic violence - Thus, provisions of "respondent" in Section 2(q) of Act is not to be read in isolation but has to be read as part of scheme of Act - Complaint alleging acts of domestic violence was maintainable not only against adult male person who was son or brother, but complaint can also be filed against relative of son or brother - Therefore, Metropolitan Magistrate shall proceed to try cases filed by Petitioners under Act on basis that Petitioners had filed complaint against adult male person in domestic relationship with Petitioners - Petition allowed. [paras 18, 21, 24 and 26]

## JUDGMENT

M.S. Shah, C.J.

1. By this petition under Article 226 of the Constitution, the petitioners sister and mother of P.N.H. (respondent no. 1 in complaint before the Magistrate's Court) have challenged the constitutional validity of the provisions of section 2(q) of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as "the DV Act").

2. The petitioners had earlier filed Misc. Case No. 31/M of 2007 in the Court of Metropolitan Magistrate, 18th Court at Girgaum, Mumbai against Mr.PNH (respondent no. 1 in the complaint), his wife H. (respondent no. 2 in the complaint) and his two sisters A and C (respondent nos.3 and 4 in the complaint). The petitioners will now be referred to by their status in the original complaint. The case was filed under the provisions of the DV Act on 3 April 2007 praying for various reliefs for dealing with the respondents in accordance with law and to direct the respondents to pay damages to the tune of Rs. 5,55,00,000/- under section 20 of the DV Act and monetary compensation to the extent of Rs. 5,00,00,000/- under section 22 of the DV Act. The complaint was filed on the basis that respondent no. 1 in the complaint had caused and was causing physical abuse, verbal and emotional abuse and economic abuse as defined under section 3 of the DV Act. The petitioners alleged that there was domestic relationship between the parties as the petitioners are related to respondent nos.1, 3 and 4 by consanguinity and that respondent no. 2 being wife of respondent no. 1, they are all family members who were living together in a shared household and were also living with respondent nos.1, 2 and 3 in a shared household as a joint family. It appears that the petitioners thereafter prayed for permission to withdraw the said case on the ground that several relevant material facts were not properly stated or mentioned in the complaint and that therefore the petitioners be allowed to withdraw the complaint with liberty to file a fresh complaint on the same facts and cause of action. The said application for withdrawal filed on 27 June 2007 was allowed to be withdrawn by the learned Additional Chief Metropolitan Magistrate, 40th Court, Girgaum, Mumbai, with liberty as prayed for.

3. It appears that thereafter there were attempts between the parties for settlement of their disputes and since those efforts did not fructify, the petitioners filed two separate cases against the same four respondents praying for substantially same reliefs, but for higher monetary reliefs under section 20 of the DV Act and for higher compensation amount under section 22 of the DV Act.

4. On 11 February 2011, applications were filed by the Respondents in the complaint seeking discharge on the ground that the petitioners being mother and sister do not fall within the definition of "aggrieved person" and that only a wife or a female partner in a marital relationship can invoke the provisions of the DV Act. By an order dated 5 January 2012, the learned Metropolitan Magistrate rejected the application for discharge and, therefore, respondent nos.2, 3 and 4 being lady members of the family filed Criminal Writ Petition Nos. 187 and 188 of 2012 challenging the above order dated 5 January 2012 essentially contending that no case can be

filed under the DV Act against female relatives of respondent no. 1. The criminal writ petitions came to be disposed of by a learned Single Judge of this Court by judgment and order dated 15 February 2012. The learned Single Judge allowed the criminal writ petitions to the extent of discharging respondent nos.2, 3 and 4 from the proceedings filed by the petitioners under the DV Act and allowed only the proceedings against respondent no. 1 PNH to continue. It appears that the judgment was based on the concession made by the learned counsel for the respondents in the said criminal writ petitions, who are petitioners in this writ petition, that in view of definition of the term "respondent" in section 2(q) of the DV Act, the proceedings under the DV Act cannot be initiated against female relatives.

5. As regards the case against PNH (respondent no. 1 in the complaint), the learned Single Judge recorded that it was conceded on behalf of PNH that complaint could be filed against him, but on merits it was sought to be contended that the allegations were for the period prior to coming into force of the DV Act and, therefore, the complaint was not maintainable. It was further contended that the alleged act did not fall within the meaning of domestic violence and, therefore, he was also required to be discharged. The learned Single Judge, however, did not accept the said contentions and held that proof of such allegations is a question to be decided at the stage of trial in the Court of the Metropolitan Magistrate and such threadbare analysis of allegations was not warranted at the stage of discharge. The learned Single judge accordingly disposed of the criminal writ petitions by directing discharge of present respondent nos.3, 4 and 5 (Respondent nos.2, 3 and 4 in the complaint) from the proceedings under the DV Act initiated by the present petitioners.

6. In view of the above judgment, the petitioners have filed the present petition challenging the constitutional validity of provisions of section 2(q) of the DV Act.

7. In response to the notice issued by this Court, the Union of India has appeared and filed affidavit in reply dated 20 February 2014. It is stated in the reply affidavit that the provisions of section 2(q) of the DV Act do not restrict the definition of "respondent" to adult male partners and that the proviso thereto permits relatives of the husband or male partner to be joined as respondents. The affidavit further states that all women are covered under the DV Act and any woman, who is living in a domestic relationship with the perpetrator can file a case for reliefs under the DV Act. It is further stated that while the definition of "respondent" under the DV Act was only limited to the adult male member, in view of vulnerable position of married women and growing instances of violence against them, specific provisions of section 498A of the IPC have already been framed to provide them protection from cruelty and injustice and, therefore, in order to ensure consistency in the legal position and in recognition of their specific vulnerability, the definition of "respondent" was expanded to include female relatives of the husband or male partner. The affidavit further states that any woman, who is a victim of domestic violence, can approach the Magistrate and seek relief under the DV Act.

8. Definitions in section 2(a), (f), (q) and (s) read thus:

"2(a) "aggrieved person" means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent;

(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 ;

(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 a marriage may also file a complaint against a relative of the husband or the male*

partner.

(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."

(emphasis supplied)

9. The petitioners appearing as parties in person have submitted that when maintainability of the complaint against PNH (respondent no. 1 in the complaint) is not disputed, the maintainability of complaint against his relatives cannot be challenged because the cause of action against all the parties is a common cause of action as they are acting in concert to harass the petitioners. It is stated that both the petitioners had initially filed a joint complaint but subsequently they were advised to withdraw the same to file a fresh complaint which were filed by the petitioners separately. The petitioners have now preferred to have both the complaints tried jointly and, therefore, they may be permitted to proceed with the trial of the original complaint filed in the year 2007 and the subsequent complaint may be read as further pleading in the original complaint.

10. It is submitted by the petitioners that since the complaint against PNH is maintainable, it would be discriminatory to deny the petitioners remedies against the wife of PNH and sisters of PNH, who are relatives of PNH by marriage/consanguinity and in a domestic relationship with the petitioners and who are instigating PNH to harass the petitioners and they are themselves also harassing the petitioners. It is, therefore, vehemently submitted by the petitioners that the provisions of Section 2(q) are interpreted to mean that aggrieved mother-in-law or sister-in-law cannot file a complaint under the DV Act against her daughter-in-law or sister-in-law (brother's wife), then the same would be violative of the petitioners' right of equality under Article 14 of the Constitution of India. It is submitted that in view of totality of facts and circumstances of the case and the allegations made in the complaint, the complaint should be allowed to be proceeded with against other accused also. It is submitted that Respondent nos.2, 3 and 4 in the complaint are admittedly relatives of respondent no. 1- PNH and, therefore, there is no impediment to maintainability of the complaint against all the four parties- respondent nos.1 to 4 in the complaint.

11. Learned counsel for the private respondents has submitted that the complaint could be filed under the DV Act by a married woman against her husband and husband's relatives, but in the instant case, PNH is not the husband of any of the petitioners (complainants) and on the contrary he is brother/son of the complainants. It is submitted that the complaint is not maintainable against H (respondent no. 2 in the complaint), who is wife of the son of petitioner no. 2 and wife of brother of petitioner no. 1. It is further submitted that the complaint is also not maintainable against respondent nos.3 and 4 in the complaint (i.e. respondent nos.4 and 5 in the Writ Petition) because they are daughters of petitioner no. 2 and sisters of petitioner no. 1.

12. At the hearing of this writ petition, our attention has been invited to the decision in the case of Sandhya Manoj Wankhade vs. Manoj Bhimrao Wankhade and Ors. MANU/SC/0081/2011 : 2011-Cri.L.J.- 1687 decided by the Supreme Court on 31 January 2011 taking the view 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 DV Act.

The Supreme Court considered the expression "respondent" in section 2(q) of the DV Act and made the following observations:

"12. 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.

13. 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. 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.

14. 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."

The Supreme Court thus made it clear that no restrictive meaning has been given to the word "relative".

13. Our attention has been invited by learned counsel for the Government of India to the decision of the Delhi High Court in Kusum Lata Sharma vs. State (Government of NCT of Delhi) and Ors in Criminal M.C.No. 725 of 2011 dated 2 September 2011 laying down that mother-in-law is also entitled to file a complaint against daughter-in-law under the provisions of the DV Act. Special Leave Petition (Criminal) P.R. No. 10014 of 2012) against the said judgment of the Delhi High Court has been dismissed by the Supreme Court on 4 May 2012. The said order reads as under:

"Delay condoned.

After hearing learned counsel for the petitioner and perusing the records, we find no grounds to entertain this special leave petition. The Special Leave Petition is, accordingly, dismissed."

14. Learned counsel for the Union of India submits that in view of the aforesaid judgment of the Delhi High Court, the SLP against which has been dismissed by the Supreme Court, it is open to a mother-in-law to file a complaint against her son as well as against her daughter-in-law and other relatives of the son, including his sisters, i.e. daughters of the complainant.

15. Learned counsel for the private respondents submitted that respondent no. 4 in the complaint Mrs. CBD was married 30 years back and is living separately in a separate household and only occasionally visits the house of respondent no. 1 and, therefore, it cannot be said that respondent no. 5 is living as a member of the joint family.

16. We make it clear that we are not going into the facts of the present case to decide whether respondent no. 4 in the complaint is staying separately or whether any cause of action arises against respondent nos.3 and 4 in the complaint. We are only examining the question of interpretation/constitutional validity of the expression "respondent" in clause (q) of section 2 and the expressions "domestic relationship", "aggrieved person" and "shared household" in clauses (a), (f) and (s) of section 2 of the DV Act read with the provisions of section 3 defining domestic violence.

17. The learned counsel for the private respondents would contend that the definition of "domestic violence" is aimed at acts of physical abuse, sexual abuse, verbal and emotional abuse and economic abuse which generally husband is accused of committing and, therefore, the definition of "respondent" in proviso to section 2(q) should not be interpreted as including any relatives of son or brother.

18. Though the provisions of section 3 may prima facie indicate that most of the acts of domestic violence referred to in section 3 may be committed by a husband, the expression "domestic violence" is very widely defined in section 3 and acts of violence could be committed by any person in domestic relationship with the complainant when the abuser and complainant the and who are living together. Such acts of domestic violence could also be committed by a sister or a daughter of the complainant. In this connection, we may refer to the Statement of Objects and Reasons.

19. The Statement of Objects and Reasons indicates that the Bill seeks to provide for the following:

"Domestic violence is undoubtedly a human rights issue and serious deterrent to development. The Vienna Accord of 1994 and the Beijing Declaration and the Platform for Action (1995) have acknowledged this. The United Nations Committee on Convention of 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 in the public domain. Presently, where a woman is subjected to cruelty by her husband or his relatives, it is an offence under section 498A of the Indian Penal Code. The civil law does not however address this phenomenon in its entirety.

3. It is, therefore, proposed to enact a law keeping in view the rights guaranteed under Articles 14, 15 and 21 of the Constitution to provide for a remedy under the civil law which is intended to protect the woman from being victims of domestic violence and to prevent the occurrence of domestic violence in the society.

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 parties have lived together in a shared household and are related by consanguinity, marriage or through a relationship in the nature of marriage or adoption. In addition, relationships with family members living together as a joint family are also included. Even those women who are sisters, widows, mothers, single women, or living with the abuser are entitled to legal protection under the proposed legislation. *However, whereas the Bill enables the wife or the female living in a relationship in the nature of marriage to file a complaint under the proposed enactment against any relative of the husband or the male partner, it does not enable any female relative of the husband or the male partner to file a complaint against the wife or the female partner.* "

(emphasis supplied)

20. The first part of paragraph 4(i) of the Statement of Objects and Reasons indicates that the sisters and mothers living with the abuser are entitled to legal protection under the proposed legislation. However, the second part would support the case of the private respondents, but the fact that the Supreme Court dismissed the Special Leave Petition against the decision of the Delhi High Court by observing that the Supreme Court found no grounds to entertain the Special Leave Petition after perusing the record and after hearing the counsel would justify us in taking the view that the Supreme Court has accepted the legal principle enunciated by the Delhi High Court that the complaint under the DV Act could also be filed by a woman against her son and daughter-in-law.

21. Since the definitions of "aggrieved person", "domestic relationship" and "shared household"

are wide enough to include mother and sisters as victims of domestic violence, the question is whether the definition of "respondent" should be read in isolation or whether it should be read as a part of entire scheme of the DV Act. As the complaint can be filed against "any adult male person, who is or has been in domestic relationship with the aggrieved person", the expression "male person" would definitely include son and, therefore, mother would be entitled to get reliefs against her adult son under the DV Act. If the mother is entitled to get reliefs against the adult son, there is no reason why mother should not be entitled to get relief against relatives of the adult son, that is, against wife of the son (i.e. the complainant's daughter-in-law).

22. Similarly, since petitioner no. 1 has made allegations that all the four respondents in the complaint i.e. brother, brother's wife and two sisters, are acting jointly, there is no reason why the definition of "respondent" should be interpreted in such a manner that a sister cannot file a complaint against her brother, who is an adult male person in domestic relationship with the complainant and against wife of such male person and against other relatives of male person.

23. Of course, the interpretation canvassed by the private female respondents is that as per definition of "respondent" in section 2(q), a complaint could be filed against a male or female relative only of the husband or male or female relative only of "the male partner" and that the expression "male partner" would mean "male partner of a female living in a relationship in the nature of a marriage". However, such restricted definition of "respondent" would be inconsistent with the wide definition of "aggrieved person"; "domestic relationship"; and "shared household", as already discussed hereinabove. Apart from that reasoning, we may also, while interpreting the scope of the expression "respondent", take into consideration the fact that the provisions of the DV Act extend to whole of India except the State of Jammu and Kashmir and that the provisions of the Act are not applicable merely to rural areas where ordinarily women have complaints against husbands and mothers-in-law. The Act is also applicable to urban areas where an old mother living with her son and daughter -in-law may have complaints against her son and daughter-in-law. Since the acts of domestic violence defined in section 3 of the Act are not necessarily confined to the acts which could be perpetrated only on a spouse or on a person living with the abuser in a relationship in the nature of marriage and since domestic relationship is defined widely to include relationship between two persons who live or have lived together in a shared household when they are related, inter alia, by consanguinity, it is not possible to accept the contention of the learned counsel for the private respondents that the expression "male partner" in the proviso to section 2(q) should be confined to the male partner in a live in relationship. The view we are taking is supported by the decision of the Delhi High Court, SLP against which has been dismissed by the Supreme Court by a speaking order, though a brief one.

24. If we do not accept the above interpretation, the provisions of section 2(q) would be susceptible to be struck down as violative of Article 14 of the Constitution because it would amount to classifying female victims into two categories :

(i) daughter-in-law who can seek relief against husband as well as mother -in-law and/or sisters-in-law; and

(ii) mother and sisters who may be victims of domestic violence, but who can only seek relief against son/brother but cannot seek any relief against daughter-in-law and sister-in-law (brother's wife).

Such a classification would not be valid in an urban set up and when 30 to 40 per cent population now lives in urban areas, the provisions of section 2(q) would be vulnerable to the challenge of discrimination under Article 14 of the Constitution of India.

25. It is true that clause 2 of the Statement of Objects and Reasons refers to providing civil remedies to a woman subjected to cruelty by her husband or his relatives, but clauses 1 and 3 indicate that the State should "act to protect women against violence of any kind especially that occurring within the family" and "to provide for a remedy under the civil law which is intended to protect the woman from being victims of domestic violence and to prevent the occurrence of domestic violence in the society." The Legislature has purported to protect the rights guaranteed

under Articles 14, 15 and 21 of the Constitution. The classification of "female victims of domestic violence" into the above two categories does not subserve the avowed object of protecting women against violence of any kind occurring within the family, especially in urban areas, as indicated above.

26. In view of the above discussion and in view of the fact that the decision of the Delhi High Court in Kusum Lata Sharma's case has not been disturbed by the Supreme Court, we are inclined to read down the provisions of section 2(q) of the DV Act and to hold that the provisions of "respondent" in section 2(q) of the DV Act is not to be read in isolation but has to be read as a part of the scheme of the DV Act, and particularly along with the definitions of "aggrieved person", "domestic relationship" and "shared household" in clauses (a), (f) and (s) of section 2 of the DV Act. If so read, the complaint alleging acts of domestic violence is maintainable not only against an adult male person who is son or brother, who is or has been in a domestic relationship with the aggrieved complainant- mother or sister, but the complaint can also be filed against a relative of the son or brother including wife of the son / wife of the brother and sisters of the male respondent. In other words, in our view, the complaint against the daughter-in-law, daughters or sisters would be maintainable under the provisions of the DV Act, where they are co- respondent/s in a complaint against an adult male person, who is or has been in domestic relationship with the complainant and such co- respondent/s. It must, of course, be held that a complaint under the DV Act would not be maintainable against daughter-in-law, sister-in- law or sister of the complainant, if no complaint is filed against an adult male person of the family.

27. In the facts of the present case, the learned Metropolitan Magistrate shall proceed to try the cases filed by the petitioners under the DV Act on the basis that the petitioners have filed a complaint against an adult male person in a domestic relationship with the petitioners and on that basis treat the complaints against the other respondents (respondent nos.2 to 4 in the complaint wife and sisters of respondent no. 1 in the complaint) as maintainable.

28. The writ petition is accordingly allowed in the above terms.

We make it clear that the observations made in this judgment are for the limited purpose of examining the question of maintainability which we have decided in favour of the petitioners. We may not be taken to have expressed any opinion on the correctness or otherwise of the allegations made in the complaints.

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