

(Babulal & Ors. vs. Smt. Premwati)

06.12.2016

Shri Prashant Sharma, counsel for the applicants.

Shri Pramod Gohadkar, counsel for the respondent.

This petition under Section 482 of Cr.P.C. has been filed against the order dated 27.02.2013 passed by Seventh Additional Sessions Judge, Gwalior in Criminal Appeal No. 89/2013 arising out of the order dated 10.12.2012 passed by JMFC, Gwalior in case No.6982/2012.

2. The necessary facts for the disposal of the present application are that the respondent had filed an application under Section 12, 19 of Protection of Women from Domestic Violence Act, 2005 against the applicants alleging that the applicants used to abuse her and her unmarried daughter and they do not allow the respondent to reside in the house and her husband Devi Lal do not provide anything for the maintenance of the respondent and her daughter, therefore, it was prayed that the applicants should not create any obstruction in peaceful residence of the respondent in the house situated at Indra Nagar Char Shahar Ka Naka Hazira, Gwalior.

3. *Per contra*, the applicants filed their reply and submitted that the proceedings under Section 125 of Cr.P.C. were initiated against the non-applicant Devi Lal in the year 1985 and from thereafter the

respondent/applicant has never come to the house nor has met with them. The property has already been partitioned and the applicants are residing in the house which has fallen to their share. They had never abused the respondent/applicant. Husband of the applicant namely Devi Lal has already sold his share of the house and has paid the maintenance allowance and thereafter he is residing along with the respondent in her house. The respondent/applicant never came to the house situated at Indra Nagar, Hazira, Gwalior and prayed that the application be rejected.

4. It is important to mention here that although the application under Section 12, 19 of Protection of Women from Domestic Violence Act, 2005 was filed against the applicants and Devi Lal (husband of the respondent/applicant) but Devi Lal never appeared before the Court and he was proceeded exparte. The Trial Court allowed the application filed by the respondent/applicant under Section 197 of Protection of Women from Domestic Violence Act, 2005 on the ground that from the perusal of the partition deed dated 17.04.1984, it is clear that house No.381 situated at Indra Nagar, District Gwalior was partitioned amongst Kamta Prasad, Tejpal, Devi Lal and Babu Lal. One portion of the house went to the share of Devi Lal who is the husband of the respondent and, therefore, the applicant is entitled to reside in the said portion of the house. So far as the

contention of the applicants that Devi Lal has already sold his share was concerned, the Trial Court rejected the same as it was evident on the basis of evidence which has come on record that Devi Lal had executed a Power of Attorney on 6.1.2004 in favour of applicant No.3 Hetram. After the application under Section 12,19 of the Protection of Women from Domestic Violence Act, 2005 was filed, Hetram, on the basis of the Power of Attorney, sold the share of Devilal in favor of one Dharmendra for a consideration of Rs. 4 lacs. It is also not out of place to mention that Dharmendra is the son of one of the applicants. Thus, the Trial Court came to the conclusion that the so called Sale deed has been executed with an intention to frustrate the very purpose of the application and in fact the entire house is still in possession of the applicants and consequently directed that the applicants should not obstruct in peaceful residence of the respondent along with her daughter in House No. 5/381, Ward No. 7, Gwalior.

5. Being aggrieved by this order, the applicants filed an appeal which was dismissed by the Appellate Court by order dated 27-2-2013.

6. It is contended by the learned Counsel for the applicants that in fact the house was partitioned and Devilal, the husband of the respondent had already sold his share therefore, the prayer under Section 19 of the Protection of Women From Domestic Violence

Act, 2005 (In Short DVA, 2005) cannot be granted. Further, it was submitted by the Counsel for the applicants that in view of the fact that the acts which fall within the definition of "Domestic Violence" were committed prior to coming into force of DVA, 2005, therefore, the application was not maintainable.

7. Per contra, it is submitted by the respondent that the sale deed is nothing but a sham document executed with an intention to frustrate the very purpose of the DVA, 2005. It was also contended by the learned Counsel for the respondent that since, the act complained of by the respondent was a continuing offence, therefore, the application under Section 12, 19 of the Constitution of India is maintainable.

8. Considered the arguments advanced by the learned Counsel for the parties and perused the record.

9. The contention of the learned Counsel for the applicants that Devilal had already sold his share therefore, the Trial Court should not have passed the Residence Order under Section 19 of the DVA, 2005, cannot be accepted. The learned Counsel for the applicants could not dispute the fact that the respondent had filed an application under Section 12,19 of the DVA, 2005 on 1-8-2011 whereas the sale deed was executed by Hetram, in favor of Dharmendra on 12-6-2012 on behalf of Devilal on the strength of a Power of Attorney. This fact has also

not been denied by the applicants that Dharmendra is son of one of the applicants. Thus, in the considered view of this Court, the Trial Court did not commit any mistake in holding that the so called sale deed was executed with a view to frustrate the very purpose of the DVA, 2005. Accordingly it is held that the sale deed dated 12-6-2012 was merely a sham document.

10. The next contention of the learned Counsel for the applicants is that all the acts which were complained by the respondent were prior to coming into force of DVA, 2005, therefore, the respondent cannot be said to be an aggrieved person and further, the acts complained of cannot be treated as continuing for the purpose of conforming jurisdiction on the Court, therefore, the application was not maintainable. To buttress his contention, the learned Counsel for the applicants relied upon judgment dated passed by a co-ordinate bench of this Court in the case of **Devkaran Vs. Sanjana Bai** reported in **(2012) 4 MPHT 104.**

11. To consider the contention of the learned Counsel for the applicants with regard to the maintainability of the application under Section 12, 19, 20 of the DVA, 2005, first of all we will have to consider the basic purpose for which the DVA, 2005 was enacted. As the preamble would reflect, the DVA, 2005 has been enacted to provide for more effective protection of the Rights of the Women. The Supreme Court in the case of **Krishna**

Bhattacharjee Vs. Sarathi Choudhary reported in **(2016) 2 SCC 705** has held as under :

"3. Regard being had to the nature of the legislation, a more sensitive approach is expected from the courts whereunder the 2005 Act no relief can be granted, it should never be conceived of but, before throwing a petition at the threshold on the ground of maintainability, there has to be an apposite discussion and thorough deliberation on the issues raised. It should be borne in mind that helpless and hapless "aggrieved person" under the 2005 Act approaches the court under the compelling circumstances. It is the duty of the court to scrutinise the facts from all angles whether a plea advanced by the respondent to nullify the grievance of the aggrieved person is really legally sound and correct. The principle "justice to the cause is equivalent to the salt of ocean" should be kept in mind. The court of law is bound to uphold the truth which sparkles when justice is done. Before throwing a petition at the threshold, it is obligatory to see that the person aggrieved under such a legislation is not faced with a situation of non-adjudication, for the 2005 Act as we have stated is a beneficial as well as assertively affirmative enactment for the realisation of the constitutional rights of women and to ensure that they do not become victims of any kind of domestic violence."

12. Thus, keeping the above proposition of law in mind, we have to understand the meaning of Domestic Violence. The word "Domestic Violence"

has been defined in Section 3 of the DVA, 2005, which reads 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 purpose 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.”

13. Thus, it is clear that “economic abuse” is also included in the definition of “Domestic Violence”. As it is evident from the provision 3(iv)(a),(b) and (c), the word “economic abuse” has several aspects. It is also not in dispute that the marital ties between the respondent and Devilal have not been separated. They are still husband and wife and no decree of divorce has been passed. As the respondent is in domestic relationship with her husband Devilal, therefore, certainly, the respondent would be an “aggrieved person” as defined in Section 2(a) of the DVA, 2005.

14. The objection raised by the learned counsel for the applicants with regard to the maintainability of the application is misconceived. The contention raised by the learned Counsel for the applicants has already been considered and decided by the Supreme Court in the case of **V.D. Bhanot Vs. Savita Bhanot** reported in **(2012) 3 SCC 183**. The Supreme Court while upholding the Judgment passed by the Delhi High Court held that “after considering the Constitutional safeguards under Article 21 of the Constitution vis-à-vis the provisions of Sections 31 and 33 of the PWD Act, 2005, and after examining the Statement of Objects and Reasons for the enactment of the PWD Act, 2005, it was held that it was with the view of protecting the rights of women

under Articles 14,15 and 21 of the Constitution, that Parliament enacted the PWD Act, 2005, in order to provide for some effective protection of rights guaranteed under the Constitution to women, who are victims of any kind of violence occurring within the family and matters connected therewith and incidental thereto, and to provide an efficient and expeditious civil remedy to them. It was accordingly held that even if the acts of Domestic Violence had been committed prior to the coming into force of the said Act, notwithstanding the fact that in the past she had lived together with her husband in a shared household, but was not more living with him, at the time when the Act came into force.

15. Thus, it is clear that even if the acts of Domestic Violence have been committed prior to coming into force of DVA, 2005, the application under Section 12,19 etc under DVA, 2005 is maintainable.

16. The Supreme Court in the case of **Saraswathy Vs. Babu** reported in **(2014) 3 SCC 712**, has held as under :

“23. The other issue that whether the conduct of the parties even prior to the commencement of the DVA, 2005 could be taken into consideration while passing an order under Sections 18, 19 and 20 fell for consideration before this Court in *V.D. Bhanot v. Savita Bhanot* (2012) 3 SCC 183. In the said case, this Court held as follows:

“12. We agree with the view expressed by the High Court that in looking into a complaint under Section 12 of the DVA, 2005, the conduct of the parties even prior to

the coming into force of the DVA, could be taken into consideration while passing an order under Sections 18, 19 and 20 thereof. In our view, the Delhi High Court has also rightly held^{††} that even if a wife, who had shared a household in the past, but was no longer doing so when the Act came into force, would still be entitled to the protection of the DVA, 2005.”

24. We are of the view that the act of the respondent husband squarely comes within the ambit of Section 3 of the DVA, 2005, which defines “domestic violence” in wide terms. The High Court made an apparent error in holding that the conduct of the parties prior to the coming into force of the DVA, 2005 cannot be taken into consideration while passing an order.”

17. In the case of **Shalini Vs. Kishor and others** reported in **AIR 2015 SC 2605**, the Supreme Court after relying on the Judgments passed in the cases of **V.D. Bhanot (Supra)** and **Saraswathy Vs. Babu (Supra)** held that as the Domestic Relationship between the parties is not in dispute and since, the applicant has specifically stated that her maternal uncle is no more ready to allow her to stay in the house, therefore, the application filed under Section DVA, 2005 under Section 12,19 and 20 was maintainable.

18. So far as the judgment passed by co-ordinate Bench of this case in the case of **Devkaran (Supra)** is concerned, in the considered opinion of this Court it is no more a good law in view of the judgments passed by Supreme Court in the cases of **V.D. Bhanot (Supra)**, **Saraswathy (Supra)**, **Shalini**

**Vs. Kishor and others (Supra), Krishna
Bhattacharjee (Supra).**

19. Accordingly it is held, the contention raised by the learned Counsel for the applicants that since the acts of Domestic Violence were committed prior to the coming into force of DVA, 2005, therefore, application filed by the respondent was not maintainable, is misconceived and therefore, it is rejected.

20. Consequently, the application is dismissed being devoid of merits.

**(G.S. Ahluwalia)
Judge**