**THE HIGH COURT OF MADHYA PRADESH AT JABALPUR**

**(Single Bench : Rajendra Mahajan, J.)**

**Cr.R No.967/2015**

1. Manoj Pillai S/o Shri K.V.S. Pillai, aged about 37 years, R/o Immersion Interior Designs, Oasis Center, 3rd Floor, Office No.71, P.O. Box 473827, Dubai (UAE).

2. Smt. Komalavalli Pillai W/o late Shri K.V.S. Pillai, R/o Kalikel Anizham House, Block Road, P.O. Pulloor Chengannur, District Pathanamteetha (Kerala).

**Applicants**

**VERSUS**

Smt. Prasita Manoj Pillai D/o Shri N.G. Nair, W/o Shri Manoj Pillai, aged about 35 years, R/o 24, Devlok Colony, CTO Road, Bairagarh, Bhopal – 462030.

**Non-applicant**

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For applicants : Shri R.K. Agarwal learned counsel.

For non-applicant : Shri Rahul Choubey, learned counsel.

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**O R D E R**

(Passed on the 17th day of March, 2017)

The applicants have filed this Criminal Revision Petition under Section 397 read with 401 of the of the Cr.P.C. being aggrieved by and dissatisfied with the order dated 08.04.2015 passed by the Sixth Additional Sessions Judge Bhopal in Criminal Appeal No.695/2014, thereby

affirming the order dated 03.07.2014 passed by the Judicial Magistrate First Class Bhopal in MJC No.1187/2014 after holding that the application filed by the non-applicant under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (for short "the Act") is maintainable.

2. The brief facts necessary for disposal of this revision are given below -:

2.1 On 10.12.2013, the non-applicant-wife has filed in the court of JMFC Bhopal an application under Section 12 of the Act (for short "the application") with her own affidavit seeking reliefs under Sections 18, 19, 20, 21, 22 and 23 of the Act stating that on 07.11.1999, she got married to applicant No.1 Manoj Pillai as per Hindu rites and customs at Bhopal. Applicant No.2 Smt. Kowalli Pillai is the mother of applicant No.1, and therefore, she is her mother-in-law by marital relation. At the time of her marriage, he was working in the Bridgestone Company at Indore. In the year 2000, he left the company and joined the Apollo company at Baroda. He worked with the company between the years 2000 and 2006. Thereafter, he got a job in Dubai (UAE). She lived in the company of applicant No.1 in Indore, Baroda and Dubai. She has alleged that in her marriage her father gave her nearly 600 gms of gold ornaments presently valued at Rs.18,00,000/- (eighteen laks) in addition to other valuable gifts. He took the ornaments in his custody at the beginning of her marital life. He would not allow her to meet her parents and misbehave with them. He always demanded money from her father as expenditure

incurred by his mother at the time of his marriage with her. Her father gave him one lakh rupees for repayment of his outstanding dues. He would drink alcohol heavily. In the drunken state, upon the provocation and instigation of applicant No.2, he would brutally beat her. He forced her to have perverted sex with him. However, she suffered in silence all kinds of violence and atrocities being meted out to her at the hands of the applicants as an obedient Indian house-wife. When she and applicant No.1 were residing in Baroda, she gave birth to a son who is christened Aryan. He dropped her and new born Aryan with her parents in Bhopal, and he moved to Dubai to do the job there. Some time later, she with Aryan joined him in Dubai, where he often committed marpeet (beatings) with her in the drunken state. He never loved and cared her and Aryan. He only gave her monthly expenses. She observed that he lavishly spent money on friends. She also came to know that he had illicit relations with some women whose names have been mentioned in para 8 of the application. Whenever she opposed his extra-marital relations, he tortured her mentally and physically. He sold all her gold ornaments, which is her Stridhan, despite her strong protest. He forcibly sent her and Aryan to Bhopal from Dubai. Ever since, she along with Aryan has been living perforce with her parents in Bhopal.

2.2 The non-applicant has also averred that applicant No.1 has his own business of interior decoration under the name and style of the Immersion Interior Designs in Dubai. His monthly profit from the

said business is around Rs.4,75,000/- (four laks and seventy five thousand) per month in terms of the Indian currency. She is a house-wife. She does not have any independent source of income and her father incurs presently their all living expenses. She does not have her own accommodation, therefore, she along with Aryan has to reside under compulsion with her parents. As such, she and Aryan are living in misery in Bhopal. She, therefore, prays to allow the application and direct the applicants to provide her the reliefs as specified in para 17 of the application.

2.3 In written reply to the application, the applicants have admitted the facts namely that applicant No.1 got married to the non-applicant on 07.11.1999 at Bhopal, that from the loins of applicant No.1, the non-applicant gave birth to Aryan and that in February 2006, applicant No.1 moved to Dubai for doing a job there. However, they have denied all the allegations levelled by the non-applicant against them. On the other hand, they have blamed the non-applicant for every wrong. They have alleged that her behaviour with them was very atrocious. She never took interest in household chores. She always preferred to stay with her parents at Bhopal. She lived in the company of applicant No.1 for a total period of one year between the time-period 2001 and February 2005 at Baroda. She seldom took interest in having physical intimacy with applicant No.1. She gave birth to Aryan in the fifth year of their marriage. She did not take proper care in his up-bringing. Therefore, applicant No.2

had to look after him. In the year 2010, the father of applicant No.1 passed away. Thereafter, applicant No.2 started living with them in Dubai. She used to quarrel with her on trivial matters. In the circumstances, applicant No.1 had to send applicant No.2 back to India. In Dubai, she did not take proper care of Aryan and that she spent most of time in conversations with her parents on phone. She left Dubai with Aryan upon her own volition. They have also averred that applicant No.1 had to close down his business in November 2012 on account of huge losses. He is, now, doing the brokery to earn a living in Dubai. Thus the applicants have denied that they had ever committed any sort of domestic violence upon the non-applicant and prayed for dismissal of the application.

2.4 On 16.04.2014, the applicants have filed an application, numbered as I.A. No.2, before the learned JMFC, challenging the maintainability of proceeding under Section 12 of the Act on the following grounds :-

(i) The non-applicant remained in the company of applicant No.1 till February 2006, whereas the Act came into force on 26.10.2006. Therefore, the provisions of the Act are not applicable in the case.

(ii) Applicant No.1 and the non-applicant had not been in domestic relationship for over seven years i.e. from February 2006 till the date of filing of the application. Thus, the non-applicant has already lost the status of an aggrieved person as defined in

"clause (a)" of Section 2 of the Act.

(iii) As per the provisions of Section 468(2)(b) of the Cr.P.C. the application is barred by limitation as the period of filing the complaint is one year from the date of incident of domestic violence. But, the non-applicant has filed the application after long lapse of the said period.

(iv) The JMFC court at Bhopal has no territorial jurisdiction to entertain the application as the alleged domestic violence occurred in Baroda.

(v) Applicant No.2 is a woman, therefore, she does not come within the ambit of the respondent as defined in "clause q" of Section 2 of the Act. Hence, the learned JMFC has committed a legal error by registering the case against her and the learned Appellate Judge committed the same error by upholding the registration of the proceeding against her.

(vi) Since applicant No.1 is presently residing in Dubai, the provisions of the Act are not applicable there.

2.5 As per the record of the trial court, the non-applicant has not submitted a written reply to I.A No.2.

2.6 Having heard the learned counsel for the parties, the learned JMFC has dismissed I.A. No.2 vide order dated 03.07.2014 holding that the proceeding is maintainable under the Act after rejecting all the aforestated objections raised by the applicants.

2.7 Feeling aggrieved by the aforesaid order of the JMFC, the

applicants filed an appeal under Section 29 of the Act. The learned appellate Judge, having heard the learned counsel for the parties, dismissed the appeal vide the impugned order affirming the order passed by the JMFC.

2.8 Further aggrieved by the impugned order, the applicants are before this court by filing this revision.

3. I have heard the learned counsel for the parties at length and perused the order dated 03.07.2014, the impugned order dated 08.04.2015 and all the materials available on record.

4. Undisputed facts of the case are that applicant No.1 and the non-applicant got married to each other on 07.11.1999, that son Aryan was born from their wedlock, and they have not so far divorced as per law each other. As such, the domestic relationship between applicant No.1 and the non-applicant stands established.

5. In the application, the non-applicant has not mentioned the time whereafter she has been living separately from applicant No.1 along with Aryan. The applicants in I.A. No.2 have claimed that the domestic relationship between applicant No.1 and the non-applicant came to an end in February 2006, whereas in para 4 of the reply to the application they have averred that the non-applicant had resided with applicant No.1 in Dubai from March 2010 to March 2013. Thus, the applicants have made self-contradictory averments with regard to the time when applicant No.1 and non-applicant have started living separately in I.A. No.2 and the reply to the application. If the non-applicant remained in the company of

applicant No.1 till March 2013 as stated by the applicants in the application, then there would be no dispute with regard to the application of the Act in the case as the Act has been in operation since 26.10.2006. It is assumed just for the sake of academic discussion that the non-applicant has been living separately from applicant No.1 since February 2006. Notwithstanding that, The provisions of the Act are still applicable in the case in view of the following decisions rendered by the apex court. In the case of Shalini Vs. Kishor and others, (2015) 11 SCC 718, the undisputed facts were that the applicant-husband got married to respondent-wife on 8.5.1990 and that he drove her away from the matrimonial house sometime in the year 1992. In that case Hon'ble the Supreme Court has interpreted the domestic relationship as defined in "clause (f)" of Section 2 of the Act and held on the basis of the aforesaid admitted facts that the domestic relationship between them is established. In that case, the Supreme Court, having placed reliance on the law laid down by it in the case of V.D. Bhanot Vs. Savita Bhanot, (2012) 3 SCC 183, and Saraswathy Vs. Babu, (2014) 3 SCC 712, has held that the conduct of the parties even prior to coming into force of the Act can be taken into consideration while passing orders under Sections 18, 19 and 20(1)(d) of the Act. In the case of Krishna Bhatacharjee Vs. Sarathi Choudhary and another (2016 Cr.L.J. 330 SC) the wife was not living with her husband at the time when the Act came into force on 26.10.2006 because of decree for judicial separation. The Supreme Court has held that the legal relationship between the husband and the wife continues even after the decree for judicial separation,

therefore, the status of wife is an aggrieved person as per the definition given under Section 2(a) of the Act, with the result the provisions of the Act will apply in the case. In view of the law laid down in the aforestated authorities, it is held that the non-applicant has acquired the status of an aggrieved person and that the provisions of the Act are applicable in the instant case.

6. The Supreme Court has held in the cases of V.D. Bhanot Vs. Savita Bhanot (supra) and Saraswathy Vs. Babu (supra) that the conducts of the parties even prior to the commencement of the Act can be taken into consideration, therefore, by implication the provisions of Section 468 of the of the Cr.P.C. are not applicable at the time of filing an application under Section 12 of the Act. Thus it is held that the provisions of Section 468 of the of the Cr.P.C. are not applicable in the case.

7. Whether or not the provisions of Section 468 of the Cr.P.C. are applicable in a case under the Act may be examined from another angle. As per the provisions of the Act, only the breach of protection order or interim protection order, which is passed under Section 18 of the Act, by the respondent is an offence under Section 31 of the Act, meaning thereby the breach of any order passed under Sections 19, 20, 21, 22 and 23 of the Act by the respondent is not an offence. The same view is taken by the Chhatisgarh High Court and the Rajasthan High Court in the decisions rendered in the cases of Suraj Satyanarayana Sharma and others Vs. Bharti Suraj Sharma (2016 Cr.L.J. 2960) and Smt. Kanchan Vs. Vikramjeet Setiya (2013 Cr.L.J. 85) respectively. Hence, the provisions of Section 468 of the

Cr.P.C. are not applicable in the cases arising out of the Act. On account of language employed in Section 28(1) of the Act, supposing that the provisions of Section 468 of the Cr.P.C. are applicable in the Act, then the court has power under Section 473 of the Cr.P.C. for extension of period of limitation in initiating proceedings under the Act if the delay has been properly explained by the aggrieved person or it is necessary so to do in the interest of justice, taking into consideration the Act is essentially a remedial statute and it is a trite law that a remedial statute needs to be interpreted liberally to promote the beneficial object behind it and any interpretation which may defeat its object necessarily needs to be eschewed.

8. Section 27(1) of the Act provides for the territorial jurisdiction of the court where an aggrieved person can file an application under Section 12 of the Act. As per clause "(a)" of Sub-Section 1 of Section 27 of the Act, the aggrieved person may file an application where the person permanently or temporarily resides or carries on the business or is employed. The non-applicant has stated in the application that she has been presently residing in Bhopal with her parents after applicant No.1 had driven her out of the matrimonial house. This fact is not contradicted by the applicants. Thus, the JMFC court at Bhopal has jurisdiction to entertain the application filed by the non-applicant under Section 12 of the Act.

9. Hon'ble the Supreme Court in the case of Sou. Sandhya Manoj Wankhade Vs. Manoj Bhimrao Wankhade and others, (2011 AIR SCW 1372), has held that in the definition of "respondent" given in "clause (q)"

of Section 2 of the Act, the word respondent includes "female" person/persons who is/are in the domestic relationship with the aggrieved person and that she may also seek any relief against her/them under the Act. In a recent judgment rendered in the case of Hiral P. Harsora and others Vs. Kusum Narottamdas Harsora and others, (2016) 10 SCC 165, the Supreme Court has deleted the word "male" appearing in the definition of Section 2(q). Thus, the aggrieved person may seek remedies under the Act against a female member or members who is/are or has been/have been in a domestic relationship with her. The applicants have not denied the fact that the relation between applicant No.2 and the non-applicant is of the mother-in-law and the daughter-in-law respectively. The non-applicant has averred in the application that she was subjected to domestic violence at the hands of applicant No.1 upon the instigation of applicant No.2. Therefore, in view of the aforesaid decisions of the Supreme Court, it is held that the non-applicant may seek relief(s) against applicant No.2 as well. Thus the case is rightly registered against applicant No.2.

10. In the matter of Hima Chugh Vs. Pritam Ashok Sadaphule and Others, (2013 Cr.L.J. 2182), the petitioner-wife and the respondent-husband were living in the U.K. Upon the infliction of domestic violence by the husband on the wife, she had to return to India and thereafter, she filed an application under Section 12 of the Act. The husband challenged the maintainability of the proceeding thereunder on the ground *inter alia* that he is living in the U.K., therefore, the provisions of the Act are not applicable to him. In that case, the Delhi High Court, after elaborate

discussion and logical and legal reasoning, has ruled that the provisions of the Act are applicable to the husband despite that he has been living in the U.K. I am fully in agreement with the reasoning behind the said ruling. Therefore, it is held that the provisions of the Act are also applicable to applicant No.1 nevertheless he is presently living in Dubai.

11. At the time of arguments, the learned counsel for the applicants has contended as to how any order passed under the Act in the instant case will be executable in Dubai ? From the perusal of the application, it is evident that the non-applicant has sought mainly monetary reliefs against applicant No.1. The monetary relief has been defined in Section 2(k) of the Act and such reliefs are to be granted by way of proceedings under Sections 12 and 23 of the Act. The Section 12 covers in its application all kinds of reliefs including monetary relief as well as protection order and compensation. In case of non-compliance of an order of monetary relief or compensation the aggrieved person has to apply to the jurisdictional Magistrate, who has passed the said order, for execution of the order as per the provisions of Section 20 of the Act. The Magistrate may get the order executed in terms of Sub-Sections 4 and 6 of Section 20 of the Act. Section 28 of the Act lays down that the courts shall be governed by the general provisions of the Code of Criminal Procedure in relation to the proceedings under Sections 12, 18, 19, 20, 21, 22 and 23 as well as Section 31 of the Act. Thus, in the present case the non-applicant may take recourse to provisions of “CHAPTER VII A” of the Cr.P.C. to get the order executed in Dubai against applicant No.1.

12. From the aforesaid reasons and discussion, I come to the conclusion that the learned JMFC and the learned appellate Judge have rightly held that the proceeding initiated by the non-applicant under the Act is maintainable. Therefore, this revision is liable to be dismissed and is hereby dismissed being devoid of merits and substance.

13. Few words more, the Act is intended to protect the women from being victims of domestic violence which in its sweep also includes domestic violence of economic nature, therefore, the filing of appeals and revisions on flimsy and frivolous grounds against the order(s) passed by the trial court in favour of the aggrieved woman amounts to causing further domestic violence of economic nature upon her. It is already held that this revision is devoid of merits and substance and it is also apparent from the contents of the application that the non-applicant is a victim of domestic violence inflicted by the applicants. Therefore, the applicants are directed to pay the non-applicant Rs.5000/- (five thousand) towards the expenses of this revision.

14. Accordingly, this revision is finally disposed of.

(Rajendra Mahajan)
Judge

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