

IN THE COURT OF THE ADDL. SESSIONS JUDGE
KAMRUP ::: GUWAHATI.

Crl. Appeal No. 63/2010

U/S 29 of Protection of Women from D.V. Act.

PRESENT : SRI I. HUSSAIN

Addl. Sessions Judge,
Kamrup, Guwahati.

Sri Durga Shankar Singh Appellant
and others.

-Vs-

Smt. Anju Singh
Respondent.

Appearance :

For the Appellant :- Sri S.P. Roy,
Sri D. Nandi,
Sri N.N. Jha,
Miss. B. Das

For the Respondent :- Smt. A. Singh,
Sri N.P. Das,
Sri M.K. Das

Date of Hearing :- 23.08.2011

Date of Judgment :- 05.09.2011

J U D G M E N T

1. The appellant has challenged the Order dated 30.06.2010 passed by the learned Addl. Chief Judicial Magistrate, Kamrup, Guwahati in Case No. 50^M/2009 whereby the petition filed under Section 2(q) of The Protection of Women from Domestic Violence Act, 2005, (hereinafter called "the Act") for striking out of the names of accused Smt. Bibha Singh and Smt. Saraswati Singh was rejected. Being aggrieved with the said order, the appellants have preferred this appeal under Section 29 of the Act.

2. Brief fact of the case is that the District Social Welfare Officer & Protection Officer under Domestic Violence Act, 2005, Kamrup, Guwahati, informed the Ld. Chief Judicial Magistrate, Kamrup, Guwahati, on 5th May 2009, by submitting an application along with Domestic Incident report under Section 12 and 9 of the Act, in respect of Mrs. Anju Singh, the respondent, against her husband Sri Durga Shankar Singh,

Father-in-law Sri Nagendra Singh, Mother-in-law Smt. Bibha Singh, Smt. Saraswati Singh, sister-in-law and requested to pass necessary order for urgent relief of the aggrieved woman victim as she is facing much hardship due to the cruel and inhuman treatment and for fear of her life as threats of acid throwing is received. The case was transferred to the Court of Ld. Addl. C.J.M. Respondents after appearance, filed written statement as well as the petition for striking out the names of Smt. Bibha Singh and Smt. Saraswati Singh. Ld. Addl. C.J.M. passed the impugned order dated 30.06.2010.

3. Heard learned Advocates of both sides and perused the case records and other materials on record. Ld. Counsel for the Appellants submitted that Section 2(q) of the Act specifically states that the respondent means any adult male person having domestic relationship with the aggrieved person, so, woman cannot be made respondent in a complaint filed under the Act. He also submits that the purpose of enacting the Act is to protect the women from domestic violence

and hence it is under section 2(q) of the Act it is specifically mentioned that respondent means any adult male person, hence the application under section 12 of the Act is not maintainable against appellants Smt. Sibha Singh and Smt. Saraswati Singh. Ld. Counsel further submits that there is a proviso in the section 2(q), where it is mentioned that the complaint may also be filed against a relative of the husband but it cannot be construed as female relatives of the husband as because the main part of the section clearly states that respondent shall be any adult male person. The interpretation of the section shall always be derived through the main part of the section. He relied on the decision of Hon'ble Calcutta High Court reported in *2009 (1) Crimes 180 (Cal.); Smt. Rina Mukherjee and another Vs State of West Bengal and another.*

4. Learned counsel for the complainant/respondent vehemently opposed the above submission and stated that irrespective of sex or gender, all relatives of the husband can be made respondent under this Act. Because, the very

purpose of the Act is to protect the women from domestic violence, and hence the legislature has enacted this Act to protect every married women from the cluster of domestic violence carried out by any relatives of the husband. He relies on the decision of the Apex Court dated 31.01.2011; *Sri Sandhya Manoj Wankhade Vs Manoj Bhimrao Wankhade and Ors. In Criminal Appeal No. 271 of 2011 (Arising out of SLP (Crl.) No. 2854 of 2010), MANU/SC/0081/2011.*

5. From the above rival contention of the parties, it appears that the main crux of the appeal is whether the appellants Smt. Bibha Singh and Smt. Saraswati Singh falls within the meaning of “relative of the husband” as appeared in the proviso to Section 2(q) of the Act.

6. To decide this core issue, the background history of the Act has to be discussed, which led the Government to bring the Act for protection of women. It is stated in the objectives that

i. 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 on 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.

ii. 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 498-A of the Indian Penal Code. The civil law does not however address this phenomenon in its entirety.

iii. 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.

7. Thus, it appears that depending upon the recommendations of the Vienna Accord and CEDAW's General Recommendation No. XII (1989), Government intended to bring the legislation to give a complete protection to the women from being the victims of domestic violence. Government also intended to provide remedy under the civil law in view of the rights guaranteed under article 14, 15 and 21 of the Constitution in case of domestic violence to the victim. So, the intention of the legislature is to protect the women from being subjected to any act of domestic violence which may be of different kind and nature. The word "Domestic violence" is defined in Section 3 of the Act, as an act, omission or commission or conduct of the respondent which causes all sorts of harms, harassment, injures or endangers health, safety, life, limb or well being, mental or physical, abuses etc. etc. to the aggrieved person. Here in this section the word "respondent" has been used, which is defined in

section 2(q) of the Act. After careful reading of the definition of 'respondent' in section 2(q), it appears that the definition is given in two parts, the first part is confined to the husband or male partner of the aggrieved person and the second part or proviso of the Section include all other persons i.e. relative of the husband. The proviso of the section 2(q) is found to be used in broader sense. Because, as per first part, respondent includes the adult male person, who is or has been in a domestic relationship with the aggrieved person and against whom aggrieved person has sought relief under this Act. The word "domestic relationship" used in the section has been defined in Section 2(f) of the Act, which means the relationship between two persons who live or have, at any point of time lived together in a shared household, or related by consanguinity, marriage etc. Thus taking in to consideration of both the definitions as given section 2(f) and 2(q), we can arrive at the conclusion that the word 'respondent' used in the first part of the section means the husband or male partner of the aggrieved person.

The proviso to the section 2(q) has the broader sense of the meaning of 'respondent' and includes the relative of the husband or the male partner. It is not confined to only one category of persons and includes all the relatives of the husband who took part in causing domestic violence to the aggrieved person. The legislature has not distinguished or specified the word 'relative of the husband' by using male or female. So, it cannot be ruled out that relative of husband means and includes both male and female relatives.

8. I have gone through the case law i.e. *S. Sandhya Manoj Wankhade Vs Manoj Bhimrao Wankhade and Ors. (supra)* submitted by Id. Counsel for the respondent/petitioner. Hon'ble Apex Court hold that -

"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."

9. I have gone through the case law, *Smt. Rina Mukherjee and another Vs State of West Bengal and another (supra)* cited by Id. Counsel for the appellant. Hon'ble Calcutta High Court hold that –

"5. Now the statute is very clear that application claiming residence order or protection order has to be made against

the “respondent” and as we have seen above, respondent has to be a male adult person or a relative of a husband of the male partner. Therefore, the scheme of the Act a female does not come within the ambit of the expression “respondent” against whom an order can be passed under section 18/19 of the Act.”

10. After going through both the above case laws, it is obvious that the views given by Hon’ble the Apex Court is to be accepted. It is clear from the observation of the Hon’ble Apex Court that the legislature never intended to exclude female relatives from the ambit of a complaint that can be made under the Act.

11. Further, it appears that the Act has been passed with the objective to give protection to the women to provide remedy under the civil law by taking in to consideration of the rights guaranteed by our Constitution. The word woman used in the Act means and includes a woman who has domestic relationship with the respondent and who alleges any act of domestic

violence by respondent. In our general Indian society, wife uses to live in her husband's house after marriage, where male and female relative of the husband also resides. The legislature intended to protect the women from domestic violence while she is living with her husband, because it is seen that the domestic violence generally occurs with common act of the husband and his other relative, male and female, while the wife is living with her husband. With the above backdrop of the situation, Legislature has promulgated the Act to protect the women from domestic violence and did not specify the gender or sex of relative of husband as appeared in section 2(q) of the Act.

12. In view of the above discussion and reasons stated, I have come to the conclusion that the appeal has no merit and is liable to be dismissed. In the result the appeal is dismissed and the order dated 30.06.2010 passed by the learned Addl. Chief Judicial Magistrate, Kamrup, Guwahati in Case No. 50^M/2009 is affirmed. Send back the LCR immediately.

Judgment prepared and pronounced
in the open Court on this 5th day of September,
2011 under my hand and seal.

Judge

Guwahati

Addl. Sessions

Kamrup,