

AIR 2014 SUPREME COURT 857**SUPREME COURT**

(From : Madras)

S. J. MUKHOPADHAYA, J. and V. GOPALA GOWDA , J.Criminal Appeal No. 1999 of 2013 (arising out of SLP (Cri.) No. 2190 of 2012), **D/-25-11-2013****Saraswathy v. Babu**

(A) Protection of Women From Domestic Violence Act (43 of 2005), S.3- Domestic violence - Respondent-husband not allowing wife to reside in shared household matrimonial house even after passing of order by Sub-ordinate Judge - There is a continuance of domestic violence committed by respondent-husband against wife - Question whether such acts were committed prior to coming into force of Act and whether it falls within definition of domestic violence under S. 3 - Need not be gone into in view of such continued domestic violence. (Para13)

(B) Protection of Women From Domestic Violence Act (43 of 2005), S.18, S.19, S.20- Domestic violence - Protection order, residence orders and monetary reliefs - Conduct of parties prior to coming into force of Act - Can be taken into consideration while passing an order under Act - Appellant - Wife having being harassed since 2000, is entitled for protection orders and residence orders under Ss. 18 and 19 along with the maintenance under S. 20(d) of Act - Wife also entitled for compensation and damages for injuries, including mental torture and emotional distress, caused by acts of domestic violence committed by respondent-husband - Hence, respondent-husband directed to pay compensation and damages to extent of Rs. 5,00,000/- in favour of appellant-wife.

Order dated 13-12-2011 (Madras High Court), Reversed. (Paras1516)

Cases Referred

AIR 2012 SC 965:2012 AIR SCW 1515

Chronological Paras

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T. Harish Kumar, for Petitioner; Dr. Kailash Chand, for Respondent.

Judgement

1.SUDHANSU JYOTI MUKHOPADHAYA, J.:-Leave granted. This appeal has been preferred by the appellant-wife against the judgment and order dated 13th December, 2011 passed by the High Court of Judicature at Madras. By the impugned judgment, the High Court dismissed the criminal revision case filed by the appellant and thus affirmed the order of First Appellate Court.

2.The pertinent facts of the case are as follows :

The parties to the present dispute are married to each other and the said marriage was solemnized on 17th February, 2000. According to the appellant, she brought 50 sovereign gold ornaments and 1 kg silver articles as stridhan also Rs.10,000/- was given to the respondent. After marriage the appellant lived in her matrimonial house at Padi, Chennai. After four months of the marriage, the respondent-husband and his family demanded more dowry in the form of cash and jewels. The appellant was not able to satisfy the said demand. Therefore, she was thrown out of her matrimonial house by the respondent and her in-laws. Another allegation of the appellant is that after sending out the appellant from her matrimonial house, the respondent-husband intended to marry again. On hearing such rumour, the appellant filed petition under Section 9 of the Hindu Marriage Act, 1955 (hereinafter referred to as, "the HM Act, 1955") bearing No. H.M.O.P. No. 216 of 2001 before the Principal Subordinate

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Judge, Chengalpattu, Tamil Nadu for restitution of conjugal rights.

The respondent-husband on the other hand filed H.M.O.P. No. 123 of 2002 under Section 13(1) (ia) and (iv) of the HM Act, 1955 before the Principal Subordinate Judge, Chengalpattu, Tamil Nadu for dissolution of marriage between the appellant and the respondent.

On 5th April, 2006, the learned Principal Subordinate Judge, Chengalpattu, Tamil Nadu dismissed the petition for dissolution of marriage filed by the respondent-husband and allowed the petition for restitution of conjugal rights filed by the appellant-wife with the condition that the appellant should not insist for setting up of a separate residence by leaving the matrimonial home of the respondent.

In the year 2008, the appellant filed Crl. M.P. No. 2421 of 2008 before learned XIII Metropolitan Magistrate, Egmore, Chennai against the respondent seeking relief under Sections 19, 20 and 22 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as, "the PWD Act, 2005"). The learned XIII Metropolitan Magistrate, Egmore, Chennai partly allowed the same and directed the respondent to give maintenance of Rs.2,000/- per month to the appellant to meet out her medical expenses, food, shelter and clothing expenses. The Magistrate Courts held that the appellant is in domestic relationship with the respondent and the appellant being the wife of the respondent has a right to reside in the shared household. The officer in charge of the nearest Police Station was directed to give protection to the appellant for implementation of the residence orders and was also directed to assist in the implementation of the protection order.

The respondent-husband being aggrieved preferred Criminal Appeal No. 339 of 2008 before the Sessions Court (Vth Additional Judge) at Chennai.

In the meantime, as per the order passed by the XIII Metropolitan Magistrate, Egmore, Chennai the appellant-wife went to her **matrimonial** house for staying with the respondent-husband house along with Protection Officer. However, the respondent did not obey the order of the Court and refused to allow the appellant-wife to enter the house and locked the door from outside and went out.

On 22nd December, 2008, the appellant filed a complaint against the respondent for not obeying the order of the learned XIII Metropolitan Magistrate, Egmore, Chennai and the same was registered in Ambatur T3 Korattur Police Station as FIR No. 947 of 2008 under Section 31,32 and 74 of the PWD Act, 2005. The case was committed to the learned XIII Metropolitan Magistrate, Egmore, Chennai and registered as Criminal Miscellaneous Petition No. 636 of 2011.

In the meantime, the Criminal Appeal No. 339 of 2008 filed by the respondent-husband was partly allowed by the Sessions Court (Vth Addl. Judge) at Chennai on 21st October, 2010. Sessions Courts by the said order set aside the order prohibiting the respondent-husband from committing acts of domestic violence as against the appellant-wife by not allowing her to live in the shared household and the order directing the respondent to reside in the house owned by respondent's mother and upheld the order granting maintenance of Rs.2,000/- per month in favour of the appellant-wife by the respondent-husband.

3. Aggrieved by the aforesaid order, the appellant-wife filed Crl. R.C. No. 1321 of 2010 before the High Court. A criminal miscellaneous petition No.1 of 2010 was also filed in the said revision application. On 23rd December, 2010, the High Court granted an interim stay to the above order passed by the learned Sessions Court (Vth Addl. Judge) at Chennai.

4. In the meantime, while the matter was pending before the High Court, the learned XIII Metropolitan Magistrate, Egmore, Chennai passed an order on 24th February, 2011 in Crl. Misc. Petition No. 636 of 2011 (arising out of FIR No. 947 of 2008) and directed the SHO, Ambatur T3 Korattur Police Station to break the door of the respondent's house in the presence of the Revenue Inspector and make accommodation

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for the appellant with further direction to the SHO to inquire about the belongings in the respondent's house in presence of the family members of the respondent with further direction to submit the report to the respondent as well as the Protection Officer. The respondent-husband thereafter filed a petition for vacating the order of stay dated 23rd December, 2010 and vide order dated 9th March, 2011 the High Court vacated the order of stay and made it clear that appellant-wife can go and reside with her husband in his rental residence at Guduvancherry. As the order aforesaid was not complied with by the respondent-husband the appellant-wife filed Contempt Petition No. 958 of 2011 against the respondent-husband for wantonly disobeying the order dated 9th March, 2011 passed by the High Court.

5. The High Court closed the contempt petition vide order dated 21st July, 2011 with following observation:

"In view of the categorical submission made by the Ld. Counsel for the respondent as well as the statement made by the respondent herein by appearing before this court and stating that the respondent undertakes not to prevent the contempt petitioner from entering inside the premises at Door No. 80, Karpagambal Nagar, Nadivaram, Guduvancherry, Chennai and the contempt petitioner also agreed to occupy and stay in the above said premises from 01.08.2011, the contempt petition is hereby closed."

6. Thereafter the appellant made representation before Sub-Inspector of Police, Guduvancherry and stated that the respondent-husband has given false address and in order to comply with the court's order, the appellant went to the address and on enquiry came to know that the address was a bogus one. The appellant thereby submitted a complaint and requested the police to enquire from the respondent to ascertain the real facts so as to ensure that the court's order is executed in its letter and spirit.

7. When the matter was pending before the Police, the High Court decided the criminal miscellaneous case filed by the appellant and held that although the offending acts of the respondent could be construed as offences under other enactments it could not be construed as acts of domestic violence under the PWD Act, 2005 until the Act came into force. The High Court dismissed the revisional application.

8. From the bare perusal of the impugned judgment passed by the High Court, we find that the High Court framed the following question:

"4. The primary question that arises for consideration is whether acts committed prior to the coming into force of the Protection of Women from Domestic Violence Act, 2005 and which fall within the definition of the term 'Domestic Violence' as informed in the Act could form the basis of an action."

9. The High Court after taking into consideration the stand taken by the parties held as follows:

"5. This court would first concern itself with whether acts which now constitute domestic violence but committed prior to the coming into force of the Act would form a basis of an action thereunder. With due respect to the authorities above cited, this court would inform that the fundamental issue stands unaddressed. The Act came into force on 2005. It cannot be disputed that several wrongful actions which might have amounted to offences such as cruelty and demand for dowry cannot have taken the description of "Domestic violence" till such time the act came into force. In other words the offending acts could have been construed as offences under other enactments but could not have been construed as acts of 'Domestic Violence' until the act came into force. Therefore, what was not 'Domestic violence' as defined in the Act till the Act came into force could not have formed the basis of an action. Ignorance of law is no excuse but the application of this maxim on any date prior to the coming into force of the Act could only have imputed knowledge of offence as subsisted prior to coming into force of the Act. It is true that it is only violation of orders passed under the Act which are made punishable. But those very orders could be passed only in the face of acts of domestic violence. What constituted domestic violence was not known until the passage of the act

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and could not have formed the basis of a complaint of commission of 'Domestic violence'."

10. From the judgment passed by the Trial Court (XIII Metropolitan Magistrate, Egmore, Chennai dated 5th December, 2008) we find that the appellant filed petition against her husband Babu seeking relief under Sections 18, 19, 20 and 22 under the PWD Act, 2005. Sections 18, 19, 20 and 22 read as follows:

"18. Protection orders. The Magistrate may, after giving the aggrieved person and the respondent an opportunity of being heard and on being prima facie satisfied that domestic violence has taken place or is likely to take place, pass a protection order in favour of the aggrieved person and prohibit the respondent from-

- (a) committing any act of domestic violence;
- (b) aiding or abetting in the commission of acts of domestic violence;
- (c) entering the place of employment of the aggrieved person or, if the person aggrieved is a child, its school or any other place frequented by the aggrieved person;
- (d) attempting to communicate in any form, whatsoever, with the aggrieved person, including personal, oral or written or electronic or telephonic contact;
- (e) alienating any assets, operating bank lockers or bank accounts used or held or enjoyed by both the parties, jointly by the aggrieved person and the respondent or singly by the respondent, including her stridhan or any other property held either jointly by the parties or separately by them without the leave of the Magistrate;
- (f) causing violence to the dependants, other relatives or any person who give the aggrieved person assistance from domestic violence;
- (g) committing any other act as specified in the protection order.

19. Residence orders. (1) While disposing of an application under sub-section (1) of section 12, the Magistrate may, on being satisfied that domestic violence has taken place, pass a residence order -

- (a) restraining the respondent from dispossessing or in any other manner disturbing the possession of the aggrieved person from the shared household, whether or not the respondent has a legal or equitable interest in the shared household;
- (b) directing the respondent to remove himself from the shared household;

- (c) restraining the respondent or any of his relatives from entering any portion of the shared household in which the aggrieved person resides;
- (d) restraining the respondent from alienating or disposing off the shared household or encumbering the same;
- (e) restraining the respondent from renouncing his rights in the shared household except with the leave of the Magistrate; or
- (f) directing the respondent to secure same level of alternate accommodation for the aggrieved person as enjoyed by her in the shared household or to pay rent for the same, if the circumstances so require:

Provided that no order under clause (b) shall be passed against any person who is a woman.

(2) The Magistrate may impose any additional conditions or pass any other direction which he may deem reasonably necessary to protect or to provide for the safety of the aggrieved person or any child of such aggrieved person.

(3) The Magistrate may require from the respondent to execute a bond, with or without sureties, for preventing the commission of domestic violence.

(4) An order under sub-section (3) shall be deemed to be an order under Chapter VIII of the Code of Criminal Procedure, 1973 (2 of 1974) and shall be dealt with accordingly.

(5) While passing an order under sub-section (1), sub-section (2) or sub-section (3), the court may also pass an order directing the officer in charge of the nearest police station to give protection to the aggrieved person or to assist her or the person making an application on her behalf in the implementation of the order.

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(6) While making an order under sub-section (1), the Magistrate may impose on the respondent obligations relating to the discharge of rent and other payments, having regard to the financial needs and resources of the parties.

(7) The Magistrate may direct the officer in-charge of the police station in whose jurisdiction the Magistrate has been approached to assist in the implementation of the protection order.

(8) The Magistrate may direct the respondent to return to the possession of the aggrieved person her stridhan or any other property or valuable security to which she is entitled to.

20. Monetary reliefs. (1) While disposing of an application under sub-section (1) of section 12, the Magistrate may direct the respondent to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of the domestic violence and such relief may include, but not limited to,

- (a) the loss of earnings;
 - (b) the medical expenses;
 - (c) the loss caused due to the destruction, damage or removal of any property from the control of the aggrieved person; and
 - (d) the maintenance for the aggrieved person as well as her children, if any, including an order under or in addition to an order of maintenance under section 125 of the Code of Criminal Procedure, 1973(2 of 1974) or any other law for the time being in force.
- (2) The monetary relief granted under this section shall be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved person is accustomed.
- (3) The Magistrate shall have the power to order an appropriate lump sum payment or monthly payments of maintenance, as the nature and circumstances of the case may require.
- (4) The Magistrate shall send a copy of the order for monetary relief made under sub-section (1) to the parties to the application and to the in-charge of the police station within the local limits of whose jurisdiction the respondent resides.
- (5) The respondent shall pay the monetary relief granted to the aggrieved person within the period specified in the order under sub-section (1).

(6) Upon the failure on the part of the respondent to make payment in terms of the order under sub-section (1), the Magistrate may direct the employer or a debtor of the respondent, to directly pay to the aggrieved person or to deposit with the court a portion of the wages or salaries or debt due to or accrued to the credit of the respondent, which amount may be adjusted towards the monetary relief payable by the respondent.

22. Compensation orders. In addition to other reliefs as may be granted under this Act, the Magistrate may on an application being made by the aggrieved person, pass an order directing the respondent to pay compensation and damages for the injuries, including mental torture and emotional distress, caused by the acts of domestic violence committed by that respondent."

11. The Trial Court having noticed the provisions of PWD Act, 2005 and the fact that the appellant-wife was prevented by the respondent-husband to enter the matrimonial house even after the order passed by the Subordinate Judge, granted protection under Section 18 with further direction to the respondent-husband under Section 19 to allow the appellant-wife to enter in the shared household and not to disturb the possession of the appellant-wife and to pay maintenance of Rs.2,000/- per month to meet her medical expenses, food and other expenses. However, no compensation or damages was granted in favour of the appellant-wife.

Notices were issued on the respondent but in spite of service, no affidavit has been filed by the respondent denying the averments made in the petition.

12. Section 2 (g) of PWD Act, 2005 states that "domestic violence" has the same meaning as assigned to it in Section 3 of PWD Act, 2005. Section 3 is the definition of domestic violence. Clause (iv) of Section 3 relates

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to "economic abuse" which includes 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 as evident from clause (c) of Section 3(iv).

13. In the present case, in view of the fact that even after the order passed by the Subordinate Judge the respondent-husband has not allowed the appellant-wife to reside in the shared household matrimonial house, we hold that there is a continuance of domestic violence committed by the respondent-husband against the appellant-wife. In view of the such continued domestic violence, it is not necessary for the courts below to decide whether the domestic violence is committed prior to the coming into force of the Protection of Women from Domestic Violence Act, 2005 and whether such act falls within the definition of the term 'Domestic Violence' as defined under Section 3 of the PWD Act, 2005.

14. The other issue that whether the conduct of the parties even prior to the commencement of the PWD Act, 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 : (AIR 2012 SC 965). 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 PWD Act, 2005, the conduct of the parties even prior to the coming into force of the PWD Act, 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 PWD Act, 2005,"

15. We are of the view that the act of the respondent-husband squarely comes within the ambit of Section 3 of the PWD Act, 2005, which defines "domestic violence" in wide term. The High Court made an apparent error in holding that the conduct of the parties prior to the coming into force PWD Act, 2005 cannot be taken into consideration while passing an order. This is a case where the respondent-husband has not complied with the order and direction passed by the Trial Court and the Appellate Court. He also misleads the Court by giving wrong statement before the High Court in the contempt petition filed by the appellant-wife. The appellant-wife having being harassed since 2000 is entitled for protection orders and residence orders under Sections 18 and 19 of the PWD, Act, 2005 along with the maintenance as allowed by the Trial Court under Section 20 (d) of the PWD, Act, 2005. Apart from these reliefs, she is also entitled for compensation and damages for the injuries, including mental torture and emotional distress, caused by the acts of domestic violence committed by the respondent-husband. Therefore, in addition to the reliefs granted by the courts below, we are of the view that the appellant-wife should be compensated by the respondent-husband. Hence, the respondent is hereby directed to pay compensation and damages to the extent of Rs.5,00,000/- in favour of the appellant-wife.

16. The order passed by the High Court is set aside with a direction to the respondent-husband to comply with the orders and directions passed by the courts below with regard to residence and maintenance within

three months. The respondent-husband is further directed to pay a sum of Rs.5,00,000/- in favour of the appellant-wife within six months from the date of this order. The appeal is allowed with aforesaid observations and directions. However, there shall be no separate order as to costs.

Appeal Allowed.
