

AIR 2015 SUPREME COURT 2605**SUPREME COURT**

(From : 2010 (4) Air Bom R 497)

DIPAK MISRA , J. and PRAFULLA C. PANT, J.Criminal Appeal No. 1556 of 2010, **D/-6-5-2015****Shaliniv.Kishorand Ors.**

Protection of Women From Domestic Violence Act (43 of 2005),S.3- Domestic violence - Complaint made 15 years after couple has started living separately which was much before enforcement of Act - Not liable to be dismissed - Moreso when maternal uncle with whom wife was living is no more ready to allow her to stay in his house.

2010 (4) AIR Bom R 497, Reversed.**(Para14)****Cases Referred****Chronological Paras****AIR 2012 SC 965:** AIR 2012 SC (Cri) 685:**2012 AIR SCW 1515 (Foll.)****12****AIR 2014 SC 857:** AIR 2014 SC (Cri) 493:**2014 AIR SCW 380:2014 Cri LJ 1000 (Foll.)****13**

Siddhesh K. Ms. Bansuri Swaraj, Annirudh Sharma, Nirnimesh Dube, for Appellant; Dr. Monika Gusain, Manish Pitale, Wasi Haider, Shiv Ram Pandey, Chander Shekhar Ashri, for Respondent.

Judgement**1.Prafulla C. Pant, J. :-**This appeal

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is directed against judgment and order dated 30.3.2010, passed by the High Court of Judicature at Bombay, Nagpur Bench, in Criminal Writ Petition No. 37 of 2008 (Reported in 2010 (4) AIR Bom R 497) whereby said Court has allowed the writ petition, and quashed the Misc. Criminal Complaint Case No. 314 of 2007 filed under Sections 12, 19 and 20 of the Protection of Women from Domestic Violence Act, 2005 (for short "the Act of 2005") pending in the Court of Judicial Magistrate, First Class, Court No. 5, Amravati.

2.Heard learned counsel for the parties and perused the papers on record.

3.Brief facts of the case are that the appellant got married to respondent No. 1 on 8.5.1990. From the wedlock, respondent No. 3 Shantanu was born on 24.2.1991. It is pleaded by the appellant that her husband (respondent No. 1) drove her away from her matrimonial house in 1992, whereafter she started living in her maternal uncle's house at Shamnagar, Amravati. She filed application for maintenance in the year 1994, and in said proceedings Rs.1800/- p.m. were directed to be paid by respondent No. 1 to her, for herself and her minor son. It appears that respondent No. 1 filed a petition HMP No. 48 of 2008 before Civil Judge, Senior Division, Amravati, seeking divorce against the appellant, on the ground of mental cruelty. Said suit was decreed by the trial court. However, the decree appears to have been stayed by the appellate court, on the appeal filed by the wife (appellant). After Protection of Women from Domestic Violence Act, 2005 came into force, the appellant (wife) filed complaint under said Act before the Judicial Magistrate, First Class, Amravati, in the year 2007. Said complaint was registered as Misc. Criminal Application No. 314 of 2007 under Section 12 read with Sections 19 and 20 of the Act of 2005. At the time of filing of said application, the son of the parties was minor. Following was the prayer made in said application:

"It is, therefore, humbly prayed that this Hon'ble Court may be pleased to grant interim order, directing the non-applicant to pay to the applicants/aggrieved persons a sum of Rs.7000/- per month to each of them, by way of their maintenance from the date of this application, till the decision of the main application, further directing the non-applicant to allow the applicants to reside in the house, situated at Chimote Layout, Near Dastur Nagar, Amravati, or in alternative, to secure the alternate accommodation for the applicants at Amravati, and pay the rent for the same at his own cost, and grant any other just and proper relief to the applicants which this Hon'ble Court may deem necessary under the circumstances, in the interest of justice."

4.The above-mentioned application filed by the wife of respondent No. 1 was contested by him before the Magistrate, and reply was submitted challenging the maintainability of the proceedings. A separate

application for dismissal of the proceedings was filed by him on 20.10.2007. The Judicial Magistrate, vide order dated 31.10.2007, after hearing the parties, found no substance in said application moved by the husband, and rejected the same. Thereafter, the application of the wife was heard on merits, and following order was passed by the Judicial Magistrate, First Class, Court No. 5, Amiravati, on 31.12.2007 with the following interim directions, in the concluding paragraph of the order:

- "1. The application is partly allowed.
2. The non-applicant do pay Rs.2,000/- per month to applicant No. 1 and Rs. 1000/- p.m. to applicant No. 2 towards their interim maintenance till disposal of main application. The earlier maintenance of Rs. 18,000/- p.m. which the applicants are getting be adjusted to the said maintenance.
3. The non-applicant would also provide shared house to the applicants till disposal of the main application. In case of his failure to provide the same, the non-applicant

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is directed to pay Rs.1200/- p.m. towards residence allowance to the applicants....."

5.Aggrieved by the order dated 31.12.2007, passed by the Judicial Magistrate, First Class, respondent No. 1 (husband) filed Criminal Appeal No. 138 of 2007. Said appeal, after hearing the parties, was dismissed by the Ad hoc Additional Sessions Judge-I, Amravati, vide order dated 11.12.2007.

6.Thereafter respondent No. 1 challenged the proceedings, initiated by his wife under the Act of 2005, in Criminal Writ Petition No. 37 of 2008 before the High Court, and the same was allowed vide impugned order, challenged before us, through special leave.

7.Learned counsel for the appellant argued before us that -

(a) since act of respondent No. 1 depriving her from living in matrimonial house was continuing act, as such, the High Court has erred in law in holding that the complaint filed under the Act of 2005 was not maintainable;

(b) the appellant is victim of continuous 'economic abuse' on the part of respondent No. 1, as such, he cannot escape the liability under the Act of 2005; and

(c) the High Court was not justified in reversing the concurrent conclusions recorded by the two courts below on the factual aspects of the matter.

8.On the other hand, on behalf of the respondents it is argued that the appellant has attempted to raise the issue of desertion after a period of fifteen years, and the parties were admittedly not living together for said long period. In this connection, it is further argued that there is no question of shared household in a case where parties were living separately for a long period.

9.Before further discussion, we think it just and proper to mention the relevant

provisions of law applicable to the case. The definitions of expressions "aggrieved person", "domestic relationship" and "shared household" are reproduced below from Section 2(a), (f) and (s) of the Act of 2005:

"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;

(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."

10.Expression "domestic violence" is defined in Section 3 of the Act of 2005, relevant part of 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)

(c)

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(d).....

Explanation I.-For the purposes of this section,-

(i)

(ii)

(iii)

(a).....

(b).....

(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."

11.It is not disputed that the appellant and respondent No. 1 got married to each other on 8.5.1990. It is also not disputed that a son (respondent No. 3) was born from the wedlock on 24.2.1991. As such, domestic relationship between the two (appellant and respondent No. 1) is clearly established on the record.

12.As to the maintainability of the petition on the ground that the couple was living separately from the date much before the Protection of Women from Domestic Violence Act, 2005 came into force, this Court in V. D. Bhanot v. Savita Bhanot¹, has observed and held as under:

1. (2012) 3 SCC 183 : (AIR 2012 SC 965).

"13. On facts it may be noticed that the couple has no children. Incidentally, the respondent wife is at present residing with her old parents, after she had to vacate the matrimonial home, which she had shared with the petitioner at Mathura, being his official residence, while in service. After more than 31 years of marriage, the respondent wife having no children, is faced with the prospect of living alone at the advanced age of 63 years, without any proper shelter or protection and without any means of sustenance except for a sum of Rs. 6000 which the petitioner was directed by the Magistrate by order dated 8-12-2006, to give to the respondent each month. By a subsequent order dated 17-2-2007, the Magistrate also passed a protection-cum-residence order under Sections 18 and 19 of the PWD Act, protecting the rights of the respondent wife to reside in her matrimonial home in Mathura. Thereafter, on the petitioner's retirement from service, the respondent was compelled to vacate the accommodation in Mathura and a direction was given by the Magistrate to the petitioner to let the respondent live on the first floor of House No. D-279, Nirman Vihar, New Delhi, and if that was not possible, to provide a sum of Rs 10,000 per month to the respondent towards rental charges for acquiring an accommodation of her choice.

14. In our view, the situation comes squarely within the ambit of Section 3

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of the PWD Act, 2005, which defines "domestic violence" in wide terms, and, accordingly, no interference is called for with the impugned order of the High Court. However, considering the fact that the couple is childless and the respondent has herself expressed apprehension of her safety if she were to live alone in a rented accommodation, we are of the view that keeping in mind the object of the Act to provide effective protection of the rights of women guaranteed under the Constitution, who are victims of violence of any kind occurring within the family, the order of the High Court requires to be modified."

13.In Saraswathy v. Babu², in the similar circumstances where the wife was driven out of the matrimonial home about fourteen years before, complaint was
2. (2014) 3 scc 712 : (AIR 2014 SC 857).

filed under the Protection of Women from Domestic Violence Act, 2005, and this Court has laid down the law on the point as under:

"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. 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..... The appellant wife having been harassed since 2000 is entitled for protection order and residence order under Sections 18 and 19 of the DVA, 2005 along with the maintenance as allowed by the trial court under Section 20(1)(d) of the DVA, 2005....."

14.In view of the above position of law and considering that the wife has clearly stated that her maternal uncle is no more ready to allow her to stay in his house, we are of the opinion that the High Court has erred in law in quashing the proceedings filed by the wife under the Act of 2005.

15.Therefore, this appeal deserves to be allowed, and is, accordingly allowed. The impugned judgment and order dated 30.3.2010 passed by the High Court in Criminal Writ Petition No. 37 of 2008, is hereby set aside.

Appeal Allowed.
