IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(135)

CRM-M-8352-2023
Reserved on: - 22.02.2023
Date of Pronouncement: - 03.03.2023

Harvinder Kaur …Petitioner

Versus

State of Haryana and others …Respondents

CORAM: HON'BLE MR. JUSTICE ALOK JAIN

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Present: Mr. R.S. Mamli, Advocate for the petitioner.

ALOK JAIN, J. (Oral)

The present petition raises challenge to the order dated 31.01.2023 passed by the learned Judicial Magistrate First Class, Gurugram, in EXE-21-2021, whereby the learned Court below after giving ample opportunity to the petitioner and her son, was constrained and passed the following order:

"EXE-21-2021 Anju Bindra & Ors vs. Aman Deep & Ors.

Present: Sh. Rao Bhagat Singh, counsel for DH.

Sh. Rakesh Kumar Saini, counsel JDs no. 1 to 3.

Today the case was fixed for making the payments of arrears of maintenance, rupees more than 10 Lakhs are pending, the son of petitioner is suffering from Autism and approximately expenses of Rs. 26,000/- are being incurred on his treatment every month and despite making a specific statement by respondent no. 1, husband in the court on 17th October 2022, he failed to pay even a single penny. The respondent had also even undertook to take petitioner with him in the shared household. But, today the petitioner has

moved an application for permitting her to reside in the shared household which is opposed by the counsel appearing on behalf of respondents. She submitted that this house is not shared household and she is using filthy language and the respondent no. 1 has no means to pay maintenance and expenses of the child.

Thus, after having heard the arguments advanced by counsel for petitioner and counsel for respondents and in view of the fact that respondent no. 1 had already suffered a statement on 17.10.2022 in the Court for taking the petitioner with him for keeping her happily and now the petitioner is stating that he is not permitting her in the matrimonial/shared household which is corroborated by objection made by counsel for petitioner and the petitioner present in the Court submitted the respondent no. 1 is residing in live in relationship with this very counsel appearing on his behalf today in the Court. Therefore, in view of the fact that a huge amount of maintenance of rupees more than 10 Lakhs is pending and the respondent no. 1 is intentionally has failed to appear in the Court and failed to make even a single penny despite fact that only child of petitioner and respondent no. 1 is suffering from a serious aliment known as Autism which incurs Rs. 26,000/- per month. Therefore, warrant of arrest be issued against respondent no. 1. SHO concerned shall ensure the execution of warrant against this respondent and in view of the statement suffered by respondent no. 1 in the court for taking the petitioner whim him, the petitioner is held entitled to reside in the house. However, to rule out the possibility of the allegations and counter allegations of assault, the respondent no. 1 is directed to install CCTV camera in the shared household. In case, he does not install the CCTV camera, the petitioner is at liberty to

> *install the same and in case still the respondent no. 1 resists the petitioner to reside in the matrimonial house, SHO concerned is directed to record an FIR against FIR respondent no. 1 on receipt of proper evidence regarding resistance either in the form of videography or affidavit otherwise to ensure the compliance of order of this Court. Now to come upon 22.02.2023 for appearance and for payment of maintenance and for compliance report regarding residence order."*

Learned counsel for the petitioner has vehemently argued that the said order is illegal and not sustainable in the eyes of law on the grounds that the petitioner could not have been made a party in the proceedings under the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as "**D.V.Act**") as the same is in violation of provisions of Section 2(q). Learned counsel submits that the house belongs to the petitioner, who is the mother of the respondent no. 4 and is not liable to discharge the liability of her son and lastly submits that the said house was purchased by the petitioner on her own and from her own resources.

The brief facts of the case as narrated by the learned counsel for the petitioner are that the respondent no. 2 got married to respondent no. 4 (son of petitioner) on 16.10.2016 and a son i.e. respondent no. 3 was born out of the wedlock. It is pertinent to mention here that the said child (respondent No. 3) is a special child who needs extra medical attention and care.

It is further submitted that due to the matrimonial discord, respondent nos. 2 & 3 instituted a complaint under various provisions of

law and also under Section 23 of the D.V. Act, for claim and relief of interim maintenance. After detailed discussion and pendency of more than two years of the said application, an order dated 17.08.2021 came to be passed whereby the learned Court below after recording the special circumstances and keeping in view that the ends of justice would be met, directed the petitioner and respondent no. 4 to pay interim monthly maintenance of Rs. 20,000/- for medical treatment, education and other special expenses to respondent no. 3 and a sum of Rs. 7,000/- was directed to be paid towards the rental amount for suitable alternate accommodation.

The petitioner and her son did not adhere to the above said order, which led to the filing of the Execution Petition. During the said proceedings, it has been duly recorded in the order dated 19.11.2022 that the present petitioner and her son had categorically undertaken to take the respondent no 2 & 3 to the shared household and it was on that undertaking only that respondent no. 4 was released from the custody. It was also recorded that not even a single penny had been paid by the respondent no. 4 to respondent no 2 & 3.

Subsequent thereto, on account of the non-compliance of the orders dated 17.08.2021 and 19.11.2022, the learned Court below, after granting ample opportunity, was constrained to pass the impugned order dated 31.01.2023.

After hearing the learned counsel for the petitioner at length and in the backdrop of the above factual matrix, the first contention raised by the learned counsel for the petitioner that the

complaint at the first instance was not maintainable against the petitioner is considered herein below. For the ready reference, the provisions of Section 2(a), (f), (q) & (s) of the D.V. Act are reproduced herein below:

> *"(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;*
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> *(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;*
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> *(q) "respondent" means any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act: Provided that an aggrieved wife or female living in a relationship in the nature of a marriage may also file a complaint against a relative of the husband or the male partner.*
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> *(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."

Before deciding the issue of applicability of Section 2(q), it is important to understand the objective of the present enactment. The present Act was enacted keeping in view the transformation in the society and liberalization in the values of human relationship. The objective of the Act is to protect the wife or a female live-in partner from the violence at the hands of the husband or a male live-in partner or their relatives. The law also extends to protect the women, who are sisters, widows and mothers. In fact, it has been seen that the women are victim of domestic violence since times immemorial. However, despite increase in the educational qualifications and understanding of the human relationship, still women in this country are subjected to domestic violence irrespective of their age, caste or religion. One of the most important features of the present enactment is the right of the victimized women to reside in the matrimonial or shared household, whether or not she or her husband/ male live-in partner has any right, title or interest in the property. The said right is only qua residency and not title. The purpose of this protection is apparently only to safeguard the life and liberty of the victim from domestic violence. In nut shell, the objectives of the enactment are to identify and hold that every act of domestic violence is unlawful and the victims of such violence should be given justice in a timely, cost-efficient and a convenient manner. At the same time, the enactment also provides for punishment to the violators, who are held accountable for said violation.

Taking the said objective further, the definitions under Section 2(a), (f), (q) & (s) are to be read and understood with Section 19 of the D.V. Act whereby the Magistrate can pass a residence order on being satisfied that the domestic violence has taken place. However, the said order will become redundant and toothless unless the relatives which includes female relatives of the respondent are also bound by it. The Hon'ble Supreme Court of India in the judgment passed in ***2016(4) R.C.R.(Civil) 750 titled as "Hiral P. Harsora and ors. v. Kusum Narottamdas Harsora and ors."*** has clearly held as under: -

> *"21. When we come to Section 19 and residence orders that can be passed by the Magistrate, Section 19(1)(c) makes it clear that the Magistrate may pass a residence order, on being satisfied that domestic violence has taken place, and may restrain the respondent or any of his relatives from entering any portion of the shared household in which the aggrieved person resides. This again is a pointer to the fact that a residence order will be toothless unless the relatives, which include female relatives of the respondent, are also bound by it. And we have seen from the definition of "respondent" that this can only be the case when a wife or a common law wife is an aggrieved person, and not if any other woman belonging to a family is an aggrieved person. Therefore, in the case of a wife or a common law wife complaining of domestic violence, the husband's relatives including mother-in-law and sister-in-law can be arrayed as respondents and effective orders passed against them. But in the case of a mother-in-law or sister-in-law who is an aggrieved person, the respondent can only be an "adult male person" and since his relatives are not within the main part of the*

definition of respondent in Section 2(q), residence orders passed by the Magistrate under Section 19(1) (c) against female relatives of such person would be unenforceable as they cannot be made parties to petitions under the Act."

It is pertinent to mention here that the Hon'ble Supreme Court of India in the judgment ***Hiral P. Harsora (supra)*** has struck down the words "adult male" in Section 2(q) and the relevant extracts read as under: -

"23. When we come to Section 26 of the Act, the sweep of the Act is such that all the innovative reliefs available under Sections 18 to 22 may also be sought in any legal proceeding before a civil court, family court or criminal court affecting the aggrieved person and the respondent. The proceeding in the civil court, family court or criminal court may well include female members of a family, and reliefs sought in those legal proceedings would not be restricted by the definition of "respondent" in the 2005 Act. Thus, an invidious discrimination will result, depending upon whether the aggrieved person chooses to institute proceedings under the 2005 Act or chooses to add to the reliefs available in either a pending proceeding or a later proceeding in a civil court, family court or criminal court. It is clear that there is no intelligible differentia between a proceeding initiated under the 2005 Act and proceeding initiated in other fora under other Acts, in which the self-same reliefs grantable under this Act, which are restricted to an adult male person, are grantable by the other fora also against female members of a family. This anomaly again makes it clear that the definition of "respondent" in Section 2(q) is not based on any intelligible differentia having any rational relation to the object sought to be achieved by the 2005 Act. The restriction of such person to

being an adult male alone is obviously not a differentia which would be in sync with the object sought to be achieved under the 2005 Act, but would in fact be contrary to it.

24. Also, the expression "adult" would have the same effect of stultifying orders that can be passed under the aforesaid sections. It is not difficult to conceive of a non-adult 16 or 17 year old member of a household who can aid or abet the commission of acts of domestic violence, or who can evict or help in evicting or excluding from a shared household an aggrieved person. Also, a residence order which may be passed under Section 19(1)(c) can get stultified if a 16 or 17 year old relative enters the portion of the shared household in which the aggrieved person resides after a restraint order is passed against the respondent and any of his adult relatives. Examples can be multiplied, all of which would only lead to the conclusion that even the expression "adult" in the main part is Section 2(q) is restrictive of the object sought to be achieved by the kinds of orders that can be passed under the Act and must also be, therefore, struck down, as this word contains the same discriminatory vice that is found with its companion expression "male".

34. In ***Subramanian Swamy v. CBI, 2014(2) RCR (Criminal) 822 : 2014(3) Recent Apex Judgments (R.A.J.) 269 : (2014) 8 SCC 682****, a Constitution Bench of this Court struck down Section 6A of the Delhi Police Special Establishment Act on the ground that it made an invidious distinction between employees of the Central Government of the level of Joint Secretary and above as against other Government servants. This Court, after discussing various judgments dealing with the principle of discrimination (when a classification does not disclose an intelligible*

differentia in relation to the object sought to be achieved by the Act) from para 38 onwards, ultimately held that the aforesaid classification defeats the purpose of finding prima facie truth in the allegations of graft and corruption against public servants generally, which is the object for which the Prevention of Corruption Act, 1988 was enacted.

In paras 59 and 60 this Court held as follows:

> *"It seems to us that classification which is made in Section 6-A on the basis of status in Government service is not permissible under Article 14 as it defeats the purpose of finding prima facie truth into the allegations of graft, which amount to an offence under the PC Act, 1988. Can there be sound differentiation between corrupt public servants based on their status? Surely not, because irrespective of their status or position, corrupt public servants are corrupters of public power. The corrupt public servants, whether high or low, are birds of the same feather and must be confronted with the process of investigation and inquiry equally. Based on the position or status in service, no distinction can be made between public servants against whom there are allegations amounting to an offence under the PC Act, 1988.*
>
> *Corruption is an enemy of the nation and tracking down corrupt public servants and punishing such persons is a necessary mandate of the PC Act, 1988. It is difficult to justify the classification which has been made in Section 6-A because the goal of law in the PC Act, 1988 is to meet corruption cases with a very strong hand and all public servants are warned through such a legislative measure that*

corrupt public servants have to face very serious consequences. In the words of Mathew, J. in ***Shri Ambica Mills Ltd. [State of Gujarat v. Shri Ambica Mills Ltd., (1974) 4 SCC 656 : 1974 SCC (L&S) 381 : (1974) 3 SCR 760] : (SCC p. 675, paras 53-54)***

"53. The equal protection of the laws is a pledge of the protection of equal laws. But laws may classify. ...

54. A reasonable classification is one which includes all who are similarly situated and none who are not."

Mathew, J., while explaining the meaning of the words, "similarly situated" stated that we must look beyond the classification to the purpose of the law. The purpose of a law may be either the elimination of a public mischief or the achievement of some positive public good. The classification made in Section 6-A neither eliminates public mischief nor achieves some positive public good. On the other hand, it advances public mischief and protects the crimedoer. The provision thwarts an independent, unhampered, unbiased, efficient and fearless inquiry/investigation to track down the corrupt public servants." [paras 59 and 60]

36. A conspectus of these judgments also leads to the result that the microscopic difference between male and female, adult and non adult, regard being had to the object sought to be achieved by the 2005 Act, is neither real or substantial nor does it have any rational relation to the object of the legislation. In fact, as per the principle settled in the Subramanian Swamy judgment, the words "adult male person" are contrary to the object of affording protection to women who have suffered from domestic violence "of any kind". We, therefore, strike down the words "adult male" before the word "person" in Section 2 (q), as these words discriminate between persons similarly

situate, and far from being in tune with, are contrary to the object sought to be achieved by the 2005 Act.

43. Having struck down a portion of Section 2(q) on the ground that it is violative of Article 14 of the Constitution of India, we do not think it is necessary to go into the case law cited by both sides on literal versus purposive construction, construction of penal statutes, and the correct construction of a proviso to a Section. None of this becomes necessary in view of our finding above.

46. We, therefore, set aside the impugned judgment of the Bombay High Court and declare that the words "adult male" in Section 2(q) of the 2005 Act will stand deleted since these words do not square with Article 14 of the Constitution of India. Consequently, the proviso to Section 2(q), being rendered otiose, also stands deleted. We may only add that the impugned judgment has ultimately held, in paragraph 27, that the two complaints of 2010, in which the three female respondents were discharged finally, were purported to be revived, despite there being no prayer in Writ Petition No.300/2013 for the same. When this was pointed out, Ms. Meenakshi Arora very fairly stated that she would not be pursuing those complaints, and would be content to have a declaration from this Court as to the constitutional validity of Section 2(q) of the 2005 Act. We, therefore, record the statement of the learned counsel, in which case it becomes clear that nothing survives in the aforesaid complaints of October, 2010. With this additional observation, this appeal stands disposed of."

In fact, the victim is also held entitled to monetary relief against her husband and female relatives which includes the mother-in-law as held in para 22, which read as under: -

> *"22. When we come to Section 20, it is clear that a Magistrate may direct the respondent to pay monetary relief to the aggrieved person, of various kinds, mentioned in the Section. If the respondent is only to be an "adult male person", and the money payable has to be as a result of domestic violence, compensation due from a daughter-in-law to a mother-in-law for domestic violence inflicted would not be available, whereas in a converse case, the daughter-in-law, being a wife, would be covered by the proviso to Section 2(q) and would consequently be entitled to monetary relief against her husband and his female relatives, which includes the mother-in-law."*

As sequel to the above discussion and in light of the above judicial pronouncement, the contention raised by the counsel that by virtue of Section 2(q) of the D.V. Act, the complaint was not maintainable against the petitioner is rejected and declined. As regards his other contentions that the said property is owned by the petitioner out of her own income is also negated as from the facts it has never been disputed that the said property was not a shared household, rather the petitioner had herself given an undertaking as recorded in the order dated 19.11.2022 whereby the petitioner agreed to take the respondent-wife to the shared household. More so, it is not a case where the husband & wife are living separately from the parents of the boy.

In the light of the above, the present petition deserves to be dismissed. However, before the same is dismissed, it is pertinent to record that petitioner initially sought time from the Court to amicably resolve the matter and subsequently sought time to seek instructions qua payment of the outstanding arrears of maintenance but subsequently

resiled from the same and was not ready to settle the matter. Thus, it can be safely recorded that the act and conduct of the petitioner is not bona fide and rather mala fide to the extent that every effort has been made to defeat the compliance of the order passed by the Court of competent jurisdiction.

Accordingly, the present petition being devoid of any merits, stands dismissed.

(ALOK JAIN)
JUDGE

03rd March, 2023
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Whether speaking/reasoned:- Yes/No
Whether Reportable:- Yes/No