

MANU/RH/0338/2011

IN THE HIGH COURT OF RAJASTHAN (JAIPUR BENCH)

S.B. Cr. Revision Petition No. 449/2010

Decided On: 05.05.2011

Appellants: **Gajendra Singh**

Vs.

Respondent: **Smt. Minakshi Yadav and Anr.**

Hon'ble Judges:

R.S. Chauhan, J.

Subject: Criminal

Subject: Family

Catch Words

Mentioned IN

Acts/Rules/Orders:

Protection of Women from Domestic Violence Act, 2005 - Sections 2, 3, 12, 23 and 29;
General Clauses Act - Section 5; Indian Penal Code - Sections 349, 350, 351, 406 and
498A; Criminal Procedure Code (CrPC) - Section 125

Cases Referred:

Hema @ Hemlata and Anr. v. Jitendra and Anr. 2009 (1) Cri.L.R. (Raj.) 291; Shyam Lal
and Ors. v. Kanta Bai (2010) 2 Crimes 862

Disposition:

Petition dismissed

JUDGMENT

R.S. Chauhan, J.

1. Aggrieved by the judgment dated 15-1-2010, passed by Additional Chief Judicial Magistrate No. 3, Jaipur City, Jaipur, and by the judgment dated 12-3-2010, passed by Additional Sessions Judge (Fast Track) No. 5, Jaipur City, Jaipur, the Petitioner has approached this Court. By the former judgment, the learned Magistrate had dismissed the Petitioner's application for rejecting the complaint filed by 2 Respondent wife under the Protection of Women from Domestic Violence Act, 2005 ('the Act' for short); by the latter judgment, the learned Judge had upheld the judgment dated 15-1-2010.

2. This case has a convoluted history, which is as under:

The Petitioner, Gajendra Singh, and the Respondent, Minakshi Yadav, were married on 19-2-2002 according to the Hindu customs and rites. Out of the wedlock a son, Jatin, was born on 21-10-2004. According to Minakshi Yadav, ever since her marriage, the Petitioner and his family members constantly demanded a Maruti car and Rs. one lac as dowry. Since her parents could not afford to fulfill the said demand, she was subjected to mental and physical cruelty. Eventually on 3-5-2004, the Petitioner left Minakshi at her parental house. According to her, even after the birth of a son, neither the Petitioner, nor his any family member, bothered to care about her. On 8-2-2006, she lodged a FIR against the Petitioner and his family members for offences under Sections 498-A, and 406 IPC. In order to harass and humiliate her, in order to force her to withdraw the said case, according to Minakshi Yadav, the Petitioner and his family members would threaten her over the telephone, and would stop her way, on the way to the court, and would threaten her with regard to the safety of her child. Moreover, unable to look after herself, Minakshi had also filed an application under Section 125 Code of Criminal Procedure before the Family Court. This had further prompted the Petitioner's family members to pressurise the Respondent. Eventually in 2007, she filed an application under Section 12 of the Act, along with an application under Section 23 of the Act for interim relief.

The Petitioner filed a detailed reply disputing the averments made in the application. However, vide judgment dated 5-4-2007, the learned Additional Chief Judicial Magistrate No. 4 Jaipur City, Jaipur passed an interim order and directed the Petitioner to pay a maintenance of Rs. 1500/- to Minakshi, and Rs. 1000/- to their son, Jatin, along with Rs. 500/- as rental amount for alternative residential place. Since the Petitioner was aggrieved by the said judgment, he filed an appeal under Section 29 of the Act. However, vide judgment dated 30-4-2007, the learned Additional Sessions Judge No. 4, Jaipur City, Jaipur dismissed the appeal.

Aggrieved by the judgment dated 30-4-2007, the Petitioner filed a revision petition before this Court. The Petitioner raised the issue that since the acts complained of relate to the

period 2002 to 2004, the application under Section 12 of the Act was not maintainable, as the Act itself came into force on 26-10-2006. According to the Petitioner, the Act could not be given a retrospective effect. However, vide judgment dated 18-7-2008, this Court also dismissed the revision petition.

On 7-1-2009, this Court pronounced its judgment in the case of Hema @ Hemlata and Anr. v. Jitendra and Anr. 2009 (1) Cr.L.R. (Raj.) 291, wherein this Court held that the Act was not retrospective in nature.

Relying on the said judgment, the Petitioner filed an application before the learned Magistrate and prayed that the complaint filed by Minakshi should be dismissed. However, vide judgment dated 15-1-2010, the learned Magistrate dismissed the said application. Subsequently the Petitioner again filed an appeal before the learned Judge. However, vide judgment dated 12-3-2010, the learned Judge dismissed the appeal. Hence, this petition before this Court.

3. Mr. Rahul Sharma, the learned Counsel for the Petitioner, has vehemently contended that Section 5 of the General Clauses Act clearly states that a Central Act comes into operation on the date on which it receives the assent of the President of India. The Act received the assent on 26-10-2006; therefore, the Act is prospective in nature, and cannot be given a retrospective effect. He has further contended that the acts of domestic violence complained of by the Respondent relate to the period 2002 to 2004. For, admittedly Minakshi has been staying away from the Petitioner ever since 2004. Hence, no act of domestic violence was committed after 2004. In such a scenario, the application under Section 12 of the Act was not maintainable. Relying on the judgment of Hema @ Hemlata and Anr. (supra), the learned Counsel has asserted that the Act could not be given a retrospective effect. He has further relied on the case of Shyam Lal and Ors. v. Kanta Bai (2010) 2 Crimes 862, a case decided by Hon'ble Madhya Pradesh High Court, wherein it was held that the Act could not be given a retrospective effect.

4. On the other hand, Mr. G.C. Gupta, the learned Counsel for the Respondent, has contended that even on an earlier occasion, in the earlier revision petition filed by the Petitioner, the Petitioner had raised the issue about retrospective application of the Act. The said revision petition was dismissed by this Court on 18-7-2008. Therefore, the same issue cannot be re-agitated now. Secondly, it is not a case where the Act is being applied retrospectively. For according to the Respondent, she was abandoned by the Petitioner on 3-5-2004, and she has been living with her parents ever since then. She gave birth to Jatin

on 21-10-2004, and the child is living with her. From 2004 till present, the Petitioner was legally bound to maintain both his wife and his child. Yet, he had failed to do so. Thus, she has been subjected to "economic abuse" by the Petitioner from 26-10-2006 till present. Moreover, ever since she has filed criminal case against the Petitioner, and the case for maintenance under Section 125 Code of Civil Procedure, she is being threatened both over the phone, and on her way to the court. Thus, she has been subjected to "verbal and emotional abuse", as defined under Section 3 of the Act. Since the Respondent has been subjected to verbal and emotional abuse, and economic abuse, even after 2006, the application under the Act is maintainable. Learned Counsel has distinguished the cases of Hema @ Hemlata (supra) and Shyam Lal (supra) on the ground that factual matrix of these two cases are different. In the case of Hema @ Hemlata (supra), the parties were divorced on 3-9-2003. Thus, question of commission of domestic violence did not even arise after coming into force of the Act. Therefore, when Hema had complained that she has been subjected to domestic violence during subsistency of her marriage, i.e. prior to 3-9-2003, this Court had held that the Act could not be given a retrospective effect. However, in the present case the parties continue to be husband and wife, as the marriage is still subsisting. Moreover, the acts of domestic violence have been committed by the Petitioner and his family members even after coming into force of the Act. Lastly, the acts complained of namely "verbal and emotional abuse", and "economic abuse" are continuous civil wrongs. Thus, the Act is being applied prospectively and not retrospectively.

Learned Public Prosecutor has echoed the arguments raised by Mr. Gupta.

5. Heard learned Counsel for the parties, perused the impugned judgments, and considered the case law cited at the Bar.

6. A bare perusal of the facts clearly reveal that the Respondent was abandoned by her husband on 3-5-2004; Jatin was born on 21-10-2004. Both she and her child are staying with her parents. According to her, ever since she has filed the criminal case for the offences under Sections 498-A and 406 IPC on 8-2-2006, and ever since she has filed the application under Section 125 Code of civil Procedure, repeatedly she has been threatened over the phone. According to her, when she goes to attend the court, she has been threatened by the Petitioner and his family members; she has been further threatened about the safety of her child.

7. Section 2 (f) of the Act defines the words "domestic relationship" as under:

"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.

Section 2 (s) of the Act defines the words "shared household" as under:

"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.

Section 3 of the Act defines the words "domestic violence" as under:

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) harasses, harms, injures or endanger the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or

(c) has the effect of threatening the aggrieved person or any person related to her by any conduct 10 mentioned in Clause (a) or Clause (b); or

(d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person.

Explanation. I for the purpose of this section-

(i) "physical abuse" means any act of conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force.

(ii) "sexual abuse" includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of women;

(iii) "verbal and emotional abuse" includes-

(a) insults, ridicule, humiliation, name calling and insults or ridicule specially with regard to not having a child or a male child; and

(b) repeated threats to cause physical pain to any person in whom the aggrieved person is interested.

(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 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 of 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.

8. Even the term "physical abuse" is not limited only to assault, but also include criminal intimidation and criminal force. "Criminal Intimidation" is defined in Section 349 IPC as under:

A person is said to use force to another if he causes motion, change of motion, or cessation of motion to that other, or if he causes to any substance such motion, or change of motion,

or cessation of motion as brings that substance into contact with any part of that other's body, or with anything which that other is wearing or carrying, or with anything so situated that such contact affects that other's sense of feeling; Provided that the person causing the motion, or change of motion, or cessation of motion, causes that motion, change of motion, or cessation of motion in one of the three ways hereinafter described.

First: By his own bodily power.

Secondly: By disposing any substance in such a manner that the motion or change or cessation of motion takes place without any further act on his part, or on the part of any other person.

Thirdly: By inducing any animal to move, to change its motion, or to cease to move.

"Criminal Force" is defined in Section 350 IPC as under:

Whoever intentionally uses force to any person, without that person's consent, in order to the committing of any offence, or intending by the use of such force to cause, or knowing it to be likely that by the use of such force he will cause injury, fear or annoyance to the person to whom the force is used, is said to use criminal force to that other.

"Assault" is defined in Section 351 IPC as under:

Whoever makes any gesture, or any preparation intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault.

Therefore, neither "assault", nor "criminal force" require a physical attack on the body of aggrieved person.

9. The Act is a beneficial piece of legislation, which is an outcome of the Vienna Accord of 1994 and the Beijing Declaration and the Platform for Action (1995). It is also a result of United Nations Committee on Convention on Elimination of All Forms of Discrimination Against Women (CEDAW). Undoubtedly domestic violence is being committed in India on an epidemic scale. Although the criminal law deals with domestic violence in the form of Section 498-A IPC, it was felt that there is no remedy under the civil law. Therefore, in order to get rid of the mischief of domestic violence, the Parliament, in its wisdom, enacted the Act, which came into force on 26 October, 2006. Undoubtedly the Act is meant to protect the women from domestic violence committed against them by the husband and his

family members. The Act has recognised the fact that domestic violence is limited not only to physical and mental cruelty, but can also extend to verbal and emotional abuse, and even to economic abuse. The Act has recognised the fact that mental cruelty can take the form of verbal and emotional abuse, such an abuse would include threat to causing physical abuse to any person in whom the aggrieved person is 14 interested. Moreover, the Act has recognised that aggrieved person has a right to economic resources of the husband and his family members, has a right to "stridhan", and has a right to be maintained. In case her economic rights are violated by the husband or his family members, then according to Section 3 of the Act, domestic violence is committed. Since the Act is a social beneficial piece of legislation, Section 3 of the Act must be given a liberal interpretation.

10. Learned Counsel for the Petitioner is highly misplaced in arguing that the incident alleged by the Respondent are only for the period of 2002 to 2004. As mentioned above, according to Respondent, she has been threatened by the Petitioner and his family members even after October, 2006. Moreover, she has been denied her stridhan, she has been denied maintenance, she had been denied access to shared household even after October 26, 2006. Hence, civil wrongs are continuing even after the date when the Act has come into force. Therefore the question of retrospective application of the Act does not arise in the present case. After all as long as the civil wrongs are continued to be committed after 2006, the Act will control such acts of domestic violence.

11. The case of Hema @ Hemlata (supra) does not come to the rescue of the Petitioner. The said case is distinguishable on factual matrix. In the said case, the parties were divorced by mutual consent on 3-9-2003; and were living separately ever since then. The application under Section 12 of the Act was filed after the Act came into force. Since the parties were living separately from 2003 to 2006, that too as a divorced couple, the question of commission of domestic violence during the intervening period from 2003 to 2006, and post-2006, did not arise. It is in these peculiar facts that this Court held that the Act could not cover the acts of alleged domestic violence committed prior to October 26, 2006.

12. However, in the present case, the marriage of the parties continues to subsist; although the parties are living separately, but the Respondent wife continues to face domestic violence including threats, verbal and emotional abuse, and economic abuse. Therefore, the Respondent wife has a right of protection under the Act. Since civil wrongs are continued to be committed against her, she is certainly entitled to move the application under Section 12 of the Act.

13. Similarly, the case of Shyam Lal (supra) does not come to rescue of the Petitioner. For the observation in the said case with regard to retrospective application of the Act is merely obiter and not the ratio of the case.

14. Therefore, this Court does not find any perversity or illegality in the impugned judgments. The revision petition, being devoid of merit, stands dismissed.

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