

Karnataka High Court
Mohammed Zakir vs Smt Shabana on 18 April, 2017
Author: Anand Byrareddy

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IN THE HIGH COURT OF KARNATAKA AT
BENGALURU

DATED THIS THE 18TH DAY OF APRIL 2017

BEFORE

THE HON'BLE MR. JUSTICE ANAND BYRAREDDY

CRIMINAL PETITION No.2351 OF 2017

BETWEEN:

Mohammed Zakir,
S/o. Shakeel Ahamed,
Aged 36 years,
No.23/B, 10th cross,
Kuppaswamy Layout,
Arabic College Post,
Nagawara, Bangalore - 45.

... Petitioner

(By Sri. Tajuddin, Advocate)

AND:

1. Smt. Shabana,
Ex. W/o. Mohammed Zakir,
D/o. Mohammed Yunus,
Aged about 34 years,

2. Sri. Parveez,
S/o. Mohammed Yunus,
Age 31 years,

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3. Sri. Javeed,
S/o. Mohammed Yunus,
Age 29 Years,

4. Smt. Nasreen,
W/o. Mohammed Yunus,

Age 54 years,

5. Sri. Mohammed Yunus,
S/o. Mohammed Hafiz,
Age 58 years,

Respondent Nos. 1 to 5
are residing at No.20, 20th Main,
5th Phase, Ramaswamy Layout, JP Nagar,
Bangalore -560 078.

... Respondents

(Notice to respondent dispensed with)

This Criminal Petition is filed under Section 482 of the Code of Criminal Procedure, 1973, praying to quash that this Hon'ble court may be pleased to set aside the order dated 02.02.2017 passed by the LXVIII Addl. City Civil and Sessions Judge, Bangalore in CrI.A.No.95/2017 filed to recall the order dated 25.01.2017 in the Court of Prl. City Civil and Sessions Judge, Bangalore order dated 04.03.2017.

This Criminal Petition coming on for Admission this day, the court made the following:

ORDER

Heard the learned Counsel for the petitioner. The petitioner is a Muslim male. He is aggrieved by certain acts of his wife and her family and therefore had invoked the provisions of the Protection of Women from Domestic Violence Act, 2005 (Hereinafter referred to as the 'DV Act', for brevity). The court below was not impressed with the same as the Act clearly is loaded in favour of women only and it does not contemplate any male person being aggrieved by domestic violence. In this connection, it is to be noticed that the said issue was subject matter of an appeal before the Apex Court in the case of Hiral P. Harsora v. Kusum Narottamdas Harsora, (2016) 10 SCC 165, wherein the Supreme Court has struck down a portion of Section 2(a) on the ground that it is violative of Article 14 of the Constitution of India and the phrase "adult male" as appearing in Section 2(q) stood deleted. If the said sub-section is read after deleting the expression 'adult male', it would appear that any person, whether male or female, aggrieved and alleging violation of the provisions of the Act could invoke the provisions under the Act. In that view of the matter, the petitioner's complaint could not have been trashed on the ground that the Act does not contemplate provision for men and it could only be in respect of women.

2. In that view of the matter, since cognizance was never taken by the Magistrate and process was not issued, the question of giving them a right of hearing either by the Sessions Court or by this Court does not arise. It is for the Magistrate to reconsider the case from inception. On the question whether the provisions of the DV Act can be invoked by the petitioner or not is no longer res integra. The petition would therefore have to be entertained.

With that observation, the petition is allowed.

Sd/-

JUDGE_{nv}