

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.04.2009

CORAM

THE HONOURABLE MR. JUSTICE K.VENKATARAMAN

Writ Petition No.28521 of 2008 and M.P.No.1 of 2008

- 1.Dennision Paulraj
- 2.Baby Merey
- 3.G.Devasagayam
- 4.Johnson Gunaraj Devasagayam
- 5.Jasmine Glory
- 6.Jhansi Rani ... Petitioners

vs.

- 1.The Union of India, rep. by
Secretary,
Ministry of Law and Justice,
New Delhi.
- 2.Union of India, rep. by
Secretary,
Ministry of Women and Child
Development, New Delhi.
- 3.State of Tamil Nadu, rep. by
Secretary,
Department of Social Welfare,
Fort St. George, Chennai-9.
- 4.The Protection Officer,
District Social Welfare Office,
2nd Floor, Collector Office Campus,
Thiruvallur 602 001.
- 5.The Inspector,
All Women Police Station,
Teynampet, Chennai.

6.Mrs.Mayawinola ... Respondents

Writ petition has filed under Article 226 of the Constitution of India to issue a writ of Declaration declaring that Sections 12, 18, 19 and 23 of the Protection of Women from Domestic Violence Act, 2005 (Central Act 43 of 2005) as unconstitutional, ultra vires and void.

For petitioners : Mr.K.Moorthy

For respondents : Mr.L.S.M.Hasan Fizal, G.A.,

for R.1 to R.5

M/s.Ram and Ram, for R.6

O R D E R

By consent, the main writ petition itself is taken up for final disposal.

2. The petitioners have come forward with the present writ petition for a declaration declaring Sections 12, 18, 19 and 23 of the Protection of Women from Domestic Violence Act, 2005 (Central Act 43 of 2005) as unconstitutional, ultra vires and void.

3. The short facts which are necessary for the disposal of the present writ petition, are set out here under:-

3.1. The first petitioner is the husband of the sixth respondent. Petitioners 2 and 3 are his parents. Petitioners 4 to 6 are his brother, sister in law and sister respectively. The first petitioner married the sixth respondent on 05.07.2004 at C.S.I. Trinity Church, Avadi. It is an arranged marriage. After the marriage, the sixth respondent demanded the first petitioner an extravagant and ultra modern life style and made all the other family members as servants for her simple needs and started picking up quarrels with everyone in the family for no reasons. Hence, the first petitioner had to prefer a petition under Section 22 of the Indian Divorce Act for judicial separation on the file of the learned Principal Judge, Family Court, Chennai, in O.P.No.887 of 2005 and the same is at the stage of enquiry.

3.2. Since the sixth respondent was continuously threatening the petitioners that she is going to prefer a criminal complaint against them, the petitioners approached this Court by filing CrI.O.P.No.6823 of 2005 seeking anticipatory bail and the same was dismissed as there was no case. After coming to know of the orders, the sixth respondent filed a complaint against the petitioners before the fifth respondent under Section 498-A of Indian Penal Code, which compelled the petitioners to approach this Court by filing CrI.O.P.No.10554 of 2005 seeking anticipatory bail and the same was granted by this Court.

3.3. The sixth respondent having failed in her malicious attempt, with an ulterior motive to harass the petitioners, filed an application under Sections 18, 19 and 23(2) of the Protection of Women from Domestic Violence Act, 2005 (herein after referred to as the Act) setting out false and frivolous particulars. The said private complaint filed by the sixth respondent in C.M.P.No.1772 of 2007 in unnumbered M.C.No. / 2007 on the file of the learned Judicial Magistrate No.II, Poonamallee, has been referred to the fourth respondent for conducting enquiry. The petitioners attended the enquiry before the fourth respondent and submitted the malicious intention of the sixth respondent.

3.4 Aggrieved against the calculative and ulterior motivated action of the sixth respondent, the petitioners were constrained to approach this Court to quash the proceedings of the private complaint given by the sixth respondent

referred to above in CrI.O.P.No.1772 of 2007 and the same was dismissed on 02.04.2008.

3.5. The proceedings initiated under the said Act is a complete abuse of process of law, especially when it was initiated after the first petitioner filed a petition seeking judicial separation before the Family Court. Hence, the petitioners have approached this Court by filing the present writ petition challenging certain provisions of the said Act.

4. The main grounds on which the present writ petition has been filed are--

(i) Sections 4, 12, 18, 29 and 23 of the said Act are discriminatory and biased in favour of the wife and affect the right of life and liberty of the husband and his relatives.

(ii) The said Act does not permit the husband to file a complaint under the Act and hence, it is violative of Article 14 and 21 of the Constitution of India.

(iii) The proceedings before the learned Judicial Magistrate No.II, Poonamallee in CrI.O.P.No.1772 of 2007 is illegal, arbitrary and opposed to principles of natural justice and violative of Article 14 and 21 of the Constitution of India.

(iv) The reference by the learned Magistrate to the fourth respondent for an enquiry even though the sixth respondent voluntarily left the matrimonial home, is untenable.

(v) The proceedings before the learned Magistrate are violative of the rights of the husband and his relatives as per Section 12 of the Act as the proviso to Section 12 envisages a report being received from the fourth respondent by the learned Magistrate before passing any orders.

(vi) Section 23 of the said Act suffers from arbitrariness and confers unrestricted powers on the Magistrate and hence, ultra vires to the provisions of the Constitution of India.

5. On notice, learned counsel appearing for the sixth respondent would submit that --

(i) the said Act has been challenged before the Delhi High Court and the Delhi High Court has held that the said Act is not ultra vires and unconstitutional.

(ii) special protection given to women is intelligible differentia and hence, the contention on the side of the petitioners that the Act is enacted with a view to help only the female members cannot be accepted.

(iii) The petitioners filed a quash petition before this Court raising the same grounds and hence, they cannot be heard to raise the same grounds in the present writ petition.

(iv) No valid ground has been raised to declare few sections of the said Act as ultra vires.

6. I have considered the submissions made by the learned counsel appearing for the petitioners and the learned Government Advocate appearing for respondents 1 to 5 and the learned counsel appearing for the sixth respondent.

7. The main ground of attack on certain provisions of the Protection of Women from Domestic Violence Act, 2005 are that under the said Act, the husband cannot file any application, but only the wife can file applications. It is therefore, discriminatory and biased in favour of the wife affecting the right of life and liberty to the husband and his relatives, which is violative of Article 14 and 21 of the Constitution of India.

8. As rightly contended by the learned counsel appearing for the sixth respondent, giving certain preferential treatment to the wife and treating them as a special category cannot be termed as violative of either Article 14 or Article 16 of the Constitution of India. Though Article 15 of the Constitution of India prohibits discrimination on grounds of religion, race, caste, sex or place of birth, however, Article 15 (3) states "nothing in this Article shall prevent the State from making any special provision for women and children". Thus, the Constitution itself provides special provision for women and children. It has been widely resorted to and the Courts have upheld the validity of the special measures in legislation and executive orders favouring women. Thus, when the Constitution itself provides for making special provision for women and children, the contention on the side of the petitioners that there could be no special treatment for women is totally untenable. In tune with Article 15(3) of the Constitution of India, the State has thought it fit to frame a special legislation for women and thus, the Protection of Women from Domestic Violence Act, 2005 came into force.

9. In A.I.R. 1954 S.C. 321 [^]V Yusuf Abdul Aziz v. State of Bombay, the Hon'ble Apex Court, while dealing with the question whether Section 497 of India Penal code contravenes Article 14 and 15 of the Constitution of India, has held that since sex is a sound classification and although there can be no discrimination in general on that ground, the Constitution itself provides for special provisions in the case of women and children by clause (3) of Article 15. Articles 14 and 15 thus, read together validate the last sentence of Section 497 I.P.C. which prohibits the woman from being punished as an abettor of the offence of adultery. Para 6 of the said judgment is usefully extracted here under:-

" Article 14 is general and must be read with the other provisions which set out the ambit of fundamental rights. Sex is a sound classification and although there can be no discrimination in general on that ground, the Constitution itself provides for special provisions in the case of women and children. The two Articles read together validate the impugned clause in S.497 Penal Code."

10. In (2003) 10 Supreme Court Cases 78 [^]V Sanaboina Satyanarayana v. Govt. of A.P. and others, the Hon'ble Apex Court was posed with a question whether granting remission of sentence can be made excluding those prisoners who were convicted for life and for crimes against women. It was held by the Hon'ble Apex Court that considering Article 15 (3) and 14, exclusion of prisoners convicted of crimes against women from scheme of remission, is a sound, just, reasonable, proper and it necessitated in the larger interest of the society and greater public interest.

11. In 1985 SC 1695 [^]V Partap Singh v. Union of India, the question that was posted before the Hon'ble Apex Court was about the constitutional validity of Section 14 (1) of the Hindu Succession Act. The Hon'ble Apex Court in the said judgment has clearly held that in view of Article 15 (3) of the Constitution of India there is hardly any justification for the males belonging to the Hindu community to raise any objection to the beneficent provisions contained in Section 14 (1) of the Act on the ground of hostile discrimination. Para 6 of the said judgment is usefully extracted here under:- " There is very little substance in the second condition raised by the petitioner also. The submission made on behalf of the petitioner in this case overlooks the benign constitutional provision in clause (3) of Article 15 of the Constitution which provides that nothing in Article 15 shall prevent the State from making any special provision for women and children. The said provision overrides clause (1) of Article 15 of the Constitution which provides that the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. Section 14 (1) of the Act was enacted to remedy to some extent the plight of a Hindu woman who could not claim absolute interest in the properties inherited by her from her husband but who could only enjoy

them with all the restrictions attached to a widow's estate under the Hindu law. There is now hardly any justification for the males belonging to Hindu community to raise any objection to the beneficent provisions contained in Section 14 (1) of the Act on the ground of hostile discrimination. The above provision is further protected by the express provision contained in clause (3) of Article 15, since it is a special provision enacted for the benefit of Hindu women. We do not find any merit in the Writ Petition. The writ petition is dismissed. Consequently, the special leave petition also has to be dismissed. It is accordingly, dismissed."

12. Again, in A.I.R. 1985 Supreme Court 1618 ^V Sowmithri Vishnu v. Union of India, the Hon'ble Apex Court has held while considering Section 497 of I.P.C., that it does not discriminate between man and woman by conferring right only on husband to prosecute the adulterer and hence, it is not violative of Article 14 or Article 15 of the Constitution of India.

13. In fact, the Delhi High Court in W.P (Crl.) No.425 of 2008, by an order dated 07.04.2008 had upheld the provisions of the said Act. Para 4 of the said judgment is usefully extracted here under:-

" Domestic violence is a world wide phenomenon and has been discussed in International fora, including the Vienna Accord of 1994 and the Beijing Declaration and the Platform for Action (1995). The United Nations Committee Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) has recommended that States should act to protect women against violence of any kind, especially that occurring within the family. There is a perception, not unfounded or unjustified, that the lot and fate of women in India is an abjectly dismal one, which requires bringing into place, on an urgent basis, protective and ameliorative measures against exploitation of women. The argument that the Act is ultra virus the Constitution of India because it accords protection only to women and not to men, is therefore, wholly devoid of any merit. We do not rule out the possibility of a man becoming the victim of domestic violence, but such cases would be few and far between, thus not requiring or justifying the protection of parliament."

14. At this juncture, learned counsel appearing for the petitioners would submit that the said Act can only be prospective and not retrospective and further submitted that the petitioners are not liable for the charges that have been levelled against them. The arguments raised by the learned counsel appearing for the petitioners are to be considered by the authority concerned before whom the application filed by the sixth respondent is pending and the same cannot be canvassed before this Court.

15. For all the reasons stated above, I am not inclined to hold that Sections 12, 18, 19 and 23 of the Protection of Women from Domestic Violence Act, 2005 (Central Act 43 of 2005) are unconstitutional, ultra vires and void and the writ petition is liable to be dismissed and accordingly, dismissed. However, there is no order as to costs. Consequently, connected miscellaneous petition is closed.

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To

1.The Secretary,

Union of India,

Ministry of Law and Justice,

New Delhi.

2.The Secretary,

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3.The Secretary,
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4.The Protection Officer,
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5.The Inspector,
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