

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.08.2008

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THE HONOURABLE MR.JUSTICE K.MOHAN RAM

Criminal Original Petition No.9277 of 2008

and M.P.Nos.1 and 3 of 2008

Uma Narayanan ... Petitioner

-Vs.-

Mrs. Priya Krishna Prasad

W/o. Mr. Krishna Prasad

D/o. Mr. K.L.Narayanan ... Respondent

Prayer:- Criminal Original Petition filed under Section 482 of the Criminal Procedure Code for a direction to call for the records relating to the order in CrI.M.P.No.275 of 2008 on the file of the learned XIII Metropolitan Magistrate, Egmore, Chennai, and quash the same. For Petitioner : Mr. K.M.Vijayan, senior counsel, for

M/s. La Law, counsel for the petitioner

For Respondent : Mr. A.Vijaya Kumar

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O R D E R

The respondent herein filed an application purported to be under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as the Act) claiming the following reliefs:- (i) Protection order under Section 18;

(ii) Residence order under Section 19;

(iii) Maintenance order under Section 20.

The said petition was taken on file as CrI.M.P.No.275 of 2008 and in that petition the respondents husband-U.N.Krishna Prasad is the first respondent and her mother-in-law-Mrs.Uma Narayanan is the second respondent; the respondents husband is admittedly residing in the United States of America and in the application itself his address is shown as follows:- S/o. Bristol Meyers Squib

311, Pennington Rochy

Hill Road, Pennington

NJ-08534, USA

(Office Address)

Pending the above application, the respondent sought for interim orders. The Learned XIII Metropolitan Magistrate passed the order dated 17.04.2008 in CrI.M.P.No.275 of 2008 on the following terms namely:- Hence, this Court in the interest of justice considers that an interim order is necessary for the just decision of the case and this Court considers that the petitioner should be permitted to reside in the shared household and the officer in charge of the nearest Police Station shall assist in implementing the interim orders of this Court. This interim order shall remain in force until the disposal of the main petition. Being aggrieved by that order the petitioner who is the second respondent in CrI.M.P.No.275 of 2008 has filed the above Criminal Original Petition to quash the order passed in CrI.M.P.No.275 of 2008.

2. Since the ground on which the above order is sought to be quashed lies in a narrow campus and for deciding that issue the allegations of domestic violence and other factual background of the case are not necessary the same are not set-out in detail herein.

3. Though several grounds have been raised in the quash petition Mr.K.M.Vijayan learned senior counsel appearing for the petitioner confined his submissions relating to the following two contentions:- (i) As provided by Section 2 (q) of the Act, an application under Section 12 of the Act cannot be filed against the petitioner, who is a woman and mother-in-law of the respondent and as such the interim order passed as against the petitioner is liable to be set-aside. (ii) The application filed by the respondent herein itself is not in conformity with Form II prescribed under the Rules framed under the Act but the application has been filed in Form I, which is prescribed under Sections 9 (1) (b) and 37 (2) (C) of the Act for filing the domestic incident report by the Protection Officer / Service Provider. Learned senior counsel for the petitioner took this Court through Section 2 (q) of the Act which defines the term respondent. Section 2 (q) of the Act reads as follows:-

2. Definitions. -

(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;

Referring to the said definition of the term respondent the learned senior counsel for the petitioner submitted that it will mean only an adult male person and not a woman and as such the petition filed by the respondent as against the petitioner who is a woman is not maintainable and on that ground itself the interim protection order passed against the petitioner is liable to be quashed. Learned senior counsel for the petitioner also took this Court through Forms I and II prescribed under the Rules framed under the Act. A perusal of the said Forms show that an application under Section 12 of the Act has to be filed in Form II and not in Form I; Form I is prescribed for filing the Domestic Violence Report by the Protection Officer / Service Provider; admittedly the respondent has filed the application in Form I and not in Form II, therefore according to the learned senior counsel for the petitioner the interim order passed by the learned Magistrate is liable to be set-aside. In support of the above contentions the learned senior counsel for the petitioner relied upon a decision of the Madhya Pradesh High Court in the case of Ajay Kant and Ors. v. Smt. Alka Sharma reported in 2008 (2) Crimes 235 (M.P.). In the said decision a similar issue came up for consideration and after considering the scheme of the Act and the various provisions of the Act the Madhya Pradesh High Court has held as under:- 6.

It is clear by this definition that a complaint as provided in Cr.P.C. Can only be for an offence. As mentioned hereinabove only two offences have been mentioned in this Act and those are (1) under Section 31 and (2) under Section 33. It appears that this word complaint appeared in this definition of respondent has been used for initiating proceedings for these two offences and an aggrieved wife or female living in a relationship in the nature of a marriage has been given aright to file a complaint against a relative of the husband or the male

partner. This word complaint cannot be considered beyond the scope of the main provision of this Section which has been defined in first part of Section 2(q) that is for any relief under this Act. As provided in Section 31 of the Act, a complaint can be filed against a person who has not complied with a protection order or interim protection order. Thus, it is clear by the definition of respondent that for obtaining any relief under this Act an application can be filed or a proceeding can be initiated against only adult male person and on such application or under such proceeding, aforementioned protection order can be passed. Obviously those orders will also be passed only against the adult male person. As provided under Section 31 of the Act, non-compliance of a protection order or an interim protection order has been made punishable and as such it can be said that the complaint for this offence can only be filed against such adult male person / respondent who has not complied with the protection order. Hence, it is clear that the application under Section 12 of the Act which has been filed by the respondent against petitioners No.3 and 4, who are not adult male persons, is not maintainable.

4. On the aforesaid submissions Mr.A.Vijaya Kumar learned counsel for the respondent was heard.

5. Though at the beginning of the submissions the learned counsel for the respondent tried to justify the filing of the application under Section 12 of the Act in Form I later when this Court drew the attention of the learned counsel to Rule 6 and Forms I and II, he fairly submitted that the application should have been filed in Form II, but by inadvertance the same has been filed in Form I. However, the learned counsel submitted that this technical objection may not be taken seriously and the interim protection order passed in favour of the respondent need not be set-aside on that ground. He further submitted that the term respondent as defined in Section 2(q) of the Act cannot be construed to mean only an adult male but it will also include a woman. Learned counsel based reliance on the proviso to Section 19 (1) of the Act which reads as under:- 19. Residence Orders. - (1) While disposing of an application under sub-section (1) of Section 12, the Magistrate may, on being satisfied that domestic violence has taken place, pass a residence order - (a) ...

(b) directing the respondent to remove himself from the shared household;

Provided that no order under clause (b) shall be passed against any person who is a woman

and submitted that an order under Clause (b) of Section 19 above cannot be passed against a woman and hence according to the learned counsel other orders can be passed against a woman and therefore the restricted meaning sought to be given to the term respondent by the learned senior counsel for the petitioner cannot be accepted. He further submitted that in case if this Court holds that the application filed in Form I of the Act is not maintainable and the application under Section 12 ought to be filed in Form II, liberty may be given to the respondent to file a fresh application in Form II and seek all remedies available to her under the Act.

6. I have carefully considered the aforesaid submissions made by the learned counsel on either side. The term respondent has been clearly defined in Section 2(q) of the Act which un-doubtedly refers only to an adult male and does not include any woman. The decision of the Madhya Pradesh High Court reported in 2008 (2) Crimes 235 (M.P.) (referred to supra) after an elaborate consideration of all the relevant provisions of the Act and the scheme of the Act has lucidly laid down that in view of the definition of the term respondent in Section 2 (q) of the Act for obtaining any relief under the Act an application can be filed or a proceeding can be initiated against only adult male person and only as against such person protection orders can be passed. I am in respectful agreement with the above said decision of the Madhya Pradesh High Court.

7. The submission of the learned counsel for the respondent based on the proviso to Section 19 (1) of the Act is that an order under Clause (b) of Section 19 of the Act alone cannot be passed against a woman but other orders can be passed against a woman. For appreciating the said contention of the learned counsel, it will be useful to refer to the definition of shared household in Section 2 (s) of the Act, which reads as follows:- 2. Definitions.-

(s) shared household means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or alongwith 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. A reading of the aforesaid definition shows that shared household includes such a household which may belong to the joint family of which the the respondent is a member, whether the respondent or the aggrieved person has any right, title or interest in the shared household. Under Section 19 (1) (b) of the Act, the learned Magistrate is empowered to pass an order directing the respondent to remove himself from the shared household. While enumerating the directions that could be passed under Section 19 of the Act and with particular reference to the direction that could be issued under Section 19 (1) (b) of the Act the said proviso has been incorporated just to protect the interest of a woman member of the family who is living in such a shared household. Such a provision in the proviso has been incorporated only for the aforesaid limited purpose. In a shared household which may belong to a joint family women members may also be living and in the guise of passing an order under Section 19(1) (b) of the Act, such women members of the family cannot be directed to be removed from the shared household but such a direction can be issued only against male members. From this exemption provided under the proviso it cannot be said that the term respondent as defined under Section 2(q) of the Act will include a woman also. For the aforesaid reasons, the said contention of the learned counsel cannot be countenanced. Therefore in the considered view of this Court an application under Section 12 of the Act is not maintainable as against a woman. On that ground itself the impugned order is liable to be set-aside.

8. Under Rule 6 an application under Section 12 of the Act has to be filed only in Form II but admittedly the application has been filed by the respondent in Form I instead of Form II the same ought not to have been entertained by the learned Magistrate. Form I as pointed out above is prescribed for the Protection Officer / Service Provider to file the domestic incident report but the respondent by in-advertance and mistake has filed the application in Form I instead of Form II. Further in Form I filed by the respondent all the details and averments for establishing the domestic violence and regarding the availability of the shared household have not been set-out in detail. Had the respondent filed an application prescribed under Form II all the aforesaid details could have been set-out in detail which would have enabled the Court below to adjudicate the issue in a judicious manner. Though in the above Criminal Original Petition interim orders passed in CrI.M.P.No.275 of 2005 alone has been challenged if the same alone is set-aside and the main petition in CrI.M.P.No.275 K.MOHAN RAM, J.,

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of 2008 is allowed to be proceeded with and ultimately if a final order is passed the same will be challenged on the very same grounds and in that process valuable judicial time will be lost and the respondent also will be put to hardship as she may not be in a position to get the relief ultimately which she may be entitled to under the Act. Therefore to avoid miscarriage of justice and to secure the ends of justice all further proceedings in CrI.M.P.No.275 of 2008 itself is quashed giving liberty to the respondent to file an application under Section 12 in Form II prescribed under the Rules framed under the Act. If such an application is filed the same shall be entertained and dealt with on merits and in accordance with law. It is made clear that this Court has not expressed any opinion on the merits of the claim of the respondent herein.

9. The Criminal Original Petition is ordered on the above terms. Consequently the connected MPs are closed.

01.08.2008

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To

XIII Metropolitan Magistrate, Egmore,

Chennai