

MANU/MH/3955/2021

IN THE HIGH COURT OF BOMBAY

Writ Petition No. 4184/2021

Decided On: 03.12.2021

Appellants: **Afia Rasheed Khan**

Vs.

Respondent: **Mazharuddin Ali Khan and Ors.**

Hon'ble Judges/Coram:

Sandeep K. Shinde, J.

Counsels:

For Appellant/Petitioner/Plaintiff: Rizwan Merchant and Z. Abdi i/by Rizwan Merchant and Associates, Advocate

For Respondents/Defendant: M.R. Tidke, APP and K. Krishna Shrawan i/by Ajay Khaire, Advocate

Case Category:

CRIMINAL MATTERS - MATTERS RELATING TO HARASSMENT, CRUELTY TO WOMAN I DOWRY, DOWRY DEATH, EVE-TEASING, DOMESTIC VIOLENCE ETC.

Case Note:

Criminal - Rejection of application - Want of jurisdiction - Sections 12 and 27 of Domestic Violence Act, 2005 (DV Act) - Present petition assails order by which Metropolitan Magistrate refused to entertain application, under Section 12 of DV Act for want of jurisdiction envisaged under Section 27 of DV Act - Whether order under challenge need interference - Held, applicant was not "temporarily" residing within jurisdiction of Court of Magistrate and no cause of action arose in Mumbai - Applicants' visit to Mumbai was 'casual visit' - It does not imply definite intention to stay at particular place - Impugned order passed by Magistrate cannot be faulted with, either for wrong or non-exercise of jurisdiction - Impugned order declining to entertain petitioner's application under Section 12 of DV Act for want of jurisdiction cannot be faulted with - Petition dismissed. [15], [16]

JUDGMENT

Sandeep K. Shinde, J.

1. Rule.

2. Rule made returnable forthwith. Heard finally with the consent of the parties.

3. This Petition under Article 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, assails the order dated 23rd October, 2021, by which the learned Metropolitan Magistrate, Bandra Mumbai, refused to entertain an application, under Section 12 of the Domestic Violence Act, 2005 ('D.V. Act' for short) for want of jurisdiction envisaged under Section 27 of the said Act and in consequence, directed to return the application to the Petitioner.

4. Background Facts:

Petitioners' case is that she married to Respondent No. 1 in December, 1993 at Hyderabad. Respondent No. 2 is her son. Both inflicted mental, emotional and financial violence on her. Apprehending risk to her life, in past she fled the Hyderabad house, on two occasions and took shelter in the hotels nearby. Unable to bear the torture, she came to Mumbai on 27th September, 2021 and stayed as a guest in one hotel at Bombay-Kurla Complex. Whereafter she was constantly being stalked/watched by unknown person at the instance of Respondents and therefore she moved to hotel Hyatt. On 6th October, 2021, she filed a complaint at BKC Police Station and reported that she has reasonable apprehension and belief of being continuously watched and physically stalked and followed by some unknown persons at the instance of her husband and son. She reported that while she was on her way to town, she was terrified, when she found her family looking person clicked picture and ran away. She alleged that after reaching the hotel, when she swiped her debit card to make payment, she realized that the Respondent had hacked into her net banking account. She lodged another complaint on 7th October, 2021. Petitioner therefore, apprehends that she was under constant surveillance at the instance of her husband and son and therefore extremely scared about the safety of her life. Therefore, she urged the concerned Police Station to afford her protection.

5. In facts and circumstances as stated above, the Petitioner filed an application under Section 12 of the D.V. Act on 20th October, 2021 in the Court of 71st Metropolitan Magistrate, at Bandra and sought the following reliefs.

Prayers

"(a) To pass a protection order u/s. 18 restraining the Respondents restrain the Respondents and/or any of their friends, aids, relatives from entering any portion of the shared household in which the Applicant and/or any other place where the Applicant resides and frequent and from committing, aiding, abetting acts against the Applicant and/or her staff i.e., persons who assist and help the Applicant from Domestic Violence.

(b) Direct the Respondents from alienating and/or disposing and/or create third party rights on-any/all assets moveable or immovable on the Applicant's sole name, including those belonging to the Partnership firm, bank lockers, bank accounts etc. held by them singly or jointly without the leave of this Court.

(c) Residence order u/s. 19 and direct the Respondents to remove themselves from the shared household/matrimonial house.

(d) In the alternative to prayer (d) the Respondents be retained from dispossessing or in any other manner disturbing the possession of the Applicant in the shared household and restrain the Respondents and anybody through them from entering any portion of the shared household in which the Applicant resides.

(e) To hand over documents and/or valuables belonging to the Applicant and in their possession including but not limited to her G-mail Account, Demat Account, Laptop, Keys, IT Files, Property Papers etc.

(f) Pass a monetary order u/s. 20 and pay the Applicant a sum of Rs. 5,00,000/- per month towards monthly maintenance.

(g) That this Hon'ble Court be pleased to pass a compensation order u/s. 22 directing the Respondents to pay a sum of Rs. 1,00,00,000/- (Rupees One Crore Only) to the Applicant.

(h) That this Hon'ble Court be pleased to pass an order directing the Respondent to pay an amount of Rs. 50,00,000/- (Rupees fifty lakh only) towards litigation expenses to the Applicant.

(i) That this Hon'ble Court be pleased to grant an ex-parte order u/s. 23(2) of the Act in terms of prayer clause (a)-(g) till the hearing & final disposal of the present application.

(j) That this Hon'ble Court be pleased to grant interim and ad-interim reliefs u/s. 23 of the DV Act in terms of prayer clause (a)-(g) till the hearing and final disposal of the present application.

(k) For such other and further reliefs as the nature and circumstances of the present case may require."

6. Pending application, she sought ex-parte protection and residence orders under Section 23(2) of the D.V. Act.

7. The learned Magistrate, after perusing the application, vide order dated 23rd October, 2021 declined to entertain and proceed with the application, for want of jurisdiction under Section 27 of the D.V. Act. Thus, held that, Petitioner is neither permanently nor temporarily residing or carrying on business within the local limits of jurisdiction and in consequence, returned the application to her. This order is assailed in this petition.

8. Submissions:

Mr. Merchant learned Counsel for the petitioner contended that the learned Magistrate misconstrued the provisions of Section 27 of the D.V. Act and further failed to appreciate that two police complaints filed in Mumbai, would disclose and constitute "Domestic Violence" within the meaning of Act, caused within the local limits of the said Court and therefore compliant was maintainable. Mr. Merchant submitted though Petitioner is permanent resident of Hyderabad, in compelling circumstances, she was forced to leave her shared household and take shelter in the hotel. Submission is that Applicant's visit to Mumbai was neither casual or flying visit. He submitted that jurisdiction under Section 27 of the D.V. Act, cannot be construed narrowly, Act being a beneficial piece of legislation. Mr. Merchant submitted the learned Magistrate ought to have appreciated the pleadings in the application and two police complaints, which according to him reveals that Petitioner was subjected to domestic violence by the Respondents even, within the jurisdiction of Court of Metropolitan Magistrate at Bandra. His next submission, is that on the plain reading of complaint, Applicant's intention to reside in Mumbai was clearly borne out and therefore simply because, she was residing in a hotel and abandoned her shared household at Hyderabad. Learned Magistrate could not have non-suited her. Mr. Merchant submitted that expression 'temporarily resides' includes a temporary shelter made in the hotel or such other place. He submitted that Applicant was apprehending danger to her life at the hands of Respondents and this fact was clearly discernible from the pleadings. Thus, argued that the learned Magistrate ought to have passed ex-parte interim protection order in exercise of jurisdiction under Section 23(2) read with 19 of the D.V. Act. Mr. Merchant therefore submitted the learned Magistrate by declining to exercise jurisdiction defeated object of the Act. It is

therefore urged that the order impugned be quashed and set aside and the learned Magistrate be directed to entertain the application and pass appropriate order in accordance with law.

9. Mr. Shrawan, learned Counsel appearing for Respondent No. 1 and 2 opposed the application and contended that Applicant has engineered cause of action. He submitted that expression 'temporarily reside' cannot be equated with casual visit or casual stay at a place with no intention to reside there as such. He argued that there has to be some material to show that the person is residing there and not merely visiting for some days. He argued that simply, because she is temporarily residing at hotel, within the local limits of 71st Metropolitan Magistrate, that itself was not good, to hold and infer that she had intention to reside in the local limits of the said Court.

Learned Counsel in support of his contention, has relied on the following judgments;

- (i) Sharad Kumar Pandey Vs. Mamta Pandey MANU/DE/2179/2010 : 2010 (118) DRJ 625 High Court of Delhi.
- (ii) Darshan Kumari Vs. Surinder Kumar 1995 Supp (4) Supreme Court Cases 137
- (iii) Shyamlal Devda and Others Vs. Parimala MANU/SC/0067/2020 : (2020) 3 Supreme Court Cases 14
- (iv) Divya J. Nair Vs. S.K. Sreekanth
- (v) Rabindra Nath Sahu & Another Vs. Smt. Susila Sahu
- (vi) MST Jagir Kaur and Another Vs. Jaswant Singh MANU/SC/0242/1963 : AIR 1963 Sc 1521

10. Before advertng to the arguments of the learned Counsel for the parties and the authorities cited, in support of their contentions, let me reproduced Section 27 of the Domestic Violence Act, which is about jurisdiction. It reads as under;

"27. Jurisdiction:-

(1) The court of Judicial Magistrate of the first class or the Metropolitan Magistrate, as the case may be, within the local limits of which-

- (a) the person aggrieved permanently or temporarily resides or carries on business or is employed; or
- (b) the respondent resides or carries on business or is employed; or
- (c) the cause of action has arisen, shall be the competent court to grant a protection order and other orders under this Act and to try offences under this Act.

(2) Any order made this Act shall be enforceable throughout India."

11. It may be stated every statute has to be interpreted keeping in mind the purpose for which it has been enacted and the interpretation must be such, so as to advance the purpose of the act and should not be such as to defeat, the intention of the legislature. In the case of Sharad Kumar Pandey (supra) in Paragraph No. 8; learned Judge of High

Court of Delhi has observed; thus,

"the scheme of the Act provides that protection officer, and the police to help the aggrieved person in not only approaching the Court for redressal but to ensure that the domestic violence is not further perpetuated and an aggrieved person gets shelter either in the shelter home or after the residence order in the shared household. Thus, the place of domestic violence and the place of respondent are two places which are the places of actions under the Act which the Magistrate can take and give directions to other bodies created under the Act. Yet, legislature provided that the jurisdiction can be invoked by an aggrieved person on the basis of temporary residence. This provision has been made for such aggrieved person who has lost her family residence and is compelled to take residence, though temporarily, either with one of her relatives or with one of her friends at a place where the domestic violence was not committed."

In Paragraph No. 10, it was observed that temporary residence does not include residence in a lodge or hostel or residence at a place only for the purpose of filing a domestic violence case and further observed that this temporary residence must be also be a continuing residence from the date of acquiring residence till the application under Section 12 is disposed of. The Paragraph No. 10 reads as under;

"10. I, therefore, consider that the temporary residence, as envisaged under the Act is such residence where an aggrieved person is compelled to take shelter or compelled to take job or do some business, in view of domestic violence perpetuated on her or she either been turned out of the matrimonial home or has to leave the matrimonial home. This temporary residence does not include residence in a lodge or hostel or an inn or residence at a place only for the purpose of filing a domestic violence case. This temporary residence must also be a continuing residence from the date of acquiring residence till the application under Section 12 is disposed of and it must not be a fleeing residence where a woman comes only for the purpose of contesting the case and otherwise does not reside there."

12. In the case, of Rabindra Nath Sahu & Another (supra), the learned Judge of Orissa High Court has held that, the temporarily resides is a temporary dwelling place of the aggrieved person, who has for the time being decided to make that place as a home. Thus, a place, where aggrieved person has gone on a casual visit, a lodge or hostel or a guest house or an inn where she stays for a short period or a residence at a place simply for the purpose of filing a case against another person cannot be a place which would satisfy the term 'temporarily resides' as appears in Section 27.

13. In the case in hand, since after Applicants' marriage in 1993, she was continuously residing at Hyderabad till 26th-27th September, 2021. It appears she was subjected to domestic violence at Hyderabad, whereupon she has filed a complaint at Banjara Hills Police Station, Hyderabad on 4th September, 2021. She came to Mumbai on 27th September, 2021 and resided in hotel situated within the local limits of 71st Metropolitan Magistrate, Bandra. Soon thereafter, on 6th and 7th October, she filed two non-cognizable complaints and reported that she was forced to flee to Mumbai, to protect herself and she believes and apprehends being under constant surveillance at the instance of her husband and son in their attempt to keep a watch on her actions, whereby she was frightened and harassed by them. Whereafter, on 28th October, she filed an application under Section 12 of the D.V. Act, that is within 23 days, after her

arrival in Mumbai from Hyderabad. What appears from the complaint, and argument is that Respondents being highly influential persons in Hyderabad and although Applicant has ventured to lodge a complaint against them, she won't be able to secure any relief from police or such other agency under the D.V. Act. However, it is to be stated that since her date of marriage i.e. December, 1993 till September, 2021, though she was subjected to domestic violence, she had not taken any measure to protect her life, property or to prevent the Respondents from causing or inflicting domestic violence to her. In the backdrop of these facts, it is to be ascertained, whether application under Section 12 filed by the Petitioner discloses or implies her intention to reside at a place in Mumbai or was it just casual or flying visit to acquire jurisdiction. As such to ascertain her intention I have perused the application. Paragraph No. 1 to 6 of the application are introductory in nature like particulars of parties. Paragraph No. 7 says, marriage expenses were borne by Petitioner's father. Paragraph No. 8 says, post marriage education and related expenses of her husband overseas were borne by Petitioner's father. Paragraph No. 9 says that she was not permitted to pursue MBA course, although she was qualified, Chemical Engineer. Paragraph No. 10 says about the attitude of Respondent No. 1; whereas Paragraph No. 11 describes that Petitioner, was neglected during her pregnancy. Paragraph No. 12 and 13 are about the partnership of Respondent No. 1 and investments. Paragraph No. 14 speaks about the domestic violence and emotional distress she had suffered. Paragraph No. 15 describes her illness i.e. breast cancer, she had suffered at the age of 44 year. Paragraph No. 16 and 17 describe as to how her parents were rudely and forcibly removed from Applicant's house. Paragraph No. 18 says about the abuses and harassment at the hands of the Respondent and that she fled the house and sought protection in hotel on 4th September, 2021. Paragraph No. 19 to 24 describe the incident of domestic violence. Paragraph No. 25 speaks about decision to leave the Hyderabad house and reached out to her brother (who resides in USA) and to meet him in Mumbai. Paragraph No. 26 to 28 describes Police Complaints filed at Mumbai. The Paragraphs No. 33 onwards, speak of her life style and amount of maintenance. In Paragraph No. 42, Applicant pleaded jurisdiction;

"The Applicant states that she is presently residing at the address mentioned in the caption, which comes within the jurisdiction of this Court and this Hon'ble Court has jurisdiction to entertain and decide the present application."

14. Thus, averments in application suggest, that Applicant is well educated person; she is financially sound; her parents are in business. In consideration of her background it is difficult to accept her contention or that she could not seek protection order at Hyderabad. In other words, application in no way suggest or implies that she was forced to leave the Hyderabad and or she was intending to reside in Mumbai. On the contrary the chronology of the events do suggest, that the Applicant engineered the cause of action with an intention to file case and confer jurisdiction upon the Magistrate. In the case of, Advocate Ramesh Mohanlal Bhutada Vs. State of Maharashtra & Ors., 2011 CRI. L.J. 4074, the learned Judge of this Court has made distinction between temporary residence and casual visit. In Paragraph No. 5 it was held that;

"5. In support of the petition, it is submitted on behalf of the petitioners that there is distinction between temporary residence and casual visit. The expression "reside" implied something more than "stay" and implied some intention to remain at a place and not merely to pay it a casual visit. The question of residence is required to be decided as to whether the party claiming residence, permanent or temporary, has an intention to stay at a particular place then alone it could be said that the party is residing at that particular

place, either permanently or even temporarily. The question as to whether aggrieved person has made a particular place an abode, permanent or temporary, is a question to be decided with reference to facts of each case. It is apprehended that if liberal construction is placed upon the provisions made under Section 27 of the Act to allow even casual visit of the place to claim that the place is his or her temporary residence within the meaning of Section 27 of the Act 2005, then it may lead to abuse of the legal process as the aggrieved person may choose to harass the other party by choosing any place where he or she may be a casual visitor. Reference is made to the ruling in Mst. Jagirkaur and another v. Jaswant Singh: MANU/SC/0242/1963 : AIR 1963 SC 1541. The Apex Court was dealing with the question relating to the term "resides" in respect of petition by a wife against her husband for maintenance. Considering the dictionary meaning of the word "resident" the Apex Court has observed that the word means both a permanent dwelling as well as temporary living in a place. It is capable of different meanings including domicile in the strictest and the most technical sense and a temporary residence. Whichever meaning is given to it one thing is obvious that it does not include casual stay or a flying visit to a particular place. In short, the meaning of the word would, in the ultimate analysis, depend upon the context and the purpose of a particular statute. The expression "reside" implies something more than a casual stay and implies some concrete intention to remain at a particular place but not merely to pay a 1 casual or flying visit. In other words, it is always something more than a casual visit or casual stay at a particular place to assign status to the person as "temporary resident" of a particular place is contemplated under the law."

Yet in the case of Prashant s/o Manmohanji Laddha Vs. Sau Madhuri w/o Prashant Laddha; MANU/MH/0652/2018 : 2018 ALL MR. (Cri.) 2971. It was held that;

"Temporary residence requires residence at a place on continuing basis in pursuit of some activity or want or need which may be economic, educational, financial, cultural, social and the like which comes to an end when the goal or purpose is achieved. The period or such residence would vary depending upon the purpose for which it is taken. But, such residence cannot be a residence created just to confer territorial jurisdiction upon a Magistrate of a place or otherwise, it would be easy for a woman well equipped with resources to go to a far away place, set up a temporary residence there just to file a case and file a case to get the pleasure of seeing husband or person in domestic relationship being put to travails of long travels and high expenses. So, to my mind, in the context of Section 27 of the D.V. Act, temporary residence means a residence set up or acquired in the ordinary course of human affairs and is not a residence set up with an intention to file a case and confer jurisdiction upon the magistrate. This is the meaning, plainly and naturally, conveyed by combined reading of key words used in Section 27 of the D.V. Act, which are "resides or carries on business or is employed."

15. Thus, in consideration of the facts of the case, I hold that the Applicant was not "temporarily" residing within the jurisdiction of the Court of learned Magistrate and no cause of action arose in Mumbai. The facts pleaded in the application and the documents produced in support of her case only belief, leads to indicate that Applicants' visit to Mumbai was 'casual visit' and does not imply definite intention to stay at a particular place. Therefore, order passed by the Magistrate cannot be faulted with, either for wrong or non-exercise of jurisdiction. In fact if liberal construction is placed

upon the provision, made under Section 27 of the Act, as sought by the Applicants, it may lead to abuse of legal process of law, as aggrieved person may choose, any place, where she may be a casual visitor.

16. In the result, the impugned order declining to entertain, Petitioner's application under Section 12 for want of jurisdiction cannot be faulted with. There is no error committed by the learned Magistrate in exercise of her jurisdiction. Petition therefore fails, it is dismissed. Rule is discharged.

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