

V.D. BHANOT

v.

SAVITA BHANOT

(Special Leave Petition (Crl.) No. 3916 of 2010)

FEBRUARY 7, 2012

[ALTAMAS KABIR AND J. CHELAMESWAR, JJ.]

PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005:

ss. 3, 12, 18, 19, 20, 31 and 33 - Domestic violence - Complaint by wife - Held: Looking into a complaint u/s 12, the conduct of the parties even prior to the coming into force of the Act, could be taken into consideration while passing an order u/ss 18, 19 and 20 thereof - High Court has also rightly held that even if a wife, who had shared a household in the past, but was no longer doing so when the Act came into force, would still be entitled to the protection of the Act, - On facts, the couple has no children - The wife is residing with her old parents - After more than 31 years of marriage, the wife having no children, is faced with the prospect of living alone at the advanced age of 63 years, without any proper shelter or protection and without any means of sustenance except for the sum which the husband was directed by the Magistrate to give to her each month - The situation comes squarely within the ambit of s. 3 of the Act, which defines "domestic violence" in wide terms, and, accordingly, no interference is called for with the order of High Court - However, considering the fact that the couple is childless and the wife has herself expressed apprehension of her safety if she were to live alone in a rented accommodation, and keeping in mind the object of the Act to provide effective protection of the rights of women guaranteed under the Constitution, who are victims of violence of any kind occurring within the family, the order of the High

- A *Court modified and it is directed that the wife be provided with a right of residence where the husband is residing, by way of relief u/s 19 of the Act - Protection orders u/s 18 are also passed - It is further directed that in addition to providing the residential accommodation to the wife, the husband shall also*
- B *pay a total sum of Rs.10,000/- per month to her towards her maintenance and day-to-day expenses.*

CRIMINAL APPELLATE JURISDICTION : SLP (Criminal)
No. 3916 of 2010.

- C From the Judgment & Order dated 22.3.2010 of the High Court of Delhi in CRMC No. 3959 of 2009.

Jitendra Mohan Sharma, Anjali Bhargva, Sandeep Singh for the Petitioner.

- D Anil Kumar Bakshi, Dr. Sushil Balwada, Rakesh Kumar, Rajeshwar Tyagi, Ashok Kumar Shukle for the Respondent.

The Order of the Court was delivered by

E **O R D E R**

- F **ALTAMAS KABIR, J.** 1. The Special Leave Petition is directed against the judgment and order dated 22nd March, 2010, passed by the Delhi High Court in Cr.M.C.No.3959 of 2009 filed by the Respondent wife, Mrs. Savita Bhanot, questioning the order passed by the learned Additional Sessions Judge on 18th September, 2009, dismissing the appeal filed by her against the order of the Metropolitan Magistrate dated 11th May, 2009.

- G 2. There is no dispute that marriage between the parties was solemnized on 23rd August, 1980 and till 4th July, 2005, they lived together. Thereafter, for whatever reason, there were misunderstandings between the parties, as a result whereof, on 29th November, 2006, the Respondent filed a petition
- H before the Magistrate under Section 12 of the Protection of

Women from Domestic Violence Act, 2005, hereinafter referred to as the "PWD Act", seeking various reliefs. By his order dated 8th December, 2006, the learned Magistrate granted interim relief to the Respondent and directed the Petitioner to pay her a sum of Rs.6,000/- per month. By a subsequent order dated 17th February, 2007, the Magistrate passed a protection/residence order under Sections 18 and 19 of the above Act, protecting the right of the Respondent wife to reside in her matrimonial home in Mathura. The said order was challenged before the Delhi High Court, but such challenge was rejected.

3. In the meantime, the Petitioner, who was a member of the Armed Forces, retired from service on 6th December, 2007, and on 26th February, 2008, he filed an application for the Respondent's eviction from the Government accommodation in Mathura Cantonment. The learned Magistrate directed the Petitioner herein to find an alternative accommodation for the Respondent who had in the meantime received an eviction notice requiring her to vacate the official accommodation occupied by her. By an order dated 11th May, 2009, the learned Magistrate directed the Petitioner to let the Respondent live on the 1st Floor of House No.D-279, Nirman Vihar, New Delhi, which she claimed to be her permanent matrimonial home. The learned Magistrate directed that if this was not possible, a reasonable accommodation in the vicinity of Nirman Vihar was to be made available to the Respondent wife. She further directed that if the second option was also not possible, the Petitioner would be required to pay a sum of Rs.10,000/- per month to the Respondent as rental charges, so that she could find a house of her choice.

4. Being dissatisfied with the order passed by the learned Metropolitan Magistrate, the Respondent preferred an appeal, which came to be dismissed on 18th September, 2009, by the learned Additional Sessions Judge, who was of the view that since the Respondent had left the matrimonial home on 4th July, 2005, and the Act came into force on 26th October, 2006, the

A claim of a woman living in domestic relationship or living together prior to 26th October, 2006, was not maintainable. The learned Additional Sessions Judge was of the view that since the cause of action arose prior to coming into force of the PWD Act, the Court could not adjudicate upon the merits of the Respondent's case.

5. Before the Delhi High Court, the only question which came up for determination was whether the petition under the provisions of the PWD Act, 2005, was maintainable by a woman, who was no longer residing with her husband or who was allegedly subjected to any act of domestic violence prior to the coming into force of the PWD Act on 26th October, 2006. After considering the constitutional safeguards under Article 21 of the Constitution, vis-à-vis, the provisions of Sections 31 and 33 of the PWD Act, 2005, and after examining the statement of objects and reasons for the enactment of the PWD Act, 2005, the learned Judge held that it was with the view of protecting the rights of women under Articles 14, 15 and 21 of the Constitution that the Parliament enacted the PWD Act, 2005, in order to provide for some effective protection of rights guaranteed under the Constitution to women, who are victims of any kind of violence occurring within the family and matters connected therewith and incidental thereto, and to provide an efficient and expeditious civil remedy to them. The learned Judge accordingly held that a petition under the provisions of the PWD Act, 2005, is maintainable even if the acts of domestic violence had been committed prior to the coming into force of the said Act, notwithstanding the fact that in the past she had lived together with her husband in a shared household, but was no more living with him, at the time when the Act came into force. The learned Judge, accordingly, set aside the order passed by the Additional Sessions Judge and directed him to consider the appeal filed by the Respondent wife on merits.

6. As indicated hereinbefore, the Special Leave Petition is directed against the said order dated 22nd March, 2010,

passed by the Delhi High Court and the findings contained therein. A

7. During the pendency of the Special Leave Petition, on 15th September, 2011, the Petitioner appearing in-person submitted that the disputes between him and the Respondent had been resolved and the parties had decided to file an application for withdrawal of the Special Leave Petition. The matter was, thereafter, referred to the Supreme Court Mediation Centre and during the mediation, a mutual settlement signed by both the parties was prepared so that the same could be filed in the Court for appropriate orders to be passed thereupon. However, despite the said settlement, which was mutually arrived at by the parties, on 17th January, 2011, when the matter was listed for orders to be passed on the settlement arrived at between the parties, an application filed by the Petitioner was brought to the notice of the Court praying that the settlement arrived at between the parties be annulled. Thereafter, the matter was listed in-camera in Chambers and we had occasion to interact with the parties in order to ascertain the reason for change of heart. We found that while the wife was wanting to rejoin her husband's company, the husband was reluctant to accept the same. For reasons best known to the Petitioner, he insisted that the mutual settlement be annulled as he was not prepared to take back the Respondent to live with him. B
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8. The attitude displayed by the Petitioner has once again thrown open the decision of the High Court for consideration. We agree with the view expressed by the High Court that in looking into a complaint under Section 12 of the PWD Act, 2005, the conduct of the parties even prior to the coming into force of the PWD Act, could be taken into consideration while passing an order under Sections 18, 19 and 20 thereof. In our view, the Delhi High Court has also rightly held that even if a wife, who had shared a household in the past, but was no longer doing so when the Act came into force, would still be entitled to the protection of the PWD Act, 2005. F
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A 9. On facts it may be noticed that the couple has no
 children. Incidentally, the Respondent wife is at present residing
 with her old parents, after she had to vacate the matrimonial
 home, which she had shared with the Petitioner at Mathura,
 being his official residence, while in service. After more than
 B 31 years of marriage, the Respondent wife having no children,
 is faced with the prospect of living alone at the advanced age
 of 63 years, without any proper shelter or protection and without
 any means of sustenance except for a sum of Rs.6,000/- which
 the Petitioner was directed by the Magistrate by order dated
 C 8th December, 2006, to give to the Respondent each month.
 By a subsequent order dated 17th February, 2007, the
 Magistrate also passed a protection-cum-residence order
 under Sections 18 and 19 of the PWD Act, protecting the rights
 of the Respondent wife to reside in her matrimonial home in
 D Mathura. Thereafter, on the Petitioner's retirement from service,
 the Respondent was compelled to vacate the accommodation
 in Mathura and a direction was given by the Magistrate to the
 Petitioner to let the Respondent live on the 1st Floor of House
 No.D-279, Nirman Vihar, New Delhi, and if that was not
 possible, to provide a sum of Rs.10,000/- per month to the
 E Respondent towards rental charges for acquiring an
 accommodation of her choice.

10. In our view, the situation comes squarely within the
 ambit of Section 3 of the PWD Act, 2005, which defines
 F "domestic violence" in wide terms, and, accordingly, no
 interference is called for with the impugned order of the High
 Court. However, considering the fact that the couple is childless
 and the Respondent has herself expressed apprehension of her
 safety if she were to live alone in a rented accommodation, we
 G are of the view that keeping in mind the object of the Act to
 provide effective protection of the rights of women guaranteed
 under the Constitution, who are victims of violence of any kind
 occurring within the family, the order of the High Court requires
 to be modified. We, therefore, modify the order passed by the
 H High Court and direct that the Respondent be provided with a

right of residence where the Petitioner is residing, by way of relief under Section 19 of the PWD Act, and we also pass protection orders under Section 18 thereof. As far as any monetary relief is concerned, the same has already been provided by the learned Magistrate and in terms of the said order, the Respondent is receiving a sum of Rs.6,000/- per month towards her expenses. A B

11. Accordingly, in terms of Section 19 of the PWD Act, 2005, we direct the Petitioner to provide a suitable portion of his residence to the Respondent for her residence, together with all necessary amenities to make such residential premises properly habitable for the Respondent, within 29th February, 2012. The said portion of the premises will be properly furnished according to the choice of the Respondent to enable her to live in dignity in the shared household. Consequently, the sum of Rs.10,000/- directed to be paid to the Respondent for obtaining alternative accommodation in the event the Petitioner was reluctant to live in the same house with the Respondent, shall stand reduced from Rs.10,000/- to Rs.4,000/-, which will be paid to the Respondent in addition to the sum of Rs.6,000/- directed to be paid to her towards her maintenance. In other words, in addition to providing the residential accommodation to the Respondent, the Petitioner shall also pay a total sum of Rs.10,000/- per month to the Respondent towards her maintenance and day-to-day expenses. C D E

12. In the event, the aforesaid arrangement does not work, the parties will be at liberty to apply to this Court for further directions and orders. The Special Leave Petition is disposed of accordingly. F

13. There shall, however, be no order as to costs. G

R.P. Special Leave Petition disposed of.

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