

SOU. SANDHYA MANOJ WANKHADE

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v.

MANOJ BHIMRAO WANKHADE & ORS.

(Criminal Appeal No. 271 of 2011)

JANUARY 31, 2011

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[ALTAMAS KABIR AND CYRIAC JOSEPH, JJ.]

*Protection of Women from Domestic Violence Act, 2005*  
– s.2(q) read with proviso thereto – Expression “respondent”  
in s.2(q) – Interpretation of – Complaint under the provisions  
of the Act – Whether female members cannot be made  
parties in proceedings under the Act, as “females” are not  
included in the definition of “respondent” in s.2(q) – Held:  
Although s.2(q) defines a respondent to mean any adult male  
person, who is or has been in a domestic relationship with the  
aggrieved person, the proviso to s.2(q) widens the scope of  
the said definition by including a relative of the husband or  
male partner within the scope of a complaint, which may be  
filed by an aggrieved wife or a female living in a relationship  
in the nature of a marriage – Though the expression “female”  
has not been used in the proviso to s.2(q) also, but, if the  
Legislature intended to exclude females from the ambit of the  
complaint, which can be filed by an aggrieved wife, females  
would have been specifically excluded, instead of it being  
provided in the proviso that a complaint could also be filed  
against a relative of the husband or the male partner – No  
restrictive meaning has been given to the expression  
“relative”, nor has the said expression been specifically  
defined in the Act, to make it specific to males only – In such  
circumstances, it is clear that the legislature never intended  
to exclude female relatives of the husband or male partner  
from the ambit of a complaint that can be made under the  
provisions of the Act.

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A The appellant had filed a complaint, being a Misc. Cr. Application, against her husband (respondent no.1), mother-in-law (respondent no.2) and sister-in-law (respondent no.3) under Sections 12, 18, 19, 20 and 22 of the Protection of Women from Domestic Violence Act, 2005.

B The High Court, by the impugned judgment, confirmed the order of the Sessions Judge in regard to deletion of names of respondent Nos.2 and 3 from the proceedings, upon confirmation of the finding of the

C Sessions Judge that no female could be made a party to a petition under the Domestic Violence Act, 2005, since the expression "female" had not been included in the definition of "respondent" in the said Act.

D The question which, therefore, arose for consideration in the instant appeal was whether female members cannot be made parties in proceedings under the Domestic Violence Act, 2005, as "females" are not included in the definition of "respondent" in Section 2(q) of the said Act.

E Allowing the appeal, the Court

F HELD:1. Although Section 2(q) of the Protection of Women from Domestic Violence Act, 2005 defines a respondent to mean any adult male person, who is or has been in a domestic relationship with the aggrieved person, the proviso to Section 2(q) widens the scope of the said definition by including a relative of the husband or male partner within the scope of a complaint, which may be filed by an aggrieved wife or a female living in a relationship in the nature of a marriage. [Paras 11, 12] [267-E-H; 268-A-B]

G 2. It is true that the expression "female" has not been used in the proviso to Section 2(q) also, but, on the other hand, if the Legislature intended to exclude females from

the ambit of the complaint, which can be filed by an aggrieved wife, females would have been specifically excluded, instead of it being provided in the proviso that a complaint could also be filed against a relative of the husband or the male partner. No restrictive meaning has been given to the expression "relative", nor has the said expression been specifically defined in the Domestic Violence Act, 2005, to make it specific to males only. [Para 13] [268-B-C]

3. In such circumstances, it is clear that the legislature never intended to exclude female relatives of the husband or male partner from the ambit of a complaint that can be made under the provisions of the Domestic Violence Act, 2005. [Para 14] [268-D]

4. Both the Sessions Judge and the High Court went wrong in holding otherwise, possibly being influenced by the definition of the expression "respondent" in the main body of Section 2(q) of the aforesaid Act. Consequently, the trial Court shall also proceed against the said Respondent Nos.2 and 3 on the complaint filed by the Appellant. [Paras 15, 16] [268-E-F]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 271 of 2011.

From the Judgment & Order dated 05.03.2010 of the High Court of Judicature at Bombay, Nagpur Bench, Nagpur in Criminal Writ Petition NO. 588 of 2009.

Garvesh Kabra, Pooja Kabra, Nikita Kabra, Abhishek Chaudhary, Adarsh Upadhyay, Harshvardhan for the Appellant.

Satyajit A. Desai, Anagha S. Desai for the Respondents.

The Judgment of the Court was delivered by

ALTAMAS KABIR, J. 1. Leave granted.

2. This Appeal is directed against the judgment and order dated 5th March, 2010, passed by the Nagpur Bench of the

A   Bombay High Court in Crl. W.P. No.588 of 2009, *inter alia*, directing the Appellant to vacate her matrimonial house and confirming the order of the Sessions Judge deleting the names of the other Respondents from the proceedings.

3. The Appellant herein was married to the Respondent

B   No.1 on 20th January, 2005, and the marriage was registered under the provisions of the Special Marriage Act, 1954. After her marriage, the Appellant began to reside with the Respondent No.1 at Khorej Colony, Amravati, where her widowed mother-in-law and sister-in-law, the Respondent Nos.2 and 3

C   respectively, were residing. According to the Appellant, the marriage began to turn sour after about one year of the marriage and she was even assaulted by her husband and by the other respondents. It is her specific case that on 16th June, 2007, she was mercilessly beaten by the Respondent No.1, which incident

D   was reported to the police and a case under Section 498-A I.P.C. came to be registered against him.

4. In addition to the above, the Appellant appears to have filed a complaint, being Misc. Crl. Application No.203 of 2007, on 16th July, 2007, against all the Respondents under Sections

E   12, 18, 19, 20 and 22 of the Protection of Women from Domestic Violence Act, 2005, hereinafter referred to as "the Domestic Violence Act, 2005". An application filed by the Appellant before the Judicial Magistrate, First Class, Amravati, under Section 23 of the above Act was allowed by the learned Magistrate, who

F   by his order dated 16th August, 2007, directed the Respondent No.1 husband to pay interim maintenance to the Appellant at the rate of Rs. 1,500/- per month from the date of the application till the final disposal of the main application and also restrained all the Respondents from dispossessing the Appellant from her

G   matrimonial home at Khorej Colony, Amravati, till the final disposal of the main application.

5. It further appears that the said order of the learned Magistrate dated 16th August, 2007, was challenged by Respondent No.1 in Crl. Appeal No.115 of 2007 before the

H   learned Sessions Judge, Amravati, who by his order dated 2nd

May, 2008, dismissed the said appeal. Aggrieved by the orders passed by the learned Sessions Judge, the Respondent No.1 filed Criminal Application No.3034 of 2008 in the High Court under Section 482 Cr.P.C. challenging the order dated 16th August, 2007 of the Judicial Magistrate, First Class, Amravati and the order dated 2nd May, 2008 of the Sessions Judge, Amravati. The said application was dismissed by the High Court on 4th September, 2009.

6. In the meanwhile, the Respondent No.2 filed an application in Misc. Crl. Application No.203 of 2007 in the Court of the Judicial Magistrate, First Class, Amravati, praying for modification of its order dated 16th August, 2007 and a direction to the Appellant to leave the house of Respondent No.2. The said application for modification was dismissed by the learned Magistrate on 14th July, 2008 holding that it was not maintainable. Thereupon, the Respondent Nos.2 and 3 filed Crl. Appeal No.159 of 2008 on 11th August, 2008, under Section 29 of the Domestic Violence Act, 2005, questioning the orders passed by the learned Magistrate on 16th August, 2007 and 14th July, 2008, on the ground that being women they could not be made Respondents in the proceedings filed by the Appellant under the provisions of the Domestic Violence Act, 2005, and that the matrimonial house of the Appellant at Khorej Colony, Amravati, belonged exclusively to Ramabai, the Respondent No.2 and mother-in-law of the Appellant and did not, therefore, come within the definition of "shared house". The said Criminal Appeal No.159 of 2008 was allowed by the learned Sessions Judge vide his judgment dated 15th July, 2009. The learned Sessions Judge allowed Criminal Appeal No.159 of 2008 and set aside the judgment and order dated 14th July, 2008 and also modified the order dated 16th August, 2007, to the extent of setting aside the injunction restraining the Respondents from dispossessing or evicting the Appellant from her matrimonial house at Khorej Colony, Amravati. The Respondent No.1 husband was directed to provide separate accommodation for the residence of the Appellant or to pay a sum of 1,000/- per

A month to the Appellant from the date of filing of the application till its final decision, in lieu of providing accommodation.

7. In Criminal Writ Petition No.588 of 2009, the Appellant herein challenged the judgment and order dated 15th July, 2009, passed by the learned Sessions Judge, Amravati, in Crl. Appeal

B No.159 of 2008, claiming that she had a right to stay in her matrimonial house. Although, the question as to whether a female member of the husband's family could be made a party to the proceedings under the Domestic Violence Act, 2005, had been raised in Crl. Appeal No.159 of 2008, the learned Sessions C Judge in his order dated 15th July, 2009, did not decide the said question and did not absolve the Respondent Nos.2 and 3 herein in his order, but only observed that female members cannot be made parties in proceedings under the Domestic Violence Act, 2005, as "females" are not included in the definition of D "respondent" in Section 2(q) of the said Act.

8. The learned Single Judge of the High Court disposed of the writ petition by his judgment and order dated 5th March, 2010, with a direction to the Appellant to vacate her matrimonial house, which was in the name of the Respondent No.2, with a further

E direction to the Trial Court to expedite the hearing of the Misc. Crl. Application No.203 of 2007 filed by the Appellant herein and to decide the same within a period of six months. A further direction was given confirming the order relating to deletion of the names of the 'other members'.

F 9. Questioning the said judgment and order of the Nagpur Bench of the Bombay High Court, Mr. Garvesh Kabra, learned Advocate appearing for the Appellant, submitted that the High Court had erred in confirming the order of the learned Sessions Judge in regard to deletion of names of the Respondent Nos.2 and 3 from the proceedings, upon confirmation of the finding of the Sessions Judge that no female could be made a party to a petition under the Domestic Violence Act, 2005, since the expression "female" had not been included in the definition of "respondent" in the said Act. Mr. Kabra submitted that it would G be evident from a plain reading of the proviso to Section 2(q) of

the Domestic Violence Act, 2005, that a wife or a female living in a relationship in the nature of marriage can, not only file a complaint against her husband or male partner but also against relatives of the husband or male partner. The term "relative" not having been defined in the Act, it could not be said that it excluded females from its operation.

10. Mr. Satyajit A. Desai, learned Advocate appearing for the Respondents, on the other hand, defended the orders passed by the Sessions Judge and the High Court and urged that the term "relative" must be deemed to include within its ambit only male members of the husband's family or the family of the male partner. Learned counsel submitted that when the expression "female" had not been specifically included within the definition of "respondent" in Section 2(q) of the Domestic Violence Act, 2005, it has to be held that it was the intention of the legislature to exclude female members from the ambit thereof.

11. Having carefully considered the submissions made on behalf of the respective parties, we are unable to sustain the decisions, both of the learned Sessions Judge as also the High Court, in relation to the interpretation of the expression "respondent" in Section 2(q) of the Domestic Violence Act, 2005. For the sake of reference, Section 2(q) of the above-said Act is extracted hereinbelow :-

"2(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."

12. From the above definition it would be apparent that although Section 2(q) defines a respondent to mean any adult male person, who is or has been in a domestic relationship with the aggrieved person, the proviso widens

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A the scope of the said definition by including a relative of the husband or male partner within the scope of a complaint, which may be filed by an aggrieved wife or a female living in a relationship in the nature of a marriage.

13. It is true that the expression "female" has not been used B in the proviso to Section 2(q) also, but, on the other hand, if the Legislature intended to exclude females from the ambit of the complaint, which can be filed by an aggrieved wife, females would have been specifically excluded, instead of it being provided in the proviso that a complaint could also be filed against C a relative of the husband or the male partner. No restrictive meaning has been given to the expression "relative", nor has the said expression been specifically defined in the Domestic Violence Act, 2005, to make it specific to males only.

14. In such circumstances, it is clear that the legislature never D intended to exclude female relatives of the husband or male partner from the ambit of a complaint that can be made under the provisions of the Domestic Violence Act, 2005.

15. In our view, both the Sessions Judge and the High Court E went wrong in holding otherwise, possibly being influenced by the definition of the expression "respondent" in the main body of Section 2(q) of the aforesaid Act.

16. The Appeal, therefore, succeeds. The judgments and orders, both of the learned Sessions Judge, Amravati, dated F 15th July, 2009 and the Nagpur Bench of the Bombay High Court dated 5th March, 2010, in Crl. Writ Petition No.588 of 2009 are set aside. Consequently, the trial Court shall also proceed against the said Respondent Nos.2 and 3 on the complaint filed by the Appellant.

G 17. The appeal is allowed accordingly.

B.B.B.

Appeal allowed.