

In the High Court at Calcutta  
Criminal Revisional Jurisdiction

Appellate Side

Present :

The Hon'ble Justice Joymalya Bagchi

**CRR 1301 of 2015**  
**with**  
**CRAN 2244 of 2015**  
**with**  
**CRAN 2202 of 2015**

Prabir Kumar Ghosh & Ors.  
Vs.  
Jharna Ghosh & Anr.

For the petitioners : Mr. Subrata Roy Karmakar, Advocate  
For the O.P. No. 1 : Ms. Sima Ghosh, Advocate  
Heard on : 20.08.2015  
Judgement on : 20.08.2015

**Joymalya Bagchi, J.** : Proceeding in Miscellaneous Case No. 57 of 2014 under Section 12 read with Sections 17/18/19/20/22 and 23 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as 'Act of 2005') has been assailed.

The facts of the case are as follows:-

The parties were married to each other according to Hindu rites and customs in the year 1987. A divorce proceeding was instituted and an ex parte divorce was granted in favour of petitioner no. 1 on December 12, 1988.

In appeal, an Hon'ble Division Bench of this Court affirmed the said decree of divorce vide order dated August 22, 2014. The petitioner no. 1 was directed to pay a lumpsum amount of Rs.1,00,000/- (Rs. One Lakh) as alimony pendente lite. By the selfsame order, the opposite party no. 1 was also given liberty to pray for permanent alimony, if so advised.

During the pendency of the appellate proceeding in or about February, 2014, the opposite party instituted the impugned proceeding under Section 12 of the Act of 2005 praying for various reliefs including the monetary relief against the petitioners.

The instant petition has been filed for quashing of the said proceeding.

Mr. Subrata Roy Karmakar, learned Advocate appearing on behalf of the petitioners, submits that since the ex parte decree of divorce was passed in 1988 and admittedly the parties were not living in a shared household since then there was no scope of domestic violence after divorce, hence, the proceeding is barred by limitation and not maintainable. He relies on *Inderjit Singh Grewal Vs. State of Punjab & Anr., reported in (2012) 1 CCrLR (SC) 654* and *Kishor Shrirampant Kale Vs. Sou. Shalini Kishor Kale & Ors., reported in 2010 CRI.L.J. 4049*. He, accordingly, prays for quashing of the impugned proceeding.

The learned Advocate for the opposite party submits that although the decree of divorce was passed, domestic violence particularly economic abuse continued and necessary averment to that effect has been made in the petition. She further submits that opposite party does not have a place of residence and, therefore, she is also entitled to a residence order in the shared household.

The moot question, which falls for decision, is whether the instant proceeding is under the various provisions of the Act of 2005 permissible in law.

It is true that the matrimonial tie had been severed by and between the parties by an ex parte order of divorce in 1988 and the same was affirmed by this Court in the year 2014.

It is also an admitted fact that the parties were not living together on or after 1988. However, the condition precedent for initiation of a proceeding under Section 12 is whether the unconverted allegations in the application disclose a case of domestic violence or apprehended domestic violence.

To appreciate such fact let me refer to the definition of the expressions "aggrieved person", "domestic relationship", "domestic violence" and "shared household" in the Act of 2005. The words are defined as follows:-

**2 (a) "aggrieved person" means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent.**

**2 (f) "domestic relationship" means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family.**

**2 (g) "domestic violence" has the same meaning as assigned to it in Section 3.**

**2(s) "shared household" means a household where the persons aggrieved lives or at any stage has lived in a domestic relationship either singly or along with 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.

'Domestic violence' is further defined in Section 3 of the Act of 2005 as follows:-

**Section 3 – For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it:-**

- (a) harms or injures or endangers the health, safety, life, limb or well being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or**
- (b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or**
- (c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or**
- (d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person.**

**Explanation I. – For the purposes of this section, –**

- (i) “physical abuse” means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force;**
- (ii) “sexual abuse” includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman;**

**(iii) “verbal and emotional abuse” includes—**

- (a) insults, ridicule, humiliation, name calling and insults or ridicule specially with regard to not having a child or a male child; and**
- (b) repeated threats to cause physical pain to any person in whom the aggrieved person is interested.**

**(iv) “economic abuse” includes—**

- (a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance;**
- (b) disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person; and**
- (c) prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.**

**Explanation II.—For the purpose of determining whether any act, omission, commission or conduct of the respondent constitutes “domestic violence” under this section, the overall facts and circumstances of the case shall be taken into consideration.”**

An analysis of Section 3 of the Act of 2005 would show that the expression ‘domestic violence’ yields to myriad manifestations. It may relate to physical abuse, sexual abuse, verbal and emotional abuse or economic abuse. It is also to be noted that the expression ‘domestic relationship’ not only includes a relationship

where two persons living together at present but also to a relationship where they had lived together in the past being related to each other by consanguinity, adoption, marriage or relationship in nature of marriage. Hence, the said expression embraces relationships where parties had lived together in the past on account of marriage or like relationships. What is the impact of a decree of divorce on such domestic relationships under the Act ? The decree of divorce snaps the legal tie of matrimony and dissolves the legal status of husband and wife and absolves them from their corresponding duty of cohabitation. The duty to live together in a shared household, therefore, no longer subsists after the decree of divorce is passed. Hence, once the marriage is dissolved, an aggrieved person cannot claim to be in a domestic relationship any longer. However, such decree does not disentitle her from being an “aggrieved person” under the Act of 2005 inasmuch as a person who had been in a domestic relationship also falls within its ameliorative reach. Notwithstanding a decree of divorce, a divorced wife is, therefore, entitled to institute a proceeding under the Act of 2005 for various reliefs thereunder provided she is able to establish that she is subjected to domestic violence as defined under section 3 thereof.

The next question which therefore crops up is whether a divorced wife who had been in a domestic relationship and consequentially an ‘aggrieved person’ under the Act of 2005, as aforesaid, continues to be entitled to a right of residence in a shared household under the Act of 2005 even after divorce ? Section 17 of the Act of 2005 deals with the right to residence of an aggrieved persons. Section 17 reads as follows :

**“S. 17. Right to reside in a shared household.—**

**(1) Notwithstanding anything contained in any other law for the time being in force, every woman in a domestic relationship shall have the right to reside in the shared household, whether or not she has any right, title or beneficial interest in the same.**

**(2) The aggrieved person shall not be evicted or excluded from the shared household or any part of it by the respondent save in accordance with the procedure established by law."**

A bare perusal of the aforesaid provision would show that the same is restricted to a woman in a domestic relationship and not to one who had been in such a relationship, e.g., a divorced wife. Hence, a divorced wife cannot claim right to residence under section 17 of the Act of 2005 and consequently a residence order under section 19 thereof although she is an 'aggrieved person' under the said Act and pray for other reliefs including monetary relief under the Act if a case of 'domestic violence' is demonstrated in the facts of the case.

In this backdrop let me examine the application of the opposite party no. 1 under section 12 of the Act of 2005. No doubt she was divorced by an ex parte decree in 1988. Such decree was upheld by this Court in 2014. While upholding the said decree of divorce, the Division Bench observed that the opposite party no. 1 may claim permanent alimony. In the application under section 12 of the Act of 2005 which had been filed during the pendency of the said appeal it has been averred that the opposite party no. 1 is living in penury and suffering from economic deprivation/abuse and is, inter alia, entitled to monetary reliefs from petitioner no. 1/husband who has sufficient income of his own. The aforesaid uncontroverted allegations per se disclose a case of 'economic abuse' which is a species of 'domestic violence' under section 3 of the Act. 'Economic abuse' includes deprivation of financial or economic resources to which an aggrieved person is

entitled to under any law or custom. In the instant case, the opposite party no. 1 was entitled to claim permanent alimony post divorce and such claim is a continuing one which continues from day to day. Hence, institution of the proceeding by the aggrieved lady to such relief cannot be said to be impermissible on the ground that she has been divorced and no domestic relationship is presently subsisting between herself and the petitioners.

I am also unable to accede to the submission of the learned lawyer for the petitioner that there can be no case of 'domestic violence' after the decree of divorce in 1988 as the parties had not lived together thereafter. Section 3 of the Act provides that any act or omission on the part of the respondent which harms, endangers or injures the health, safety life, limb or well being of an aggrieved person including economic abuse amounts to 'domestic violence'. Denial of economic support/sustenance to a divorced wife living penury would amount to 'economic abuse' constituting 'domestic violence' under the Act. Continuity of joint residence in a shared household or domestic relationship inter se is not a sine qua non for the perpetration of domestic violence to an aggrieved person in the form 'economic abuse' under the Act. Hence, the plea that there can be no case of 'domestic violence' after divorce of the opposite party no. 1 is clearly misconceived and untenable in law.

If economic abuse is evident in respect of an aggrieved person, who was in a domestic relationship and in the event, such economic abuse continues from day to day, the aggrieved person, in my considered opinion, would be entitled to institute a proceeding under Section 12 of the Act of 2005 for necessary relief.



In **Kishor Shrirampant Kale (supra)**, I find that on a factual analysis of the application, the High Court had come to a finding that there was no case of economic abuse. Such is not the situation in the present case. On the other hand, the decree of divorce gives a right to the opposite party no. 1 to seek permanent alimony. It is nobody's case that opposite party no. 1 has independent income of her own or sufficient monetary arrangement had been provided to her after divorce. It was no doubt open to the opposite party no. 1 to seek such alimony under the provisions of the Hindu Marriage Act. However, in view of section 26 of the Act, the opposite party no. 1 was entitled to claim similar relief under the Act of 2005. The reliefs under the Act are to be read in addition to the reliefs under any other law for the time being in force and not in exclusion of each other.

Lastly it has been argued that the proceeding is barred by limitation under section 468 Cr.P.C. It is submitted as the parties did not live together since 1988 and there was no case of 'domestic violence' thereafter, the proceeding is barred by limitation as the same had to be instituted within one year from the incident of domestic violence in terms of section 468 Cr.P.C. As already discussed, 'domestic violence' in the form of 'economic abuse' continued even after divorce on a day to day basis and the instant proceeding cannot therefore be said to be time barred on that score.

That apart, section 468 Cr.P.C. in my considered opinion cannot have any manner of application to a proceeding under section 12 of the Act of 2005. Section 468 Cr.P.C. prescribes the period of limitation for a Court to take cognizance of offences punishable with fine only, maximum imprisonment of year or three years respectively. Act of 2005 does not provide for initiation of prosecution for an act of

'domestic violence' at the first instance. The scheme of the Act provides for a two-tier system. A victim of domestic violence may take out an application under section 12 of the Act before the learned Magistrate complaining of domestic violence whereupon the learned Magistrate upon due enquiry may pass protection order (section 18), residence order (section 19), monetary relief (section 20), custody order (section 21) or compensation order (section 22), as the case may be in favour of the aggrieved person. Ad-interim/interim orders of like nature may also be passed under section 23 of the Act. Only when a protection order or an interim protection order is breached by the respondent the penal provision of the Act are attracted and the offenders may be prosecuted and punished under section 31 of the Act for a maximum period of one year. From the aforesaid discussion it is clear that neither is the act of 'domestic violence' is per se an offence punishable under the Act nor can an application under section 12 of the Act be treated as a petition of complaint/prosecution report filed before a learned Magistrate for taking cognizance of an offence punishable in law. The reliefs prayed for in an application under section 12 of the Act, e.g., protection order, etc. are all preventive or protective and not punitive in nature. It is only after a protection order passed under the Act, is breached, the penal provision under section 31 of the Act is attracted.

The initial proceeding under section 12 of the Act of 2005 in the aforesaid two-tier system as envisaged in the statute is neither punitive in nature nor the reliefs penal in character. In fact, the preventive/protective import of such remedy prescribed therein is highlighted in the State of Objects and Reasons appended in the Bill at the time of its introduction in the Parliament, which reads as follows :-

**“Prefatory Note–Statement of Objects and Reasons. –**

.....

**2. The phenomenon of domestic violence is widely prevalent but has remained largely invisible in the public domain. Presently, where a woman is subjected to cruelty by her husband or his relatives, it is an offence under section 498-A of the Indian Penal Code. The civil law does not however address this phenomenon in its entirety.**

**3. It is, therefore, proposed to enact a law keeping in view the rights guaranteed under Articles 14, 15 and 21 of the Constitution to provide for a remedy under the civil law which is intended to protect the women from being victims of domestic violence and to prevent the occurrence of domestic violence in the society.”**

.....

**(emphasis supplied)**

It is accordingly opined that the initial proceeding under section 12 of the Act, although governed by the provisions of the Criminal Procedure Code, is essentially quasi-civil in nature while the subsequent prosecution contemplated under section 32 thereof for breach of protection order passed therein is penal in character. Initial act or acts of ‘domestic violence’ per se does not constitute the offence under section 32 of the Act but a breach of protection order passed therein by subsequent acts of ‘domestic violence’ or otherwise is the ingredient of such offence. Starting point of limitation contemplated under section 468 Cr.P.C. is from date of commission of the offence which in respect of section 32 of the Act is the date of breach of protection order under the Act and not the initial act/acts of domestic violence which is cause of action for a proceeding contemplated under section 12 of the Act.

Hence, the period of the limitation prescribed under section 468 Cr.P.C. for launching prosecution in respect of offences specified therein cannot be applied to

an application under section 12 of the Act which neither partakes the character of a prosecution nor the reliefs envisaged therein are penal in nature. The said provision may at best be pressed into service to regulate the initiation of prosecution under section 32 of the Act complaining of breach of protection order but certainly does not prescribe the period of limitation for instituting initial proceeding under section 12 of the Act of 2005 complaining of 'domestic violence' and culminating in a protection order under the said Act.

Reference to **Inderjit Singh Grewal (supra)** is wholly misconceived. In the said report the Apex Court quashed a proceeding under the Act of 2005 as an abuse of process of Court as it was instituted after a decree of mutual consent was passed dissolving the marriage between the parties. In the said decree the issue as to dowry articles and custody were settled. However, alleging that the decree was procured through fraud, the wife filed a proceeding under the Act praying for custody, residence order and return of dowry articles. Simultaneously, she also filed a suit for declaration that the decree is null and void and custody of the child. In the aforesaid factual background, the Apex Court held that the allegation of fraud was patently absurd and an afterthought and the proceeding was quashed. The facts are completely different in the present case. Although herein the matrimonial tie has also been dissolved by a decree of divorce, the claim of alimony/maintenance was not settled therein and the opposite party no. 1 was given leave to seek permanent alimony in accordance with law. The plea of 'economic abuse' of a divorced wife as a species of 'domestic violence' had not fallen for consideration in the aforesaid report and the said authority is accordingly distinguishable on facts from the present case on that score. The said report is also

not an authority for the proposition that section 468 Cr.P.C. applied to an application under section 12 of the Act inasmuch as in paragraph 24 of the said report it refers to applicability of section 468 Cr.P.C. to a prosecution under section 32 of the Act in terms of section 28 and Rule 15(6) of the Rules framed thereunder and not to an initial proceeding under section 12 of the said Act seeking reliefs in the nature of protection, orders, etc.

It is trite law that a decision is an authority for the proposition it actually decides and not what logically follows therefrom. **[State of Orissa Vs. Sudhansu Sekhar Misra, AIR 1968 SC 647 (para 13)]**

Accordingly, I am of the opinion that the aforesaid decision has no application to the facts of the instant case, where having perused the averments in the application and in the light of the factual background, I am satisfied that a case of economic abuse which is continuing on a day to day basis, has been made out against petitioner no. 1.

Hence, I am of the opinion that the application under Section 12 is maintainable against the petitioner no. 1 (former husband).

However, with regard to the institution of the proceeding against the other petitioners, namely, petitioner nos. 2, 3, 4 and 5, I find that the only allegation against them is that they prevented the divorced lady from entering her erstwhile matrimonial home. In view of the fact that an aggrieved person who had been in a domestic relationship is not entitled to a right of residence under section 17 of the Act, I am of the opinion that the uncontroverted allegations against petitioner nos. 2, 3, 4 and 5 do not disclose any act of domestic violence in the facts of the case.

Accordingly, I quash the proceeding so far as the other petitioners are concerned.

I direct the Trial Court to proceed with the matter against the petitioner no. 1 in accordance with law and take it to its logical conclusion at an early date.

The revision petition is, accordingly, **disposed of**.

With the disposal of the revision petition, the connected applications being CRAN 2244 of 2015 and CRAN 2202 of 2015 are also **disposed of**.

**(Joymalya Bagchi, J.)**