

HIGH COURT OF JAMMU AND KASHMIR  
AT JAMMU

CRMC No. 700/2017  
MP No. 01/2017

Date of decision: 18.05.2018

Raghav Agnihotri & ors. Vs. Neha Sharma

Coram:

Hon'ble Mr. Justice Janak Raj Kotwal, Judge.

Appearing Counsel:

For petitioner(s)/appellant(s) : Mr. Vilakshana Singh, Advocate.

For respondent(s) : Mr. Vikram Sharma, Advocate.

(i) Whether to be reported in Press, Journal/Media : Yes/No

(ii) Whether to be reported in Journal/Digest : Yes/No Heard learned counsel for the parties and perused the record.

Petitioners 2 & 3 are the parents-in-law of the respondent and petitioner No.1 is her brother-in-law, that is, husband of the sister of respondent's husband.

Respondent has filed application under section 12 of the Jammu and Kashmir Protection of Women from Domestic Violence Act, 2010 (for short, the Act) read with sections 18, 19, 20 and 22 against her husband, Raghav Agnihotri and the petitioners.

By the medium of this petition, petitioners seek quashing of the said application.

The bottom line of the submissions made by learned counsel for the petitioners was that the application under section 12 of the Act and the connected sections is not maintainable against the petitioners for the reason that the averments therein make it clear that the petitioners were never in a domestic relationship with the respondent inasmuch as at no point of time the respondent has resided with them or any one of them in a shared household. Learned counsel for the petitioners argued that it is admitted case of the respondents that ever since her marriage she had been living with her husband at Noida and never lived in the household with her parents-in-law at Mohali (Punjab) or with the brother-in-law (supra). Learned counsel relied upon the Supreme Court judgment in S.R.Batra & anr. v. Smt. Taruna Batra, (2007) 3 SCC 169.

Per contra, learned counsel for the respondent argued that the respondent and her husband had been visiting and residing with her parents-in-law in their house at Mohali, Punjab and that it is sufficient that at some point of time parties had been living in a shared accommodation. Learned counsel argued further that all the petitioners are guilty of domestic violence against the respondent along with her husband.

It is important to note that cause of action to file an application under section 12 of the Act accrues to the "aggrieved person". Application under this section can be filed by the aggrieved person herself or on her behalf by the Protection Officer or by any other person. In this application, the aggrieved person can seek one or more of the reliefs provided under the Act. Sections 18, 19, 20 & 22 provide for some of the reliefs, which can be sought by the aggrieved person under the Act.

The term "aggrieved person" is defined in section 2(a) and the term "domestic relationship" is defined in section 2(f). Sections 2(a) and 2(f) are reproduced:

"2(a) "aggrieved person": means any woman who is 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, adoption or are family members living together as a joint family."

On reading the aforementioned provisions in juxtaposition, as they should be, an application under section 12 of the Act can be filed by a woman against a person with whom she is in a domestic relationship, that is, with whom she lives or has at any point of time lived together in a shared household and is related by consanguinity, marriage, adoption or as a member of joint family.

The impugned application on a plain look makes it clear that right from the time of their marriage the respondent and her husband had been living at Noida, away from the household of the parents-in-law of the petitioner at Mohali (Punjab). Insofar as petitioner No. 1 is concerned, it is not at all contended that he ever lived in the house of his in-laws, much less, that he ever shared any household with the respondent. It is, thus, clear that the respondent cannot be termed as an aggrieved person vis a vis the petitioners, not even if it is believed, as contended by learned counsel for respondent, that the respondent and her husband had been visiting the house of the parents-in-law of the respondent at Mohali occasionally. The application under section 12 of the Act filed by the respondent against the petitioners, therefore, is not maintainable.

Viewed thus, this petition has merit and is allowed. The impugned application and the proceedings qua the petitioners are quashed.

(Janak Raj Kotwal) Judge Jammu:

18.05.2018 Pawan Chopra