

Babita @ Kavita vs State & Ors. on 9 September, 2016

Author: Pradeep Nandrajog

Bench: Pradeep Nandrajog

\$~2 & 8

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of Decision : September 09, 2016

+ CRL.M.C. 46/2013

BABITA @ KAVITA

..... Petitioner

Represented by:

Mr.K.P.Jain, Advocate for
Mr.O.P.Saxena and Mr.S.Kumar,
Advocates

versus

STATE & ORS.

..... Respondents

Represented by:

Mr.Amit Ahlawat, APP with SI Kapil
Kumar, PS M.S.Park
Mr.S.K.S.Bhaduria, Advocate for R-2
and R-3

CRL.M.C. 2637/2014

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Kumar, PS M.S.Park
Mr.S.K.S.Bhaduria, Advocate for R-4
and R-5

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

PRADEEP NANDRAJOG, J. (Oral)

1. In Crl.M.C.No.46/2013 Babita is aggrieved by the order absolving Ved Prakash and Hira Devi in proceedings under Protection of Women from Domestic Violence Act, 2005. In Crl.M.C.No.2637/2014 her grievance is to anticipatory bail granted to respondents No.2 to 5 who are : Ram Prasad, his wife Laxmi Devi, Ved Prakash and his wife Hira Devi.

2. The marriage between Babita @ Kavita and Manoj Kumar was solemnized on May 01, 2006 as per Hindu Rites and Customs in New Delhi and they proceeded to reside at the matrimonial home

being House No.278, IInd Floor, Masjid Moth, New Delhi-110049.

3. It is the case of Babita that at the time she married Manoj it was represented that Ram Prasad and Laxmi Devi are his parents and Ved Prakash and Smt.Hira Devi were introduced as the brother and sister-in-law respectively of Smt.Laxmi Devi. At the time of marriage, the complainant's father gave various articles and a sum of ` 2 lakhs as part of stridhan to Ram Prasad and Laxmi Devi. That she was repeatedly beaten and abused by the respondents collectively for having failed to fulfill their demand for dowry in sum of ` 15 lakhs. Ved Prakash and Hira Devi would regularly visit the matrimonial home and humiliate and give beatings to the complainant for having failed to give birth to a son and for bringing inadequate dowry. She was subjected to beatings and mental torture at the hands of the respondents on May 09, 2007, July 21, 2008, September 18, 2011 and October 16, 2011. On August 20, 2008, she discovered that the respondents had concealed material information about their identities. She discovered that her husband was actually the adopted son of Sh.Ram Prasad, and Smt.Laxmi Devi and that Sh.Ved Prakash and Smt.Hira Devi, who were introduced as relatives of Smt. Laxmi Devi were the biological parents of her husband. On September 18, 2011, the respondents threatened to kill her and she was forced to leave her matrimonial home.

4. Babita had filed a complaint No.80/12 dated December 24, 2011 before the Metropolitan Magistrate seeking reliefs of maintenance and damages for mental distress under Section 20(d) and Section 22 of the Protection of Women from Domestic Violence Act, 2005. FIR No.100/2012 dated June 07, 2012 was also registered for offence punishable under Sections 498-A/406/34 IPC and Section 4 of the Dowry Prohibition Act at P.S. Mansarovar Park, New Delhi on the complaint lodged by Babita.

5. Pertaining to the complaint lodged under the Protection of Women from Domestic Violence Act, 2005 and perusal of the allegations therein, the learned Metropolitan Magistrate deleted Sh.Ved Prakash and Smt.Hira Devi from the array of respondents vide order dated February 29, 2012 which order has been confirmed by the learned ASJ, Kakardoma Court vide order dated November 29, 2012 holding that there is no domestic relationship between the complainant and Sh.Ved Prakash and Smt.Hira Devi who were not even residing with the complainant in the matrimonial home. The allegations against Ved Prakash and Hira Devi have been found to be vague.

6. In the decision reported as 2010 (3) CC Cases (HC) 543 Harbans Lal Malik Vs. Payal Malik in paras 9 to 20 it was observed as under:-

"9. The first issue arising in this case is whether an application under Section 12 of Domestic Violence Act made by the respondent could have been entertained against all the respondents (petitioners herein) as arrayed in her application and whether the Court without discussing the domestic and legal relationship of different respondents with the petitioner, could have passed an order against the petitioners making them jointly and severally liable to pay maintenance of ` 50,000/-.

10. Under Section 12, an „aggrieved person“ can file an application to Magistrate against the respondents. The respondent has been defined under Section 2 (q). The

definition reads as under: "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.

11. It is apparent that in order to make a person as respondent in a petition under Section 12, there must exist a domestic relationship between the respondent and the aggrieved person. If there is no domestic relationship between the aggrieved person and the respondent, the Court of MM cannot pass an order against such a person under the Act. Domestic relationship is defined under Section 2 (f) of the Act and is as under:

"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;

12. It is apparent that domestic relationship arises between the two persons, who have lived together in a shared household and 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. The definition speaks of living together at any point of time however it does not speak of having relation at any point of time. Thus, if the domestic relationship continued and if the parties have lived together at any point of time in a shared household, the person can be a respondent but if the relationship does not continue and the relationship had been in the past and is not in the present, a person cannot be made respondent on the ground of a past relationship. The domestic relationship between the aggrieved person and the respondent must be present and alive at the time when complaint under Domestic Violence Act is filed and if this relationship is not alive on the date when complaint is filed, the domestic relationship cannot be said to be there. The first respondent made by the wife in her complaint before the learned MM in this case was husband with whom the wife had lived under the same roof in a shared household till 22 nd August, 2008 in USA. She had not lived for last 7 ½ years with respondent no.1 in India. Respondent No.4 is Varun Malik who is brother of the husband. Under no circumstances it can be said that brother of husband, who was a major and independent, living separately from this husband and wife, had any kind of domestic relationship or moral or legal responsibility/obligations towards his brother s wife. He had not lived in domestic relationship with Payal Malik at any point of time. Merely because a person is brother of the husband he cannot be arrayed as a respondent, nor does an MM gets authority over each and every relative of the husband, without going into the fact whether a domestic relationship or shared household was there between the aggrieved person and the respondent.

13. The other respondent made in this case is Harbans Lal, father of Nagesh Malik. Nagesh Malik was living in USA he came to India to solemnize his marriage with an appropriate person. After marriage was solemnized he left India and went to USA. He lived all along with his wife in USA, birth of the child had taken place in USA. In all such cases where boy lives abroad and is settled abroad but comes to India for marriage, it is known to the girl as well as to the parents of the girl that they are choosing a groom who is not living with his parents but settled abroad. His links with the parents are only as with any other relative. He is not dependent on parents may be parents, if poor, take financial help from him.

14. The girl and the parents of the girl knew it very well that they had selected a person for marriage with whom the girl was going to live abroad and the matrimonial home and the shared household was going to be outside India. This act of marrying a person settled abroad is a voluntary act of the girl. If she had not intended to enjoy the fat salary which boys working abroad get and the material facilities available abroad, she could have refused to marry him and settled for a boy having moderate salary within India. After having chosen a person living abroad, putting the responsibility, after failure of marriage, on the shoulders on his parents and making them criminals in the eyes of law because matrimonial ties between the two could not last for long, does not sound either legally correct or morally correct. How can the parents of a boy who is working abroad, living abroad, an adult, free to take his own decisions, be arrayed as criminals or respondents if the marriage between him and his wife failed due to any reason whatsoever after few years of marriage. If the sin committed by such parents of boy is that they facilitated the marriage, then this sin is equally committed by parents of the girl. If such marriage fails then parents of both bride and groom would have to share equal responsibility. The responsibility of parents of the groom cannot be more. Shelter of Indian culture and joint family cannot be taken to book only relatives of boy. A woman's shared household in India in such cases is also her parents' house where she lived before marriage and not her in-laws' house where she did not live after marriage.

15. When the shared household of husband and wife had not been in India for the last 08 years at any point of time, it is strange that the learned MM did not even think it proper to discuss as to how the father or the brother of the boy could be made respondents in proceedings of domestic violence, after husband and wife had not been able to pull on together. In the present case, Mr. Harbans Lal Malik petitioner could not be said to have shared household with the respondent since the respondent had not lived in his house as a family member, in a joint family of which Harbans Lal Malik was the head.

16. It is important to consider as to what "family" is and what "joint family" is. As per Black's Law Dictionary (VI Edition) "family" means a collective body of persons who live in one house under one head or management. Dictionary states that the meaning of word "family" necessarily depends on field of law in which word is used, but this is

the most common meaning. "Family" also means a group of blood relatives and all the relations who descend from a common ancestor or who spring from a common root. However, for the purpose of domestic violence act where the object is to protect a woman from domestic violence, "family" has to be defined as a collective body of persons who live in one house under one head or management. In Chambers Dictionary (1994-95) again the "family" is defined as all those who live in one house i.e. parents, children servants; parents and their children. In Shorter Oxford English Dictionary (1993 ed.) "family" is defined as a group of persons living in one household including parents and their children, boarders, servants and such a group is an organizational unit of society.

17. A Hindu Joint Family or Hindu Undivided Family (HUF) or a Joint Family is an extended family arrangement prevalent among Hindus of the Indian subcontinent, consisting of many generations living under the same roof. All the male members are blood relatives and all the women are either mothers, wives, unmarried daughters or widowed relatives, all bound by the common sapinda relationship. The joint family status being the result of birth, possession of joint cord that knits the members of the family together is not property but the relationship. The family is headed by a patriarch, usually the oldest male, who makes decisions on economic and social matters on behalf of the entire family. The patriarch's wife generally exerts control over the kitchen, child rearing and minor religious practices. All money goes to the common pool and all property is held jointly. The essential features of a joint family are:

Head of the family takes all decisions All members live under one roof Share the same kitchen Three generations living together (though often two or more brothers live together or father and son live together or all the descendants of male live together) Income and expenditure in a common pool - property held together.

A common place of worship All decisions are made by the male head of the family - patrilineal, patriarchal.

18. Thus, in order to constitute a family and domestic relationship it is necessary that the persons who constitute domestic relationship must be living together in the same house under one head. If they are living separate then they are not a family but they are relatives related by blood or consanguinity to each other. Where parents live separate from their son like any other relative, the family of son cannot include his parents. The parents can be included in the family of son only when they are dependent upon the son and/or are living along with the son in the same house. But when they are not dependent upon the son and they are living separate, the parents shall constitute a separate family and son, his wife and children shall constitute a separate family. There can be no domestic relationship of the wife of son with the parents when the parents are not living along with the son and there can be no domestic relationship of a wife with the parents of her husband when son along with

the wife is living abroad, maintaining a family there and children are born abroad. I, therefore consider that Harbans Lal Malik could not have been made as a respondent in a petition under Domestic Violence Act as he had no domestic relationship with aggrieved person even if this marriage between her and her husband was subsisting.

19. I, also consider that the definition of "wife" as available under Section 125 Cr.P.C could not be imported into Domestic Violence Act. The Legislature was well aware of Section 125 Cr.P.C. and if Legislature intended, it would have defined "wife" as in Section 125 Cr.P.C in Domestic Violence Act as well. The purpose and object of Domestic Violence and provision under Section 125 Cr.P.C. is different. While Domestic Violence Act has been enacted by the Parliament to prevent acts of domestic violence on women living in a shared household. Section 125 of Cr.P.C. is to prevent vagrancy where wife is left high and dry without maintenance. Law gives a right to claim maintenance under Civil Law as well as Section 125 Cr.P.C. even to a divorced wife, but an act of domestic violence cannot be committed on a divorced wife, who is not living with her husband or family and is free to live wherever she wants. She has a right to claim maintenance and enforce other rights as per law. She has a right to claim custody of children as per law but denial of these rights do not amount to domestic violence. Domestic Violence is not perceived in this manner. The definition of "Domestic Violence" as given in Section 3 of The Protection of Women from Domestic Violence Act, 2005 and is under:

3. Definition of domestic violence .-

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.

20. This definition pre supposes that the woman is living with the person who committed violence and domestic relationship is not dead buried or severed. This does not speak of past violence which a woman suffered before grant of divorce."

7. Judicial discipline warrants this Court to follow the law declared by a coordinate bench, and doing so I dismiss Crl.M.C.No.46/2013.

8. I see no reason to cancel the anticipatory bail granted in FIR No.100/2012 to respondents No.2 to 5. The principles of cancelling a bail granted have been succinctly noted in the order impugned which is dated March 03, 2014 by the learned Additional Sessions Judge. Thus, Crl.M.C.No.2637/2014 is also dismissed.

Babita @ Kavita vs State & Ors. on 9 September, 2016

Crl.M.A.No.219/2013 in Crl.M.C.No.46/2013 Dismissed as infructuous.

(PRADEEP NANDRAJOG) JUDGE SEPTEMBER 09, 2016/mamta