

DISTRICT:- South 24-Parganas

Present:- Sri Subasish Ghosal,
Additional District & Sessions' Judge,
17th Court, Alipore.

Criminal Appeal No. - 75 of 14
(CIS- Crl App -1/14)

1. KALI SARKAR
2. ALO DEBNATH
3. PUJA DEBNATH
4. BHAJAN DEBNATH
5. TITHI HALDER

..... Appellants/ Petitioners.

-Versus-

1. SMT. SHYAMOLI ROYOpp. Party No.1
2. THE STATE OF WEST BENGAL

.....Opp. Party No.2

U/s. 5 of the Limitation Act.

Judgment delivered on 10.01.2018.

JUDGMENT

The Appeal is directed against the order dated 04.1.14 of the Ld. J.M. 9th Court, Alipore in Complaint Case No.-3120/2013 dismissing the prayer of the O.P.No. 3 to 7 there in for expunging their name.

The fact of the case is that one Shyamoli Roy (Saha) lodged a complaint U/s. 12 & 23 of P.W.D.V.Act before the Ld. Court of CJM, Alipore stating interalia that she had got married with Shri Monosji Roy, the Respondent No. 1 there in and went to lead her matrimonial life in the matrimonial home. The marriage was effected in consonance of the advertisement of Anandabazar Patrika. She spent a lot of amount for development of the matrimonial home. After six months she came to know that her husband is a divorcee and she is the third wife and even he

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maintained an illicit relationship with one Tithi Halder the Respondent No. 7 there in. It was alleged that all the Respondents were causing torture upon her and they demanded to get divorce. She along with her minor child do not look after by the Respondent No.1. She had no independent income and therefore come to the Court against seven persons under P.W.D.V.Act.

All the Respondents had entered into appearance and Respondent No. 3 to 7 by a joint application praying for expunging their name as because they do not come within the purview of P.W.D.V.Act being not related with the Petitioner but on a contested hearing the Ld. Court below was pleased to reject the prayer on the ground that the matter is subjected to leading evidence and cannot be decided at this stage.

None appear on behalf of either of the parties to participate with the hearing.

The Respondent No. 1 and 2 before the Ld. Court are the husband and Mother-in-law and Respondent No. 3 to 6 are neighbours and Respondent No. 7 has been figured as maintaining an illicit relationship with Respondent No. 1.

I have carefully perused the LCR.

According to section 2(q) of P.W.D.V.Act the term Respondent has been emphasized as 'in adult male person who is, or has been , in a domestic relationship with the aggrieved person and against whom the aggrieved person has sort in relation under this Act'.

Section 3 of the Act define the term domestic violence which includes the act, omission or commission or conduct of the Respondent.

So, the term domestic violence is completely confined upon the Respondent and according to the previous section as noted above Respondent should be in a domestic relationship with the aggrieved person.

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Section 2(f) of the Act defines the term domestic violence relationship which meant 'a relationship between two persons who live or have, at any point of time, live together in a share household, when they are related by consanguinity, marriage or through a relationship in the nature of marriage, adoption, or are family members living together in a joint family'.

So, the domestic relationship means that the persons should be related either by consanguinity or marriage or adoption or family members and which indicates that it should not be never or related with any other relationship like friends, kept etc.

The term share household has been defined as section 2(s) of the Act which provided-----

"shared household" means household where the person 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.

In consultation with the definition as noted above it therefore comes to this Court that any neighbour or any other persons who does not related with any domestic relationship or lived in share household are subject matter with this act and practically no action can be taken against them with the influence of this Act.

The findings of the Ld. Magistrate was that the matter is required to be determined with the evidence and that findings cannot be sustainable at all as because admittedly the status of Respondent No. 3 to 7 in Court below has been stated as neighbour and maintained illicit relationship with Respondent No. 1 respectively in terms of para 2 of petition of complaint.

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Regard being had the facts and circumstances of the case, I am therefore of the view that the findings of the Ld. Magistrate was wrong and required to be interfered with.

The impugned order is thus set-aside.

The prayers of the Appellant before the Court below as the status of Respondent No. 3 to 7 under petition dated 03.01.14 to be allowed. Their name be expunged from the case.

The Appeal is thus allowed.

Send down the LCR along with copy of order to the Ld. Court below.

All the Stay be vacated.

D/C by me

A.D.J., 17th Court, Alipore Additional District & Sessions Judge,
17th Court, Alipore