

# Delhi High Court

**Mrs. Savita Bhanot vs Lt.Col.V.D.Bhanot on 22 March, 2010**

IN THE HIGH COURT OF DELHI AT NEW DELHI

Crl.M.C. No.3959/2009 & Crl.M.A.13476/2009

Reserved on: 19th March 2010

Date of Decision: 22nd March 2010

MRS. SAVITA BHANOT . . . . .Petitioner  
Through: Mr. A.K.Bakshi, Advocate.

versus

LT.COL.V.D.BHANOT . . . . .Respondent  
Through: Mr. A.K.Maitri, Advocate.

CORAM:  
HON'BLE MR. JUSTICE V.K. JAIN

V.K. JAIN, J.

1. This is a petition under Section 482 of the Code of Criminal Procedure against the order of the learned Additional Sessions Judge dated 18.9.2009, whereby he dismissed the appeal filed by the petitioner against the order of the learned Metropolitan Magistrate dated 11.5.2009.

2. The marriage between the parties was solemnized on 23.8.1980 and the petitioner was driven out of the matrimonial home on 4.7.2005. The case of the petitioner is that it was on account of the conduct of the respondent that she thereafter could not live with him. On 29.11.2006, the petitioner filed a petition before the Magistrate under Section 12 of Protection of Women from Domestic Violence Act 2005 (hereinafter referred to as "the Act") seeking various reliefs. Vide order dated 8.12.2006, the learned Magistrate granted interim relief of Rs.6,000/- per month to the petitioner. Vide subsequent order dated 17.2.2007, he passed protection/residence order and allowed the petitioner to live in her matrimonial home in Mathura. The order dated 17.2.2007 was challenged by the respondent before this Court but his application for staying the order was declined. The respondent, in the meantime, retired from service on 6.12.2007 and on 26.2.2008, he filed an application for eviction of the petitioner from the Government accommodation in Mathura Cantt. The learned Magistrate directed him to locate an alternative accommodation for the petitioner. The petitioner, who had received an eviction notice requiring her to vacate the official accommodation occupied by her, filed an application seeking an urgent relief from the Metropolitan Magistrate. Vide order dated 11.5.2009, the learned Magistrate directed the respondent to let her live on the first floor of House No. D-279, Nirman Vihar which she claimed to be her permanent matrimonial home. She further directed that if this was not possible a reasonable accommodation in the vicinity of Nirman Vihar be made available to her. She further directed that if second option was also not possible, the respondent would pay a sum of Rs. 10,000/- per month to the petitioner as rental charges, so that she could find a house of her choice. Being dissatisfied with the order passed by the learned Metropolitan Magistrate, the petitioner preferred an appeal which came to be dismissed vide order dated 18.9.2009. The learned Additional Sessions Judge was of the view

that since the petitioner had left the matrimonial home on 4.7.2005 and the Act came into force on 26.10.2006, the claim of a woman living in domestic relationship or living together prior to 26.10.2006, was not maintainable. He was of the view that since the cause of action arose prior to coming into force the Act the Court need not adjudicate upon the merits of her case.

3. The only question which comes up for determination by this Court is as to whether a petition under the provisions of the Act is maintainable by a woman, who had stopped living with the respondent, or by a woman, who alleges to have been subjected to any act of domestic violence, prior to coming into force of the Act on 26th October 2006.

4. It is a historical reality that the women in our society have been subjected to discrimination, misbehavior and ill- treatment, not only outside but, also inside their house, the main causes for their plight being (i) illiteracy (ii) economic dependence on men and (iii) insensitivity to their rights and their dignity. Even a working woman, whether she be a construction worker who works side by side with her husband or a well-educated and a suitably employed professional is not always accorded the dignity and respect, which ought to be given to her on the home front. Despite concept of equality of sex in all respects being a hallmark of our Constitution, having been recognized in Articles 14, 15, 21, 39 and 51(A), it is a harsh reality that the women in our Country continue to be subjected to what we generally term as domestic violence. The legislature has from time to time been making efforts to impart justice and fair play to the women by means of various statutory enactments and Protection of Women from Domestic Violence Act, 2005, is a landmark initiative taken by the Parliament to confer certain important benefits including right of residence on a woman and to penalize those, who fail to provide those benefits to the women despite judicial mandate in the form of order passed by a Court under the provisions of the

Act. The legislation comprehensively addresses many issues relating to women, including those in live-in relationships and extends protection to relationship other than marital such as mothers and sisters and gives a new dimension to the expression „abuse“ by including not only physical abuse but also threat of abuse whether physical, mental, sexual, verbal or economical. Verbal abuses such as name calling, character assassination, insult for not bringing enough dowry and insult for not giving birth to a male child, though dowry trivialized quite often have the potential to seriously impair the self esteem of a woman and has therefore been rightly addressed. Economic violence such as not providing food, shelter, clothes and medicines, particularly to those women who are not economically independent has for the first time been statutorily recognized as an act of violence."

5. Section 12 of the Act entitles an aggrieved person, or a Protection Officer, or any other person acting on behalf of the aggrieved person to apply to the Magistrate for grant of one or more reliefs under the Act. Section 18 of the Act enumerates the orders which the Magistrate can pass in favour of the aggrieved person. These orders include order prohibiting the respondent from (a) committing any act of domestic violence;

(b) aiding or abetting in the commission of acts of domestic violence; (c) entering the place of employment, or school in the case of the child, of the aggrieved person; (d) attempting to communicate with the aggrieved person, (e) alienating any assets or operating bank accounts and bank lockers used or enjoyed by both the parties, or singly by the respondent and (f) causing violence to the dependants or other relatives of the aggrieved person. The list of protection orders mentioned in Section 18 of the Act is not exhaustive and it is open to the Magistrate to pass any other appropriate order in consonance with the objective of the Act. Section 19 of the Act confers power on the Magistrate to pass a

Residence Order on being satisfied that domestic violence had taken place. Such order may restrain the respondent from dispossessing the aggrieved person or disturbing her possession from the shared household, restrain him or any of his relatives from entering any portion of the shared household where the aggrieved person resides, restrain him from alienating or disposing of the shared household or creating encumbrances on it, restrain him from renouncing his rights in the shared household, and may also direct the respondent to remove himself from the shared household or to secure same level of alternate accommodation for the aggrieved person as was enjoyed by her in the shared household or to pay rent for the same. Under Section 20, the Magistrate while disposing of an application under Section 12 of the Act can direct the respondent to pay monetary relief to the aggrieved person in respect of loss of earnings, medical expenses, loss caused due to destruction, damage or removal of any property from her control and maintenance of the aggrieved person as well as her children. He can also order a lump sum payment or monthly payment of the maintenance. Under Section 21 of the Act, the Magistrate may grant temporary custody of the children to the aggrieved person and may deny visit of the respondent to the children of the aggrieved person. Under Section 22, the Magistrate can direct payment of compensation and damages for the injuries, including mental torture and emotional distress. Under Section 23, the Magistrate is competent to pass such interim order as he deems fit in the facts and circumstances of the case. It would thus be seen that the orders which the Magistrate can pass under various provisions of the Act are essentially civil in nature.

6. The Act by itself does not make any act, omission or conduct constituting violence, punishable with any imprisonment, fine or other penalty. There can be no prosecution of a person under the provisions of this Act, for committing acts of domestic violence, as defined in Section 3 of the Act. No one can be punished under the

Act merely because he subjects a woman to violence or harasses, harms or injures her or subjects her to any abuse whether physical, sexual, verbal, emotional or economic. No one can be punished under the provisions of the Act on account of his depriving a woman of her right to reside in the shared household.

7. Section 31 of the Act provides for punishment only if a person commits breach of protection order passed under Section 18 or an order of interim protection passed under Section 23 of the Act. Thus, commission of acts of domestic violence by themselves do not constitute any offence punishable under the Act and it is only the breach of the order passed by the Magistrate either under Section 18 or under Section 23 of the Act which has been made punishable under Section 31 of the Act. No criminal liability is thus incurred by a person under this Act merely on account of his indulging into acts of domestic violence or depriving a woman from use of the shared household. It is only the breach of the orders passed under Sections 18 and 23 of the Act, which has been made punishable.

8. Article 20(1) of the Constitution provides that no person shall be convicted of any offence except for violation of law in force at the time of commission of the act charged as an offence. No provision of the Act makes any act committed prior to coming into force of the Act punishable with any imprisonment, fine or penalty. Since the order, as envisaged in Section 18 or Section 23, as the case may be, can be passed only after coming into force of the Act, it cannot be said that if a person is convicted under Section 31 of the Act, he is convicted for violation of a law which was not in force at the time of commission of the act charged as an offence. It has to be appreciated that the act charged as an offence under Section 31 of the Act is not the act of domestic violence committed by a person. It is the breach of the protection order passed under Section 18 or Section 23 of the Act which has been made punishable under the Act. Therefore, it

cannot be said that Article 20(1) of the Constitution is contravened if a person is convicted under Section 31 or 33 of the Act.

9. The Statement of Objects and Reasons for enacting Prevention of Women from Domestic Violence Act, 2005 would show that since subjecting of a woman to cruelty by her husband or his relative was only a criminal offence and civil law did not address the phenomenon of domestic violence in its entirety, the Parliament proposed to enact a law keeping in view the rights guaranteed under Articles 14,15 and 21 of the Constitution of India so as to provide for a remedy under the civil law, in order to protect the women from being victims of domestic violence and to prevent the occurrence of domestic violence. Thus, the Act provides civil remedies to the victims so as to give them relief against domestic violence and the punishment can be given only if there is breach of order passed under the Act.

10. In "Rajathi & Another Vs. State", 2002 (108) Company Cases 22, Tamil Nadu Protection of Interest of Depositors in Financial Establishments Act, 1997 came into force on 7th August, 1997. The Act provided for punishment in case of default by a Financial Establishment, in return of the deposits or interest on the deposit. The petitioners before the High Court were prosecuted for committing default in return of deposits taken prior to coming into force of the Act. The prosecution was challenged on the ground that a penal law cannot be given retrospective effect and, therefore, the Tamil Nadu Protection of Interest of Depositors in Financial Establishments Act, 1997 was not applicable to the case of the petitioner. Noticing that deposit of a particular amount with a financial institution was not an offence and the criminal liability was attracted only if the deposited amount was not returned on the maturity date and if interest was not paid on due date, the High Court held that since the petitioners had failed to make repayment after coming into force of the Act, they were liable to be prosecuted

under the Act. The High Court while dismissing their petition emphasized that the cause of action for the commission of the offence would commence only when the default was made on non-payment of the matured deposit and non-payment of interest towards the deposits. It was held that the period of deposit had no relevance to consider the applicability of the Act. In the present case also, since the acts of violence by themselves do not constitute an offence punishable under the Act and it is only the breach of the order passed by the Magistrate under Section 18 or Section 23 of the Act which has been made punishable, the dates on which the acts of domestic violence were committed has absolutely no bearing on the matter. Similarly, it is absolutely immaterial whether the „aggrieved person“ was living with the respondent, on the date of the commission of the offence, or not. Once the Magistrate is satisfied that the petitioner is an „aggrieved person“ within the meaning of Section 2(a) of the Act, and that domestic violence had taken place or is likely to take place, he is competent to pass a protection order in terms of Section 18 of an interim order in terms of Section 23 of the Act. Use of the words „is or has been in a domestic relationship“ leaves no doubt that it is not necessary that the aggrieved person needs to be living with the respondent on the date of coming into force of the Act or a date subsequent thereto, before she can invoke jurisdiction of the Magistrate under the provisions of the Act. Section 2(f) of the Act, which defines „domestic relationship“ reads 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;"

11. The use of words „should live or have at any point of time lived together“ in the Section is an indicator of the legislative intent and makes it quite explicit that a person will be deemed to be in domestic

relationship even if he had lived together with the respondent at a point of time prior to coming into force of the Act. Had that not been the legislative intent, the words „or have at any point of time lived“ would not have found place in Section 2(f) of the Act and it would have been sufficient to say that domestic relationship means a relationship between two persons who live together in a shared household.

12. Section 2(a) of the Act defines „aggrieved person“ as under:-

""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;"

13. If the legislative intent was to keep a person, not living with the respondent at the time of coming into force of the Act, out of the purview of the Act, there was no necessity of using the words „or has been“ in Section 2(a) of the Act and it would have been sufficient to say that aggrieved person means any woman who is in a domestic relationship with the respondent.

14. In "S. Prithviraj Kukkillaya Vs. Mathew Koshy & Another", 1991 Cri.L.J. 1771, which was a case of prosecution under Section 138 of Negotiable Instruments Act, the cheque in question was drawn before coming into force of the Act. It was contended before the Division Bench of the High Court that in view of the provisions contained in Article 20 (1) of the Constitution, prosecution of the respondent No.1 was not permissible in respect of the cheque drawn prior to coming into force of Section 138 of the Act. Holding that the offence is committed only if drawer of the cheque fails to make payment within 15 days of the receipt of the notice, it was held that dishonour of cheque by itself does not give rise to the cause of action, because payment can be made on receipt of notice of demand and in that event, there is no offence and that it is only the failure to pay the amount within 15 days of receipt of notice, which alone constitute cause of action, it was held that since the omission to pay

the amount occurred after coming into force of Section 138, the bar contained in Article 20(1) of the Constitution did not apply. In the present case also, there would be no cause of action for initiating proceedings under Section 31 of the Act unless there was a breach of the order passed under Sections 18 or 23 of the Act, as the case may be. It, therefore, cannot be said that entertaining a petition in respect of acts of domestic violence, committed prior to coming into force of the Act, or at the behest of a person who is not living in the shared household at the time of coming into force of the Act, would amount to breach of Article 20 (1) of the Constitution.

In CrI.P.No.3714/2007 decided on 2nd August, 2007, titled "U.U.Thimmanna & Others Vs. Smt.U.U.Sandhya & Others", Andhra Pradesh High Court noticing that domestic incidents did not disclose acts of violence reported by the complainant after 26th October, 2006, when the Act came into force, quashed the proceedings under the Protection of Women from Domestic Violence Act, 2005.

In "Shyam Lal & Others Vs. Kantabai", II (2009) DMC 787, it has been recorded in para 4 of the judgment that the petitioners were prosecuted by the respondent for an offence punishable under Section 23 of the Protection of Women from Domestic Violence Act, 2005. It was contended before the High Court that the petitioners cannot be prosecuted for any offence which took place prior to 26th October, 2006. The proceedings under the Act were quashed holding that the provisions of the Act had not been given retrospective effect. Section 23 of the Act „as noted earlier by me“ does not provide for punishment of any person on account of committing acts of domestic violence. It only empowers the Magistrate to pass such interim order as he may deem just and proper. It is only the breach of the order, if any, passed by the Magistrate, which has been made punishable under Section 31 of the Act. Since the order under Section 18 or

Section 23 of the Act, as the case may be, can be passed only after coming into force of the Act, therefore, it cannot be said that there would be violation of the Constitutional protection under Article 20(1) of the Constitution, by entertaining petitions in respect of acts of domestic violence committed prior to coming into force of the Act.

In CrI.M.(M).No.47145/2007 decided on November, 26, 2008 titled "Smt.Gita Vs. Smt.Raj Bala & Others", Punjab High Court recorded that the petitioners were summoned for offences under Sections 12 and 19 to 23 of the Act and the Magistrate had summoned the petitioners on 19th July, 2006, though the Act came into force on 26th October, 2006. It was held that since the petitioner was alleged to have committed the offence under various Sections of the Act, which were not in force on the date of such acts, the charge framed against him would not be maintainable in view of the provisions contained in Article 20 (1) of the Constitution. In the present case, neither any order against the respondent was passed before coming into force of the Act on 26 th October, 2006 nor has he been summoned for committing any offence under the provisions of the Act. Therefore, this judgment has no applicability.

15. On the other hand in "Dennison Paulraj & Others Vs. Maya Winola", II (2009) DMC 252, as judgment relied upon by the learned counsel for the petitioner, Madras High Court clearly held that since penal consequences under Section 31 of the Act are attracted only if a protection order is passed and the respondent violates that order, the penal consequences mandate from the date of the protection order and not from the date of acts of domestic violence and, therefore, the court was competent to take cognizance of the acts of domestic violence committed even prior to the Act came into force, and pass necessary protection orders. It was held that the Act could be applied retrospectively to take cognizance of the acts of violence, alleged to have been committed even prior to

coming into force of the Act. In a rather recent decision Crl.W.P. 2102/2008 decided on 18th July, 2009, Bombay High Court noted that the penal provision contained in Section 31 of the Act will come into picture only if the respondent commits breach of protection order or interim protection order.

16. Since Andhra Pradesh High Court and Madhya Pradesh High Court have neither considered that the Act does not make any act of domestic violence or any other act punishable and it is only the contravention of an order passed under the provisions of the Act, which has been made punishable under Section 31 of Act, nor have they taken note of the fact that proceedings under the Act are meant to provide civil remedy to the aggrieved person as noted in the Statement of Objects and Reasons and, it is only the breach of the orders passed in those proceedings which has been made punishable under the Act, I am unable to take the view taken by these High Courts.

17. If the court takes the interpretation that a petition under the provisions of the Protection of Women from Domestic Violence Act, 2005 cannot be filed by a woman unless she was living with the respondent, in the shared household, on the date this Act came into force, or a date subsequent thereto or that a petition under the provisions of the Act cannot be filed by a person who has been subjected to domestic violence before coming into force of the Act, that would amount to giving a discriminatory treatment to the woman who despite living with the respondent and having a domestic relationship with him before coming into force of the Act, is later compelled to live separately from him on account of the acts attributable to the respondent and to the woman who was, prior to coming into force of the Act, subjected to domestic violence, viz a viz, the women who are living with the respondent or women in respect of whom acts of domestic violence are committed after coming into force of the act. There can be no reasonable

classification based upon an intelligible differentia between the women who are living with the respondent on the date of coming into force of the Act or who are subjected to domestic violence after coming into force of the Act on one hand and the women who were living with the respondent or who were subjected to domestic violence prior to coming into force of the Act, on the other hand. Therefore, any discriminatory treatment to women in either category would be violative of their constitutional right guaranteed under Article 14 of the Constitution. The court needs to eschew from taking an interpretation which would not only be violative of the rights conferred upon the citizens under Article 14 of the Constitution but would also result in denying the benefit of the beneficial provisions of the Act to the women who have been subjected to domestic violence and are compelled to live separately from the respondent on account of his own acts of omission or commission. Such an interpretation would at least partly defeat the legislative intent behind enactment of the Protection of Women from Domestic Violence Act, 2005, which was to provide an efficient and expeditious civil remedy to them, in order either to protect them against occurrence of domestic violence, or to give them compensation and other suitable reliefs, in respect of the violence to which they have been subjected.

18. For the reasons given in the preceding paragraphs, I am of the considered view that a petition under the provisions of the Protection of Women from Domestic Violence Act, 2005 is maintainable even if the acts of domestic violence have been committed prior to coming into force of the Act or despite her having in the past lived together with the respondent a shared household woman is no more living with him, at the time of coming into force of the Act. It is open for the Magistrate to pass appropriate order under the provisions of Sections 12, 18, 19, 20, 21, 22 or 23 of the Act on a petition filed by such a woman and the person who commits breach of the protection

order or interim protection order passed on an application filed by such a woman will be liable to punishment under Section 31 of the Act.

18. The order passed by the learned Additional Sessions Judge is set aside. He is directed to consider the appeal filed by the petitioner on merits and decide the same within 15 days of the receipt of a copy of this order. The Registry is directed to send a copy of this order to the concerned court for information and compliance.

Crl.M.C.3959/2009 stands disposed of.

(V.K.JAIN) JUDGE MARCH 22, 2010