HIRAL P. HARSORA AND ORS.
V.
KUSUM NAROTTAMDAS HARSORA AND ORS.

CIVIL APPEAL NO. 10084 of 2016
Delivered on: 06/10/2016
Coram- The Hon'ble Mr. Justice Kurian Joseph
The Hon'ble Mr. Justice R.F. Nariman

By- Adv. Lakshmi Menon

FACTS OF THE CASE

Kusum Narottam Harsora and her mother Pushpa filed complaints against Pradeep (brother/son of the aggrieved complainants), and his wife and two sisters/daughters under the Protection of Women from Domestic Violence Act, 2005 before the Metropolitan Magistrate alleging acts of domestic violence against them. In a writ petition by the respondents, the Bombay High Court discharged the respondents 2 to 4 (wife of Pradeep and two daughters of Pushpa) from said complaint while allowing the proceedings against Pradeep to continue, on the ground that a complaint under the Act can be made only against adult male persons as per Sec.2 (q) of the Act and therefore, the said respondents, since they are females, are entitled to be discharged from the case. Thereafter, the complainants filed a writ petition before the Bombay High Court challenging constitutional validity of Sec.2(q), wherein the court held that a complaint under the act is maintainable not only against an adult male person, but also against his relatives (including wife and sisters) where they are co- respondents in a complaint against him.

ISSUE RAISED

- Whether Section. 2(q) of the Protection of Women from Domestic Violence Act, 2005 is constitutionally valid?

CONTENTIONS OF APPELLANTS

The contention of appellants was that "respondents" as defined in Section.2 (q) of The Protection of Women from Domestic Violence Act, 2005 can only mean an adult male. Proviso in S.2 (q) will apply only in the case of an aggrieved wife or female living in a relationship in the nature of a marriage. They argued that court has not read down the provision of s.2 (q) but has in fact read the proviso into the main enacting part of the said definition, something that was impermissible in law. Court is not permitted, in the

process of interpretation, to mend or bend the provision in the face of plain language used. It is the job of legislature to make changes suggested by the High Court.

CONTENTIONS OF RESPONDENTS

The respondents contended that The 2005 Act being a social beneficial legislation enacted to protect women from all kinds of domestic violence, definition under S.2(q), so as to restrict the scope of the Act should either be struck down as being violative of Article.14 of the constitution or read down. It is clear from the statements of objects and reasons, the preamble and from various other provisions of the Act that the term "adult male person" is a classification which is not founded on any intelligible differentia, and the existing differentia has no rational nexus with the object sought to be achieved by the Act. This is a fit case for the application of the Doctrine of Severability, and if the term male adult person is deleted from the said provision the Act as a whole would stand.

JUDGMENT IN BRIEF

The court held that the object of the Act is to provide for various innovative remedies for women who suffer from domestic violence, against the perpetrators of such violence. By examining various provisions of the Act the court opined that the classification of "adult male person" clearly subverts the doctrine of equality, by restricting the reach of a social beneficial statute meant to protect women against all forms of domestic violence. The court there fore struck down the words "adult male" before the word "person" in Section. 2(q). It was held that the proviso has no independent existence once the court strike down the words "adult male".

CRITICAL ANALYSIS

Each and every law has a social goal to fulfill. Be it social beneficial, welfare, reformative or even punitive. That social goal is the yard stick to measure the validity of its provisions.

The Protection of Women from Domestic Violence Act, 2005 is no doubt a social beneficial legislation which provides innovative remedies in favour of women who suffer from domestic violence. The term aggrieved person is defined under Section. 2 (a) as, "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". Thus by reading this provision we can infer that the 2005 Act's protection is afforded only to women including children. This provision does not make any distinction as to married women or maiden. So far it is perfectly fine, but a problem arises when it reaches the definition of "respondent". The term "respondent" is defined under Section. 2(q) as; "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". The term "adult male person" in this definition makes classification both among the aggrieved persons and among the respondents. It classifies aggrieved person as women who are married or living in a relationship in the nature of marriage and maiden women. Another classification is made within the respondent group as adult male person and adult female person. And it also makes a classification between adults and non adults. Thus by reading this provision it can be understood that a complaint under this Act is maintaninable only against a adult male person and wonen who are married or are in living relationship with a man only can file complaint against female relatives of her husband or male partner. Likewise a non adult person (it is difficult to understand the intention of legislature in using the term adult male person, but for the sake of argument lets now consider it as major male person) who might have actively participated in the act of domestic violence is not within the reach of the Act. Is there a need of such classification is the question to be answered in order to reach in a conclusion as to its vires under Article.14 of the constitution. Article.14 prohibits class legislation but permits reasonable classifications. The classic test of reasonable classification under Article.14 provides that there should be a intelligible differentia between the things or persons who are grouped together and those who are left out of the group and this intelligible differentia should have a rational nexus with the object sought to be achieved by the legislation. The preamble of the Act makes it clear that the object of this Act is "to

provide for more effective protection of rights of women guaranteed under the constitution who are victims of violence of any kind occurring within the family and for matters therewith and incidental thereto". If it is for the protection of women as a whole the classification made under S.2(q) defeats the purpose. Women suffrres violence from everyone it is not true to hold a view that womwn wont do violence against another woman. It is equally foolish to say that if women are capable of doing violence what is the need of protecting them from violence. The object of this Act is to protect women from whomsoever commits act of violence against them. Thus even without going into any other provisions of this Act we can arrive at the conclusion that such a classification is not within the vires of this Act and hence the same will not stand the test of reasonable classification under Article.14. it s quite strange to assume that in a nation having a penal code which recognize the criminal capability of a child above 7 , the legislature will intend to exclude them from the purview of a social beneficial legislation which provides for certain innovative remedies rather than punishments. The court is right in holding the said provision as unconstitutional in this regard.