

*Before Ranjit Singh, J.*

**SMT. GITA,—Petitioner**

*versus*

**SMT. RAJ BALA AND OTHERS,—Respondents**

CrI. Misc. No. 47145-M of 2007

26th November, 2008

*Code of Criminal Procedure, 1973—S. 482—Constitution of India, 1950—Art. 20—Protection of Women from Domestic Violence Act, 2005—Ss. 12, 19 to 23—Summoning of petitioner under provisions of 2005 Act—2005 Act not in force on date of taking cognizance of offence—Art. 20 grants protection in respect of conviction for offences by providing that no person shall be convicted of any offence except for violation of law in force at the time of commission of act charged as an offence—Action of trial Court in taking cognizance on basis of complaint cannot be sustained—Summoning order set aside being not sustainable.*

*Held*, that Article 20 grants protection in respect of conviction for offences by providing that no person shall be convicted of any offence except for violation of law in force at the time of the commission of the act charged as an offence. As per this Article, when a certain act is not an offence according to law in force at the time when the act is done, the person who does that act must not be held guilty of an offence merely because subsequently a law is made making such act an offence. When the petitioner is alleged to have committed the offences under various sections of the Domestic Violence Act, which is not in force on the date of such acts, then the charge framed under the said sections would not be maintainable in view of Art. 20(1) of the Constitution as the said penal provisions were not in existence when the alleged offences were committed. In fact, there was no law in force at the time when the petitioner allegedly committed these acts and, therefore, would be entitled to the protection of Art. 20(1) of the Constitution. Once the Act came into operation on 26th October, 2006, the various provisions of the Act creating offences would not be an

offence for which the petitioner can be put to trial. The action of the Court in taking cognizance on the basis of this complaint on 19th July, 2006, as such cannot be sustained. The summoning order, thus, cannot be sustained and the same is set aside.

(Para 3)

Manoj Kaushik, Advocate, *for the petitioner.*

Rohit Ahuja, Advocate, *for respondent No. 1.*

**RANJIT SINGH, J.**

(1) Smt. Gita seeks quashing of notice/summoning order dated 19th July, 2006 passed by ACJM, Faridabad. She is a married sister-in-law of the complainant and is separately residing at her matrimonial home at Palwal, but is summoned to face prosecution under the provisions of Protection of Women from Domestic Violence Act, 2005 (for short “the Act”).

(2) The primary submission made on behalf of the petitioner is that she has wrongly and illegally been summoned for an offence under the provisions of the Act, which was not even applicable on the date the cognizance of the offence was taken. It is accordingly pleaded that ACJM, Faridabad erred in taking cognizance of the offence which was not an offence on the date he took cognizance of the same.

(3) The averment in the petition would show that the Act was notified and came into effect with effect from 26th October, 2006. The Magistrate, however, has summoned the petitioner and his co-accused on 19th July, 2006. The petitioner and her co-accused were summoned for offences under Sections 12, 19, 20, 21, 22 and 23 of the Act. This is stated to be an illegality as on 19th July, 2006, the Act was not in force and hence the so-called alleged offences under the Act, as noticed, were not the offences on the Statute Book. Though other submissions on merits have also been made, but need not be noticed. The fact that this Act is enforced with effect from 26th October, 2006 is not in any serious dispute. Section 1(3) of the Act provides that the Act shall come into force on such date as the Central Government may by notification in the official Gazette appoint. The Central Government has appointed

26 day of October, 2006 as the date on which the said Act shall come into force as per Notification No. S.O. 1776(E), dated 17th October, 2006. It is, thus, clear that the Act came into force with effect from 26th October, 2006. The learned counsel for respondent No. 1 did not dispute this factual position, but still insisted in submitting that the Magistrate had rightly taken cognizance of offence in this case as the Act is of the year 2005, i.e., prior to the date, the Magistrate took cognizance on 19th July, 2006. Without much justification, the counsel referred to a case of **Pt. Rishikesh and another versus Smt. Salma Begum (1)**, in support of his plea. In this case, the Hon'ble Supreme Court has observed that the commencement of the Act is distinct from making the law. As per the Hon'ble Supreme Court, as soon as the assent is given by the President to the law passed by the Parliament it becomes law and the commencement of the Act may be expressed in the Act itself, namely, from the moment the assent was given by the President and published in the Gazette, it becomes operative. However, it is also observed that the operation may be postponed giving power to the executive or delegated legislation to bring the Act into force at a particular time unless otherwise provided. It is not understood as to how this ratio of law would benefit the plea raised by the counsel for the respondents. As already noticed, it is clearly provided in the Act that it shall come into force on such date as the Central Government may by notification in the official Gazette appoint. This Act came into force on 26th October, 2006, as already noticed. Thus, the legislature had given power to the Central Government, delegated authority to notify the date from which the Act was to come into force. This course is permissible in terms of the law laid down in **Pt. Rishikesh's case (supra)**. There is no need, thus, to pursue further the argument raised by the counsel for the respondent that the Act is of 2005 and, so the Magistrate could take cognizance on 19th July, 2006. This, if permitted would violate the provisions of Article 20 of Constitution of India. Article 20 grants protection in respect of conviction for offences by providing that no person shall be convicted of any offence except for violation of law in force at the time of the commission of the act charged as an offence. As per this Article, when a certain act is not an offence according to law in force at the time when the act is done, the person

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(1) 1995(3) RRR 429

who does that act must not be held guilty of an offence merely because subsequently a law is made making such act an offence. When the petitioner is alleged to have committed the offences under various sections of the Domestic Violence Act, which is not in force on the date of such acts, then the charge framed under the said sections would not be maintainable in view of Art. 20(1) of the Constitution as the said penal provisions were not in existence when the alleged offences were committed. In fact, there was no law in force at the time when the petitioner allegedly committed these acts and, therefore, would be entitled to the Protection of Art. 20(1) of the Constitution. Once the Act came into operation on 26th October, 2006, the various provisions of the Act creating offences would not be an offences for which the petitioner can be put to trial. The action of the court in taking cognizance on the basis of this complaint on 19th July, 2006, as such, cannot be sustained. The summoning order, thus, cannot be sustained and the same is set-aside.

(4) The petition is allowed.

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**R.N.R.**

*Before Kanwaljit Singh Ahluwalia, J.*

**MALKIAT SINGH DHALIWAL, —Petitioner**

*versus*

**MANPREET KAUR DHALIWAL AND ANOTHER, —Respondents**

Criminal Misc. No. 4542-M of 2008

6th January, 2009

*Code of Criminal Procedure, 1973—S. 482—Prevention of Atrocities of Scheduled Castes and Scheduled Tribes Act, 1999—S. 3(1)x—Prosecution filing cancellation report in case u/s 3(1)(x) of 1999 Act—Trial Court failing to record reasons in not accepting cancellation report—In case of rejection of cancellation report SDJM had to straightway take the cognizance u/s 190(1)(b) and issue process straightway or he could have ordered further investigation—Summoning order nowhere reveals as to in which*