



2025:CGHC:209

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRR No. 82 of 2024

Order Reserved On : 24.09.2024

Order Pronounced On : 02.01.2025

- Smt. Manti Sahu W/o Mahesh Ganjir Aged About 43 Years R/o Village - Mudhipar Railway Station, Ward No. 8, Vikaram Nagar, Post - Banbaghera, Ps - Somni, Tahsil And District - Rajnandgaon, Chhattisgarh. Mobile No. 7691995582
... Applicant

versus

- Mahesh Ganjir S/o Dharamu Ganjir Aged About 47 Years (Wrongly Mentioned As Dharnu), R/o Sevatapara, Ward No. 8, Dongangaon, District - Rajnangaon, Chhattisgarh.
... Non-Applicant

For Applicant	: Mrs. Manti Sahu, applicant in person.
For Non-Applicant	: Mr. Sudhir Verma, Advocate
Amicus Curiae	: Mr. Jitendra Shrivastava, Advocate

Hon'ble Shri Narendra Kumar Vyas, J.

CAV ORDER

1. The applicant has filed the present criminal revision against the judgment dated 14.12.2023 (Annexure P/1) passed by learned Additional Session Judge (Fast Track Court), Rajnandgaon, District Rajnandgaon (C.G.) in Criminal Appeal No. 16/2023 arising out of judgment dated 03.02.2023 (Annexure P/2) passed by learned Judicial Magistrate 1st Class, Rajnandgaon, District Rajnandgaon (C.G.) in Misc. Criminal Case No. 20/2017 dismissing the

application for grant of allowance under the Protection of Women from Domestic Violence Act, 2005 (in short "D.V. Act of 2005") and appeal has also been dismissed by the appellate Court.

2. The brief facts reflected from the record are that the applicant has filed an application under Section 29 before the Protection Officer of the Women and Child Development Rajnandgaon under Section 12 of the Protection of Women from Domestic Violence Act and sought relief under Sections 18, 19, 20 and 22 of the Act on 12.12.2017 against the non-applicant Mahesh Ganjir mainly contending that non-applicant has married with the applicant by concealing his first marriage (first wife and 01 son). It has also been contended by the applicant that they were residing together in a separate rented house and hotel as wife and husband. It is further contended that the non-applicant has misused the money of the applicant and he has further demanded when applicant denied to pay money, he started quarreling with the applicant and left her in her maternal home at Belgaon and also denied to keep her with him. It has been further contended that the applicant has sent legal notice to the non-applicant through her counsel then the non-applicant has accepted the applicant as wife by executing agreement on 21.01.2009 at District Court, Rajnandgaon and on the same day non-applicant came with his wife and child and introduced to the applicant, as such she come to know for the first time regarding marriage of the non-applicant. It is also the case of the applicant that even after execution of agreement with the applicant, the non-applicant has got married with her at Bhoramdev Temple at Kawardha in presence of

family members by putting vermilion on her forehead and took the applicant with him at Dongargaon where they resided together about 3 to 4 months as husband and wife under one roof. It is further submitted that the non-applicant compelled her to cook meat of the pig, when she denied the cooking, the non-applicant started torturing physically and mentally to her, expelled her from the house which has necessitated her to file an application before the Protection Officer to prevent from domestic violence, grant of protection, residence/shelter maintenance and compensation against the non-applicant and prayed for compensation of Rs. 5,00,000/- (Five lakh) and Rs. 25,000/- per month as maintenance from the non- applicant which was registered as Misc. Criminal Case No. 20/2017.

3. The non-applicant has filed his reply to the application filed by applicant denying the allegations made in the application and contended that the applicant has not mentioned anywhere in the application that when both of them lived in a shared household as husband and wife. It has also been contended that the applicant has contended that the incident pertains to the year 2008, but this case has been presented on 12.12.2017 i.e. after almost 10 years. There was no physical, social and religious relationship between the applicant and the non-applicant for these period, as such on a false and fabricated ground the application has been presented to harass the non-applicant. It has also been contended that the applicant has filed false report of rape against the non-applicant and demanded Rs. 10,00,000/- from the non-applicant, as such the allegations

made by the applicant that they resided in a rented house at Dongargaon cannot be considered. Even if the allegations are that the applicant and respondent resided in a rented house, then lease agreement should be produced by her which has not been produced. It has been further contended that if the allegations that both of them lived together as husband and wife, then photographs should be placed in this regard, but no documentary evidence to prove the contentions have been produced which clearly demonstrates that a false case has been submitted and would pray for dismissal of the complaint. It has been further contended that the applicant lives with her parents, siblings in village Belgaum with her sister, brother-in-law in village Mudipar, therefore, she does not require separate residence and maintenance. It has been further contended that the applicant is making false statements regarding marriage with the non-applicant as both the parties are governed by the Mitakshara branch of Hindu law and the marriage has not been solemnized according to the said law and the alleged agreement does not declare them husband and wife, as such he would pray for dismissal of the complaint.

4. The applicant to prove her case has examined herself as (PW-01) and H. B. Gazi (PW-02) before learned trial Court and also exhibited documents which are exhibited from (Ex. P-1 to Ex. P-26). The applicant to prove her case has exhibited Registration Information Letter (Exhibit P/1), Acknowledgment Letter (Exhibit P/2), Acknowledgment Letter (Exhibit P/3), Agreement (Exhibit P/4), Attested photocopy of photographs (Exhibit P/5), Registration

Information Letter (Exhibit P/6), Acknowledgment Letter (Exhibit P/7), Notice (Exhibit P/8), Reply of the Notice (Exhibit P/9), Reply of the Notice (Exhibit P/10), ITS Form (Exhibit P/11), Domicile Certificate of applicant (Exhibit P/12), Electricity Bill (Exhibit P/13), Letter to Police Station In-charge (Exhibit P/14), Letter to Superintendent of Police (Exhibit P/15), Letter to Collector (Exhibit P/16), Letter to Deputy Inspector General of Police (Exhibit P/17), Letter to Collector (Exhibit P/18), True copy of Statement (Exhibit P/19), True copy of Statement (Exhibit P/20), True copy of Statement (Exhibit P/21), Order sheet dated 09.04.2012 passed in CRMP No. 266/2012 (Exhibit P/22), Order Sheet dated 27.11.2018 passed in Criminal Revision No. 945/2015 (Exhibit P/23), Temporary Registration Certificate Details, Chhattisgarh Transport Department (Exhibit P/24), Patwari Report (Exhibit P/25), Income Tax Return (Exhibit P/26).

5. The applicant examined herself as PW-1 and has reiterated the same contents which have been pleaded in the complaint filed before the Magistrate and exhibited the documents as detailed above. The witness has cross-examined wherein she has admitted that she has not submitted any document regarding her stay with respondent in the hotel and also not examined the priest of the temple who has solemnized the marriage. She has also stated that she has lodged a complaint against Mahesh Ganjir for commission of offence under Sections 294, 323, 493, 494, 495 and 506B of IPC which has been dismissed. She has also stated that she has lodged complaint against Rajesh Kochar and his wife for commission of

offence under Section 507 of IPC wherein they has been acquitted by the learned Judicial Magistrate First Class Dongargarh. She has also admitted whatever the document she has produced before the Court, but none of the witness related to the documents have been examined. She denied that on 30.08.2009 she has lodged complaint under Section 376 of IPC against the non-applicant, but she has admitted her signature in the photocopy and also denied that Police has not made any assault to her. She has also stated that on 31.08.2009 she made complaint to Superintendent of Police Rajnandgaon alleging that the Police persons have assaulted her in the police station and put her signature on the complaint. She has also denied that she has filed the complaint to harass the non-applicant. The complainant has also examined witnesses namely Shankar Nath Jogi as PW-2 and Kalendri Sahu as PW-3 who have supported the case of the complainant and have stated that marriage was solemnized between applicant and the non-applicant five years ago. The PW-2 has stated that agreement executed between Mahesh Ganjir and the applicant is Exhibit P/1 wherein he has put his signature. The witness PW-3 has also stated that after marriage she has gone to leave her in the house of Mahesh Ganjir at Dongargarh. PW-4 who is brother of applicant has stated that marriage between applicant and the respondent was solemnized at Bhoramdev Temple and photographs were taken at the time of marriage wherein he was present as evident from the photographs also. The notary who has notarized the agreement was examined before the trial Court as PW-2 on 16.12.2022 and has stated that

the applicant and the respondent alongwith the 2 witnesses were present before him for verification and attestation wherein photographs of the applicant and non-applicant was also affixed. He has also stated that he has inquired about the execution of agreement wherein both of them have stated that this agreement has been executed by them without any corrosion or pressure or influence and both the parties have put their signature at place B and A. He has also stated that witnesses have put their signature and thereafter he has done the attestation and thereafter he put his signature.

6. The respondent exhibited documents order dated 13.07.2012 passed by the Judicial Magistrate First Class in Criminal Case No. 232/2012 (Exhibit D/1), Complaint made by the applicant to the SC ST Commission (Exhibit D/2), Report of Judicial Magistrate First Class (Exhibit D/3), Copy of the Complaint and Evidence adduced in that Complaint and Defense witnesses examined by the accused of that complaint (Exhibit D/4), Judgment of Complaint Case No. 3028/2011 (Exhibit D/5) and examined Kawal Das as DW-1. The learned trial Court has dismissed the application filed by the applicant vide order dated 03.02.2023 holding that the domestic relationship and the domestic violence has not been proved hence the applicant is not entitled to get any relief and compensation.
7. Being aggrieved with this order, the applicant has preferred an appeal before the Additional Session Judge, Rajnandgaon which was registered as Criminal Appeal No. 16/2023. The learned Appellate Court vide order dated 14.12.2023 has dismissed the

appeal by affirming the order of trial Court. The learned appellate Court while dismissing the appeal has recorded its finding in paragraph 35 of the order that the applicant has not led any evidence that before filing of the complaint in the year 2008 she was residing with respondent in domestic relationship and she has failed to prove that she was residing in a rented house with the respondent at Dongargarh or any other places, even regarding marriage at Boramdev no cogent evidence is brought on record and the agreement (Exhibit P/4) has been declared null and void by the competent Court, therefore, there is no presumption of marriage between the applicant and the respondent. Accordingly, it has dismissed the appeal. Being aggrieved with both the orders, the applicant has preferred present criminal revision.

8. The applicant in person would submit that for getting compensation under the D.V. Act of 2005, it is not required that the marriage should be proved and even otherwise, the proceeding under the grant of maintenance under Section 125 of Cr.P.C. or under this Act are summary in nature, therefore, no strict law of evidence or procedure law is applicable. On the basis of probabilities the violence against women can be established, as such she would pray for quashing both the orders.
9. On the other hand learned counsel for the respondent would submit that the impugned orders are legal, justified and on the basis of appreciation of evidence material on record which does not suffer from perversity and illegality which warrants interference by this Court. He would submit that once the agreement (Exhibit P/4) has

already been declared to be null and void by the competent Court, therefore, it cannot be held that the marriage was solemnized and there is domestic violence caused to the applicant. He would further submit that the marriage alleged to have been solemnized between the applicant and the respondent has been declared void marriage by the 2nd Additional District Judge, Rajnandgaon passed in Civil Appeal No. 13A/2020. He would further submit that the appeal filed by the present applicant against the order of the 2nd Additional District Judge registered as SA No. 12A/2020, both the appeals have been dismissed by the co-ordinate Bench of this Court in SA No. 326/2021 and SA No. 327/2021 on 12.08.2022 wherein the Co-ordinate Bench has held that marriage between applicant and respondent is a void marriage in paragraph 15 and in paragraph 16 it has recorded its finding that the agreement dated 21.01.2009 is a void agreement in view of Section 23 of the Indian Contract Act, as such he would pray for dismissal of the criminal revision.

10. I have heard applicant in person and learned counsel for the respondent, perused the record of trial Court as well as appellate Court with utmost satisfaction.
11. From the submissions made by the parties the point emerged for determination of this Court is:

Whether both the Courts below were justified in denying the maintenance to the applicant on the pretext that marriage has not been proved and no cogent evidence has been produced by the applicant regarding living her in a shared household and she was subjected to domestic violence before the year 2008?

12. To appreciate this point this Court has to see the aims and objects of the Act 2005. From perusal of aims and objects, it is quite vivid that this Act has been enacted with an object of ensuring woman's right to reside in her matrimonial home. This act has special feature with special provisions under law which provides protection to a woman live in violence free home. Section 2(f) of the D.V. Act of 2005 defines domestic relationship which is as under:-

“Section 2(f)- Domestic relationship “means a relationship between two personas 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;

Section 3 (a) of the D.V. Act of 2005 defines domestic violence and section (iv) defines economic abuse which are as under:-

Section 3(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

Section 3 (iv) of economic abuse:-

3 (iv)economic abuse includes (a)deprivation of all or any economic or financial resources to which the aggrieved person in 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 ...”

13. This Court is now on the basis of above legal position as well as the evidence, material placed on record is considering the submission made by learned counsel for the respondent that the respondent is already a married person and the applicant is unable to prove about their marriage, therefore, applicant cannot be granted benefit of D.V. Act of 2005.

14. This submission deserves to be rejected by this Court as for grant of maintenance under the D.V. Act, it is not required that the marriage between the parties is essential condition as against provisions under Section 125 of Cr.P.C. as the object of the D.V. Act of 2005 is to provide relief to an aggrieved woman who is subjected to domestic violence and falls within the ambit of aggrieved person, therefore, the finding of the co-ordinate Bench that the marriage between the applicant and the respondent is void marriage is not having any bearing as under the D.V. Act of 2005 marriage is not condition precedent for granting protection to aggrieved person who may be woman. The aggrieved person has been defined under Section 2(a) of the D.V. Act of 2005, according to which any woman who is or has been in domestic relationship and alleged to have been subjected to any act of domestic violence is entitled to file complaint under the D.V. Act of 2005. This clearly establishes that the marriage is not necessary to entitle aggrieved person to claim maintenance under the D.V. Act of 2005. The only criteria is to be established that there must be domestic relationship between the parties as defined under Section 2(f) of the D.V. Act of 2005 and the aggrieved person is sufferer of domestic violence. As per the provision of the D.V. Act of 2005, domestic relationship to include a relationship between two persons who live or at any point of time in a shared household, when they are related by consanguinity, marriage or through a relationship, nature of marriage, adoption are all family members living together as a joint family.
15. The Hon'ble Supreme Court in the case of ***Lalita Toppo vs The***

State of Jharkhand 2019 (13) SCC 796 has considered the provisions of D.V. Act of 2005 and has held as under:-

“3. In fact, under the provisions of the D.V. Act, 2005 the victim i.e. estranged wife or live-in-partner would be entitled to more relief than what is contemplated under Section 125 of the Code of Criminal Procedure, 1973, namely, to a shared household also.”

16. So far as the finding recorded by both the Courts below that the applicant is unable to establish that she was living in shared household by not filing copy of the rent receipt or other documents. These findings defeat the object of D.V. Act of 2005 as the purpose of the D.V. Act of 2005 to provide a remedy which is an amalgamation of civil right of the aggrieved person and are essentially as of a civil nature. To appreciate this point, it is expedient for this Court to extract the definition of “shared household” which reads as under:-

“2(s) “Shared Household” means a 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 house hold 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;”

17. From the definition, it is quite vivid that where the applicant and the respondent lived together in a shared household. Though the applicant in his evidence has stated that she has not submitted any rent receipt or hotel receipts where they live together, but the respondent has not rebutted this fact that they were not residing in a

shared household by examining himself as he was the best witness to depose the factum of the living or not living with the applicant, as such both the Courts below have committed illegality in not believing the evidence of the applicant on account of non-submission of rent agreement or hotel bills without drawing adverse inference against respondent for not examining him. Even, the applicant has sent registered notice dated 05.01.2009 wherein she has asked for solemnization of marriage within 7 days and the respondent has not disputed about receipt of notice by examining himself. Even the photographs which have been submitted before the trial Court, no question with regard to its authenticity was raised by the respondent. The respondent has also examined his brother who was present on the place of marriage as reflected in the photographs as per his evidence and no effective cross-examination to dilute the fact of marriage was done which clearly suggests that the applicant has placed some material regarding their relationship. The respondent has not taken any defense by saying that present applicant is unknown to him which also goes against him regarding relationship between them. Even otherwise, the proceedings of domestic violence is of summary in nature. The impugned orders have been passed on the premises that proceedings are criminal in nature, as such the procedure of criminal trial should be followed by adopting proof of facts by recording of cogent evidence which are required to prove in criminal trial where the guilt of accused has to be proved beyond reasonable doubt. The nature of proceedings under D.V. Act of 2005 whether civil or criminal has come up for

consideration before the Hon'ble Supreme Court in case of ***Kunapareddy @ Nookala Shanka Balaji vs Kunapareddy Swarna Kumari*** reported in **2016 (11) SCC 774** wherein the Hon'ble Supreme Court in paragraphs 13 and 14 has held as under:

"13. Procedure for obtaining order of reliefs is stipulated in Chapter IV of the DV Act which comprises Sections 12 to 29. Under Section 12 an application can be made to the Magistrate by the aggrieved person or Protection Officer or any other person on behalf of the aggrieved person. The Magistrate is empowered, under Section 18, to pass protection order. Section 19 of the DV Act authorizes the Magistrate to pass residence order which may include restraining the respondent from dispossessing or disturbing the possession of the aggrieved person or directing the respondent to remove himself from the shared household or even restraining the respondent or his relatives from entering the portion of the shared household in which the aggrieved person resides etc. Monetary reliefs which can be granted by the Magistrate under Section 20 of the DV Act include giving of the relief in respect of the loss of earnings, the medical expenses, the loss caused due to destruction, damage or removal of any property from the control of the aggrieved person and the maintenance for the aggrieved person as well as her children, if any. Custody can be decided by the Magistrate which was granted under Section 21 of the DV Act. Section 22 empowers the Magistrate to grant compensation and damages for the injuries, including mental torture and emotional distress, caused by the domestic violence committed by the appellant. All the aforesaid reliefs that can be granted by the Magistrate are of civil nature. Section 23 vests the Magistrate with the power to grant interim ex-parte orders. It is, thus, clear that various kinds of reliefs which can be obtained by the aggrieved person are of civil nature. At the same time, when there is a breach of such orders passed by the Magistrate, Section 31 terms such a breach to be a punishable offence.

14. In the aforesaid scenario, merely because Section 28 of the DV Act provides for that the proceedings under some of the provisions including Sections 18 and 20 are essentially of civil nature. We may take some aid and assistance from the nature of the proceedings filed under Section 125 of the Code. Under the said provision as well, a woman and children can claim maintenance. At the same time these proceedings are treated essentially as of civil nature."

As such both the Courts below have erred in not considering the

evidence regarding the factum of living together with respondent and circumstances in which she was compelled to drive out from the shared household, though she has proved this fact through an agreement (Exhibit P/4) and also examined the notary (PW-6) to prove the factum of domestic violence caused to her. Therefore, the findings recorded by the trial Court and affirmed by the appellate Court are perverse and contrary to the evidence, as such, the impugned orders deserve to be quashed and accordingly, it is quashed. It is held that applicant is victim of domestic violence. Therefore, it is held that the applicant is able to prove her case that she is subjected to domestic violence and is entitled to get maintenance under the D.V. Act of 2005.

18. Since both the Courts below have committed illegality in not considering the evidence, material placed before them and also committed patent illegality by ignoring the provisions of D.V. Act of 2005 and applied strict law of Evidence Act, as such warrants interference by this Court to exercise its revisional jurisdiction to correct the jurisdictional, material irregularity and illegality committed by the trial Court as affirmed by the appellate Court.
19. Now the issue is to ascertain with regard to quantum of maintenance amount by this Court. The record of the case could demonstrate that the Income Tax Department Rajnandgaon has submitted details of income of the respondent (Exhibit P/26) which are from the year 2008 to 2018-19 wherein there is regular increase in the income and in the Income Tax Return the total income of the applicant has been shown for the year 2018-19 is 3,85,950/-, as

such it is directed that the respondent shall pay maintenance of Rs. 3,500/- per month to the applicant from the date of passing of this order.

20. Consequentially, criminal revision is allowed and order dated 14.12.2023 (Annexure P/1) passed by the appellate Court and order dated 03.02.2023 (Annexure P/2) passed by the trial Court are set aside. The respondent is directed to pay Rs. 3,500/- per month maintenance to the applicant.

**Sd/-
(Narendra Kumar Vyas)
Judge**