

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 780 of 2013**

1. Digvijay Singh Verma (Madhariya) And Ors. S/o. Yashwant Verma, Aged About 28 Years.
2. Smt. Mayna Verma (Madharaiya) W/o. Yashwant Verma (Madhariya) Aged About 55 Years.
3. Smt. Revati Verma (Madhariya) W/o. Yashwant Verma (Madhariya) Aged About 50 Years.
4. Yashwant Verma (Madhariya) S/o . Motilal Verma (Madhariya) Aged About 60 Years.
5. Ku.Varsha (Madhariya) W/o. Yashwant Verma (Madhariya) Aged About 32 Years.

All are resident of Bazar Chowk, Utai, Police Station Utai, District Durg (C.G.)

---- Applicants

Versus

Smt.Hemlata Verma (Madhariya) W/o . Shri Digvijay Singh Verma (Madhariya) Aged About 24 Years R/o. Through Shri Kaushal Prasad Verma, Shubhash Nagar, Milan Chowk, P.S. Durg (C.G.)

---- Respondent

For Applicants:	Shri N.S. Dhurandhar, Advocate.
For Respondent.	Shri P.R. Patankar, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board By

28/08/2015

(1) Respondent/complainant herein preferred an application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (Henceforth 'Act, 2005') stating *inter alia* that she is duly married wife of Digvijay Singh Verma, applicant No.1 herein; and applicant Nos. 2 & 3 are her mother-in-laws, applicant No. 4 is father-in-law & applicant No. 5 is sister-in-law, who mal-treated her on 10.08.2012

and made an attempt to strangle her; and the applicant No. 1- Digvijay Singh had already married with Santoshi Verma and, therefore, under the provisions of Sections 18, 19, 20, 21 & 22 of the Act, 2005, a protective order may be passed in her favour.

(2) The present applicants did not file any return/written statement to the said application.

(3) The respondent/complainant examined herself as PW-1 and her mother Dulari Verma as (PW-2) and also exhibited three documents i.e. Ex.P-1 to P-3 in support of her case.

(4) The trial Magistrate, by its order dated 06.07.2013, rejected the application filed by respondent herein finding that she has failed to prove the domestic violence by the applicants herein within the meaning of Section 3 of the Act, 2005.

(5) Feeling aggrieved & dissatisfied with the order passed by the trial Magistrate, respondent/wife herein preferred criminal appeal under Section 29 of the Act, 2005 before the Court of Session.

(6) The Court of Session, by impugned order dated 18.10.2003 allowed the appeal of the respondent herein and set aside the order of the trial Court and restrained the applicants herein from repeating domestic violence against the respondent and also granted Rs. 1,00,000/- as compensation for mental harassment caused by applicants.

(7) Questioning the said order, instant criminal revision petition has been preferred by the applicants herein.

(8) Mr. N.S. Dhurandhar, counsel for the applicants submits that there is no evidence on record to prove the fact of domestic violence within the meaning of Section 3 of the Act, 2005 as in the examination-in-chief respondent/complainant did not utter any order

with regard to domestic violence allegedly committed by the applicants and no documents have been proved in accordance with law particularly Exs. P-1 to P-3 as mere production and the marking of the documents would not dispense with the prove of the documents. He would further submit that the respondent/wife was required to prove documents Exs. P-1 to P-3 in accordance with law; and since the respondent has failed to prove the same in accordance with law, therefore, no reliance can be placed in those documents. He would also submit that the appellate court has committed illegality in allowing the appeal and reversing the well reasoned order of the trial Magistrate and, therefore, revision deserves to be allowed by setting aside the order impugned. He placed reliance upon the judgment of the Supreme Court in case of *Narbada Devi Gupta Vs. Birendra Kumar Jaiswal & another*, (2003) 8 SCC 745 and judgment of High Court of Madhya Pradesh in case of *Madhusudan Bhardwaj & others Vs. Mamta Bhardwaj*, reported in 2009 Cri.L.J.3095 in support of his case.

(9) On the other hand, Shri P.R. Patankar, learned counsel for the respondent would submit that judgment granting compensation is protective order passed by the appellate court and the same is in accordance with law as the respondent/complainant has brought sufficient evidence to prove the act of domestic violence by applicant No.1 as he had already married with one Santoshi Verma on the date of marriage with respondent and since he has no issue with Santoshi Verma, he deliberately during life time of Santoshi Verma entered into second marriage with the respondent, which is domestic violence within the meaning of Section 3 (d) of the Act, 2005 and, therefore, revision deserves to be dismissed. He would further submit that the application was duly submitted in accordance with Rule 5(1)(2) and Rule 17(3) of the Act, 2005 to the Pariyojna Adhikari, Durg and he, in

turn, has sent the matter to the Chief Judicial Magistrate, Durg and, thereafter, the case was registered, in which respondent and her witnesses were examined to prove her case.

(10) I have heard counsel for the parties and perused the record of the courts below with utmost circumspection.

(11) The first & foremost question falls for consideration is whether the appellate court was justified in reversing the order of the trial Court and granting order in favour of the respondent/complainant ?

(12) It is correct to say that the respondent, while examining herself as AW-1, has simply made statement that she has filed applications before the competent authorities vide Exs. P-1 to P-3 and did not make any statement with regard to domestic violence meted out by the applicants but she, in her cross-examination made by applicants, has clearly stated that she has lodged the report under Section 498-A Cr.P.C. against the applicant vide Ex.P-1 and she remained in the house of the applicants for 1 ½ months; she has further stated in her cross-examination that her husband had already married with one Santoshi Verma prior to her marriage with the respondent. Thereafter, her mother Dulari Verma (AW-2) has clearly stated that applicant No.1 – Digvijay Singh was already married with one Santoshi Verma, he has entered into second marriage with the respondent; and the applicant No.1's first wife Santoshi Verma was living at Distt. Nallur, Andhra Pradesh as the applicant was serving in the Andhra Pradesh at that time. Not only this, there is no suggestion in the cross-examination by applicant No.1 that he is not earlier married with Santoshi Verma though *ex parte* order has been passed against the applicants but no efforts has been made to get the *ex parte* order set aside and to lead evidence by the present applicants. On the other hand, there is overwhelming evidence available on record to hold that

applicant No. 1 herein earlier married with one Santoshi Verma and respondent came to know about this fact only when she had gone to Nallur, A.P. where applicant No.1 was serving and, thereafter, offence under Section 498-A IPC has been registered against the applicants in the Police Station Durg on 16.08.2012 and, in which, charge sheet is said to have been filed against the applicants. In the considered opinion of this Court, applicant No.1 had already married when he entered into marriage with respondent on 15.5.2011 would clearly fall within meaning of domestic violence as defined in Section 3(d) of the Act, 2005, therefore, the appellate Court is justified in allowing the appeal by setting aside the order of trial Magistrate and I do not find any jurisdictional error in the impugned order warranting interference in exercise of revisional jurisdiction.

(13) As a fall out and the consequence of the aforesaid discussion, the criminal revision is held to be devoid of merit and required to be dismissed, and is, therefore, dismissed.

Sd/-
(Sanjay K. Agrawal)
Judge