

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 752 of 2015**

1. Suraj Sharma S/o Shri Satyanarayan Sharma Aged About 38 Years R/o Bangali Panja, Maskasath, Itwari, Tah. District Nagpur (M.H.).
2. Deepak Sharma S/o Shri Satyanarayan Sharma Aged About 36 Years R/o Bangali Panja, Maskasath, Itwari, Tah. District Nagpur (M.H.).
3. Satyanarayan Sharma S/o Birbal Sharma Aged About 68 Years R/o Bangali Panja, Maskasath, Itwari, Tah. District Nagpur (M.H.).
4. Rama Sharma W/o Shri Satyanarayan Sharma Aged About 62 Years R/o Bangali Panja, Maskasath, Itwari, Tah. District Nagpur (M.H.).
5. Jyoti Joshi W/o Shri Vijay Joshi Aged About 42 Years R/o Aarvi, District Wardha (M.H.).

---- Petitioners**Versus**

Bharti Shrama W/o Suraj Sharma Aged About 36 Years C/o Dharam Jwalaprasad Sharma, R/o Chandmari, Diparapara (Ganjapara) Durg Tah. And District Durg Chhattisgarh.

---- Respondent

For Petitioners	:	Shri Pallav Mishra, Advocate.
For Respondent	:	None though served.

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order On Board****11/03/2016**

1. Heard the matter on maintainability and also finally at the motion stage itself.
2. Facts in brief required for adjudication of the instant Cr.M.P. that the Respondent had filed an application before the Judicial Magistrate First Class, Durg, Chhattisgarh under Sections 12, 18, 19, 20, 22, 23 and 26 of the Protection of Women from Domestic Violence Act, 2005 (for short 'the Act of

2005') and the same is pending. The Applicants/ Non-applicants before the Court below had filed the instant Cr.M.P. and prayed that proceedings before the Court below under the Act of 2005 be quashed. The Petitioners have taken ground in the instant Cr.M.P. that invoking jurisdiction under Section 482 of the Code of Criminal Procedure (for short 'the Code'), as per the provisions of Section 468 of the Code, the Court cannot take cognizance in the matter as the same is barred by limitation. The Court below taken cognizance and issued notice without the domestic incident report. The Court cannot issue notice and take cognizance in absence of any domestic incident report. It is further submitted that in the domestic incident report, names of Suraj Sharma, Satyanarayan Sharma and Jyoti Joshi are mentioned regarding their alleged involvement in the facts attracted and is subjudice before the Court below. The Court below also issued notice to the Applicant No.2 – Deepak Sharma and Applicant No.5 Rama Sharma. Also on the other points, it is submitted that as the other litigations/ prosecution filed at the instance of the Respondent under Section 498-A of the Indian Penal Code and other matter there is repetition of the allegations hence, this Court by invoking jurisdiction under Section 482 of the Code may quash the proceedings before the Court below.

3. Heard counsel for the Petitioners on admission and also on maintainability. Perused the petition and the documents annexed along with the petition.

4. During the course of argument, learned counsel for the Petitioners conceded that as the provisions aforementioned in relation to the Act of 2005 are not an offence hence Section 468 of the Code is not applicable. On the other hand, learned counsel for the Petitioners submitted that without any report of domestic incident the Court cannot issue summons and take cognizance, and despite there is no mention of the names of Deepak Sharma and Rama Sharma,

Court cannot issue summons and take cognizance against the said Applicants. Also supported the grounds taken as the various litigations/ prosecution instituted at the behest of the Respondent, hence, the instant matter is repetition cannot be tried.

5. From perusal of the entire material, it goes to show that as the provisions of Sections 12, 18, 19, 20, 22, 23 and 26 of the Act of 2005 are not in the definition of offence they are in relation to protective and other jurisdiction. Undisputedly, Section 468 of the Code is not applicable. So far as the other grounds are concerned Section 12 of the Act is of the relevance and reads as under:

12.Application to Magistrate:- (1) An aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person may present an application to the Magistrate seeking one or more reliefs under this Act:

Provided that before passing any order on such application, the Magistrate shall take into consideration any domestic incident report received by him from the Protection Officer or the service provider.

(2) The relief sought for under sub-section (1) may include a relief for issuance of an order for payment of compensation or damages without prejudice to the right of such person to institute a suit for compensation or damages for the injuries caused by the acts of domestic violence committed by the respondent:

Provided that where a decree for any amount as compensation or damages has been passed by any court in favour of the aggrieved person, the amount, if any, paid or payable in pursuance of the order made by the Magistrate under this Act shall be set off against the amount payable under such decree and the decree shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), or any other law for the time being in force, be executable for the balance amount, if any, left after such set off.

(3) Every application under sub-section (1) shall be in such form and contain such particulars as may be prescribed or as nearly as possible thereto.

(4) The Magistrate shall fix the first date of hearing, which shall not ordinarily be beyond three days from the date of receipt of the application by the court.

(5) The Magistrate shall endeavour to dispose of every application made under sub-section (1) within a period of sixty days from the date of its first hearing.

6. From perusal of Section 12 of the Act of 2005, it goes to show that before passing any order on such application Magistrate has to consider the domestic incident report received by him from the Protection Officer or the service provider. It goes to show that legislature has not made bar for taking cognizance i.e. hearing of the matter and issuance of notice prior to the said report. It is evident that any report of the domestic incident shall not be conclusive material for making any order.

7. On the other hand, legislature directed the Magistrate to consider the report, if any, before passing of any order goes to show that despite no report or adverse report if the Magistrate thinks it proper that the various provisions of the Act of 2005 is applicable, the concerned Magistrate can pass order. The legislature has not debarred the Magistrate for issuance of any order in absence of any such report. On the other hand, if the report is available then the Court may consider for the said report, but the Magistrate is not bound with the report only. The Magistrate take a different perception and view on the basis of the entire material adduced before him during inquiry.

8. In the considered view of this Court, issuance of notice to the applicants only after the consideration of the said report is not required. So far as issuance of notice to respondents 2 and 5 is concerned, learned counsel failed to

demonstrate the impugned order by which the Court below has taken cognizance and send summons to applicants A2 and A5. Even for the sake of arguments, the Magistrate is not bound to issue summons for the non-applicants only whose names are surfaced in the domestic incident report.

9. With this, the Magistrate may issue summons to all the non-applicants impleaded by the applicant and make an inquiry under the provisions of the Act of 2005 and if after affording opportunity to both the parties, the concerned Magistrate thinks it proper may make such order against any non-applicant as he deems fit under the provisions of law.

10. In the considered view of the Court, the ground taken for this is not sustainable. So far as the other ground are concerned that various litigations/prosecution are between the parties as repetition no proceeding under the Act of 2005 cannot be initiated. In the considered view of this Court the Act of 2005 is for the protective orders and the same is not regarding any offence; there is no bar for continuance of any proceeding under the Act of 2005 despite a criminal prosecution, civil suit and other matter in relation to Hindu Marriage Act etc. are pending.

11. On due consideration, as the Petitioners have failed to demonstrate regarding the maintainability of the instant Cr.M.P., in the considered view of this Court, the instant Cr.M.P. is not maintainable as no substance. Hence, the same is dismissed.

Sd/

(Chandra Bhushan Bajpai)

Judge