

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 877 of 2015

1. Smt. Sangita Tiwari (Pandey) W/o Shri Digambarnath Pandey, aged about 28 years, R/o Q. No. 1/A, Street - 6, Sector -10, Bhilai Nagar, Distt. Durg Chhattisgarh.

---- Petitioner/Applicant

Versus

1. Digambarnath Pandey S/o Shivji Pandey, Age - 32 years, R/o Plot No. 847/1, Sector-5/C, Gandhinagar (Gujrat) Pin-382006.
2. Shivji Pandey S/o Late Shri Kisun Pandey, Age - 55 years, R/o Plot No. 847/1, Sector-5/C, Gandhinagar (Gujrat) Pin-382006.
3. Smt. Sushila Pandey W/o Shivji Pandey, Age - 53 years, R/o Plot No. 847/1, Sector-5/C, Gandhinagar (Gujrat) Pin-382006.
4. Ku. Usha Pandey D/o Shivji Pandey, Age - 30 years, R/o Plot No. 847/1, Sector-5/C, Gandhinagar (Gujrat) Pin-382006.
5. Ku. Subhavati Pandey D/o Shivji Pandey Age - 28 years, R/o Plot No. 847/1, Sector-5/C, Gandhinagar (Gujrat) Pin-382006.

---- Respondents/Non-applicants

For Petitioner – Shri Vipin Tiwari, Advocate.

For Respondents – Shri Uttam Pandey, Advocate.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Order On Board

04/02/2016

1. With the consent of both the parties, the matter heard finally at the motion stage itself.
2. Brief facts, as per present petition, are as under :-

On an application made in this behalf, the Judicial Magistrate First Class, Durg C.G. had registered a MJC No.95/14 against the respondents under the relevant provisions of The Protection of Women from Domestic Violence Act, 2005 (in brevity 'the Act, 2005). On 26-05-2015, the learned Judicial Magistrate rejected the preliminary objection made on behalf of the respondents regarding the non-maintainability of the case. On 24-06-2015, the Learned Judicial Magistrate passed an order under the provision of Section 23 of the Act, 2005 and while awarding interim maintenance directed that the non-applicant No.1,

the husband, shall give Rs.15000/- per month till the final disposal of the matter. Thereafter, the petitioner had filed a criminal appeal No.0000038/2015 for enhancement of interim maintenance amount. On the other hand, husband filed Criminal Appeal No.0000036/2015 against the quashment of the preliminary objection and also against the interim maintenance so ordered. The Additional Sessions Judge, Durg, disposed of both the criminal appeals vide a common order dated 11-08-15 and dismissed the criminal appeal filed by the present petitioner and allowed the criminal appeal filed by the husband. The order passed by the learned Magistrate in Misc. Criminal Case No.95/14 on 26-05-2015 and 24-06-2015 have been set aside. The learned appellate Court directed that initially the question of jurisdiction be disposed of and thereafter if the trial Court finds that it has jurisdiction to hear the application filed by the petitioner under Section 12 of the Act, 2005, then after affording opportunity to both the parties, the said application under Section 12 of the Act, 2005 be disposed of finally. Learned appellate Court further held that there is no bar in the Act to pass an order under Section 23 of the Act, 2005 and if presiding officer of the trial Court finds that during pendency of the case, interim order is proper and justifiable then at any stage of the proceeding the Court may pass interim order. The learned appellate Court remanded back the matter and directed both the parties to remain present before the trial Court for further hearing.

3. Against the said order respondents have not preferred any petition before this Court. The petitioner has challenged the same by filing the instant Cr.M.P. wherein it is prayed the the order passed by the Additional Sessions Judge, Durg dated 11-08-2015 be held illegal and the same be quashed.

4. Heard the matter on admission.

5. Learned counsel for the petitioner has elaborately supported the grounds taken in the instant Cr.M.P. and submitted that on the basis of the grounds available and pleading impugned order may be quashed. Learned counsel has drawn the attention of this Court regarding provisions of Section 27 of the Act,

2005 whereby jurisdiction is defined in Section 27 of the Act, 2005 which reads as under :-

27. Jurisdiction. – (1) The court of Judicial Magistrate of the first class or the Metropolitan Magistrate, as the case may be, within the local limits of which –

- (a) the person aggrieved permanently or temporarily resides or carries on business or is employed; or
- (b) the respondent resides or carries on business or is employed; or
- (c) the cause of action has arisen,

shall be the competent court to grant a protection order and other orders under this Act and to try offences under this Act.

(2) Any order made under this Act shall be enforceable throughout India.

6. Learned counsel for the petitioner has submitted that the order of the appellate Court to enquire first regarding the jurisdiction is ab initio wrong since as per provision of Section 27 of the Act, 2005, the petitioner had already established that the jurisdiction lies with the Durg Court.

7. Learned counsel for the petitioner has placed reliance on the matter of **Shalu Oja Vs. Prashant Ojha**¹, wherein Hon'ble the Apex Court held that :

Grant of maintenance – Magistrate's legal authority to pass such an order is traceable to Section 20(1) (d) of DV Act – No further appeal or revision is provided to High Court or any other Court against order of Sessions Court under Section 29 – In a matter arising under a legislation meant for protecting rights of women, High Court should have been slow in granting interim orders interfering with orders by which maintenance is granted to appellant – Maintenance order passed by Magistrate to be executed forthwith in accordance with law. Criminal Law – Maintenance Proceedings – If Sessions Court does not have power to grant interim orders during pendency of the appeal, Sessions court ought not to have stayed execution of maintenance order passed by Magistrate – Maintenance order passed by Magistrate be executed forthwith in accordance with law.

¹ AIR 2015 SC 170 : 2014 AIR SCW 5709

Learned counsel for the petitioner has further placed reliance on the matter of **Mst. Jagir Kaur and another Vs. Jaswant Singh**², wherein under provision of Criminal Procedure Code, 1898, under Sections 2(1), 488(8) Hon'ble the Apex Court held that proceedings can be initiated at any place where the husband or the father resides or last resided.

Learned counsel has further submitted that there is no ambiguity for the jurisdiction, hence, the order of the appellate Court is perverse and the same may be quashed.

8. For the purpose of appreciation for maintainability of the instant Cr.M.P., the order of the appellate Court and the order of Judicial Magistrate First Class are perused.

9. So far as the legal position of the present Cr.M.P. is concerned, from perusal of Section 29 of the Act, 2005, it is apparent that appeal shall lie to the Court of Sessions. There is no provision of revision in the present Act. As per settled law, if no any provision of revision is mentioned or expressly debarred then general procedural law shall be followed. As per Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 (in short 'the Cr.P.C.'), the High Court may call for record and examine regarding any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court. Undisputedly, the Court of Judicial Magistrate First Class and the Court of Sessions are inferior Courts as provided in Section 397 of the Cr.P.C. As per provision of Section 401 of the Cr.P.C., the High Court can exercise the powers conferred on a Court of Appeal by sections 386, 389, 390 and 391 and regarding other provisions. As a settled law, Section 482 of the Cr.P.C., i.e., the inherent jurisdiction of High Court, except for the exceptional circumstances, be exercised when there is no any forum for the

² AIR 1963 SC 1521 : (1964) 2 SCR 73 : (1963) 2 CriLJ SC 413

same. In the present matter, from the perusal of the above provisions of law, it goes to show that High Court has power and jurisdiction to examine the matter as a revision under the provision of Section 397 read with Section 401 of the Cr.P.C. and also can pass order as per power of appellate Court given under Section 386 of the Cr.P.C. reserving the other provisions as are in Section 401 in sub-section (3) of the Cr.P.C. The petitioner failed to demonstrate the reason why he had not preferred to invoke jurisdiction of revisional power of this Court and why he straightway prayed for application of exercising of inherent jurisdiction, though the remedy was available under the provisions of law.

10. With the above, this Court is of the considered view that the present petition filed under Section 482 of the Cr.P.C. is not maintainable.

11. So far as argument advanced regarding Section 27 of the Act, 2005 that the jurisdiction already proved by the petitioner before the Court below is concerned, since the petition itself is not maintainable, the same is not being disposed of on its merit.

12. Consequently, the instant Cr.M.P. is hereby dismissed as not maintainable reserving the petitioner's liberty to raise the issue before appropriate forum available under the law.

Sd/-

(Chandra Bhushan Bajpai)
JUDGE