

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 1167 of 2015

1. Harish Khatri S/o Khamchand Khatri Aged About 29 Years R/o Chakradhar Nagar, Santosh Ice Factory, Sindhu Bhawan, Pakki Kholi, Raigarh, Distt. Raigarh, Chhattisgarh. Present R/o Sanjay Nagar, Tahsil And Distt. Raigarh, Chhattisgarh.
2. Khemchand Khatri S/o Dhirmal Khatri Aged About 65 Years R/o Chakradhar Nagar, Santosh Ice Factory, Sindhu Bhawan, Pakki Kholi, Raigarh, Distt. Raigarh, Chhattisgarh. Present R/o Sanjay Nagar, Tahsil And Distt. Raigarh, Chhattisgarh.
3. Jayanti Khatri W/o Khamchand Khatri Aged About 60 Years R/o Chakradhar Nagar, Santosh Ice Factory, Sindhu Bhawan, Pakki Kholi, Raigarh, Distt. Raigarh, Chhattisgarh. Present R/o Sanjay Nagar, Tahsil And Distt. Raigarh, Chhattisgarh.
4. Santosh Kumar Khatri S/o Khamchand Khatri Aged About 38 Years R/o Chakradhar Nagar, Santosh Ice Factory, Sindhu Bhawan, Pakki Kholi, Raigarh, Distt. Raigarh, Chhattisgarh. Present R/o Sanjay Nagar, Tahsil And Distt. Raigarh, Chhattisgarh.

---- Petitioners

Versus

1. Smt. Laxmi Bajaj @ Nandani Khatri W/o Harish Khatri Aged About 26 Years R/o Raigarh At Present Basudev Bajaj, Radio Centre, Kera Road, Naila (Janjgir) Tahsil And Distt. Janjgir Champa, Chhattisgarh.

---- Respondent

For Petitioners	:	Shri Manoj Kumar Jaiswal, Advocate
For Respondent	:	Smt. M. Asha, Advocate

HON'BLE SHRI JUSTICE CHANDRA BHUSHAN BAJPAI

ORDER ON BOARD

10/02/2016

1. Heard on admission.
2. Brief facts as required for the adjudication of the instant Cr.M.P. are that the respondent had filed an application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (for short 'the Act of 2005') which is pending before the Judicial Magistrate First Class, Janjgir Champa (CG) in Case No. 62/2015 wherein the respondent had prayed for relief as

mentioned in para 9 of the application, Annexure P/6. The petitioners had challenged the initiation of proceedings under Section 12 of the Act 2005 as the same is bad in law and deserves to be quashed. Under Section 26 sub-section (3) of the Act, 2005, the respondent is duty bound to inform the Magistrate regarding the relief obtained by her in any proceeding other than a proceeding under the Act of 2005. She had not disclosed regarding the fact of the order of maintenance passed by the Court, therefore, under Section 12 of the Act of 2005, deserves to be quashed at the threshold. Further grounds taken that the respondent has misled the Court and tried to obtain reliefs from several proceedings in utter misuse of process of law and the petitioners are unnecessarily prosecuting by the respondent by filing application under Section 12 of the Act of 2005. The same cannot be initiated and the respondent is also prosecuting the petitioners under Sections 498A, 506-B/34 IPC on the same allegations for which the case under Section 12 of the Act of 2005 has been initiated whereas according to Article 20 (2) of the Constitution of India, no person shall be prosecuted and punished for the same offence more than once. After some time of marriage, petitioner No.1 and the respondent started living separately therefore, in case application under Section 12 of the Act of 2005 can be filed or continued. Hence, it is prayed that the entire proceedings of the Cr. Case No.62/2015 may be quashed.

3. Heard learned counsel for the parties on admission of the instant Cr.M.P. under the inherent provisions of this Court, i.e. under Section 482 Cr.P.C.

4. Learned counsel for the petitioners submits that as the order of maintenance passed in other proceedings was not disclosed by the respondent hence, the proceeding initiated cannot be continued as there is gross violation of Section 26 (3) of the Act of 2005. It is further submitted that they are living separately since 2012. The respondent has lodged the First Information Report under Section 498A IPC and after investigation police had

filed the charge sheet and same is pending before the Criminal Court. In Cr. Revision No.940/2014 filed on behalf of the respondent and her son Paras Khatri for enhancement of the maintenance amount, is pending before this Court wherein this Court has ordered for Rs.5000/- per month as interim maintenance to the applicants. Learned counsel would further submit that petitioner No.1 had filed an application under Section 9 of the Hindu Marriage Act, 1955 (for short the Act 1955) for restitution of conjugal rights wherein the respondent was non-applicant in C.S.No.82A/2013, the Judge, Family Court, Raigarh vide its judgment dated 12.11.2013 allowed the application and ordered for restoration of conjugal rights in favour of petitioner No.1. Against the said order, the respondent had filed First Appeal (M) No.111/2013 which is pending before this Court. On the basis of the above, it is submitted that entire proceedings under Section 12 of the Act of 2005 be quashed.

5. For the purposes of appreciation regarding arguments advanced on admission, the instant Cr.M.P. and documents annexed are perused.

6. From perusal of the above, it appears that on an application under Section 12 of the Act of 2005, Annexure P/6, the Court below vide order dated 4.5.2015 registered the case under Sections 18, 19, 22 and 23 of the Act of 2005 and the matter was fixed for the appearance of the non-applicant. From perusal of the above order it goes to show that under various provisions of the Act of 2005 regarding protection order, residence order, compensation order and for grant of interim and ex-parte order, it goes to show that the matter was not only for the maintenance. With the above facts, the matter was registered for hearing cannot be quashed under the inherent powers of this Court as there is violation of disclosure of the information regarding any relief for the maintenance as the matter belongs to other provisions of the Act of 2005 also pending for adjudication. Even in the considered view of this Court, if for the sake of arguments if any information regarding any relief obtained in any other proceeding is not disclosed by the concerned parties,

the effect would not be for the quashment of the entire proceedings. If on an information received by the other parties, the Court can take care while granting any relief for the maintenance and can very well set off and value the relief earlier granted to the petitioners. So far as other litigations are concerned, as a settled law, Act of 2005 is for the protective orders is not a penal provision. Also as a settled law allegations of Section 498A IPC is an independent proceeding and simply by lodging FIR, the respondent cannot deny the relief as provided to her under the legislation of the Act of 2005. Doctrine as mentioned in Article 20 (2) of the Constitution of India is not applicable as the provisions of Act of 2005 are not for penalizing or prosecute a person for the same offence since the Act itself is an Act regarding the protective orders, not to penalize for other hence, Article 20 (2) of the Constitution is not applicable in the present matter. Pending of any other proceeding of maintenance in other proceeding under the provisions of Section 9 of the Hindu Marriage Act for restitution of conjugal rights in appeal is pending against such order. Any revision pending for enhancement of the maintenance amount does not debar the respondent to file an application under the relevant provisions of Section 12, 18, 19, 22 & 23 of the Act of 2005.

7. In the considered view of this Court, as the petitioner failed to demonstrate authority to invoke the inherent powers of this Court, thereby the present petition being devoid of substance is liable to be dismissed as not maintainable.

8. Accordingly, the petition is dismissed at the motion stage itself.

Sd/

(Chandra Bhushan Bajpai)

Judge