

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 203 of 2015**

Sanjay Singh, aged 45 years S/o late Shri Gopal Singh R/o House No. C-9, Sector-1, PS Devendra Nagar, Raipur, Tehsil and District Raipur (CG).

---- Petitioner**Versus**

1. Smt. Taruna W/o Singh Sanjay, aged about 40 years residing at House No.676, Sector-2, Deendayal Upadhyay Nagar, PS DD Nagar, Raipur, District Raipur (CG).
2. State of Chhattisgarh through the District Magistrate, Collectorate Premises, Raipur (CG).

---- Respondents

For Petitioner

Shri N Naha Roy, Advocate.

For respondent No.1

Shri Amrito Das, Advocate.

For respondent No.2

Shri Anupam Dubey, Deputy Govt. Advocate.

Hon'ble Shri Justice P.Sam Koshy**Order On Board****18/07/2016**

1. The present petition under Section 482 CrPC has been preferred by the petitioner challenging the order dated 15.12.2014 passed by the Revisional Court i.e. the court of Additional Sessions Judge (FTC) Raipur, in Criminal Revision No.163/2014 rejecting the revision of the petitioner and affirming the order passed by the Additional Chief Judicial Magistrate, Raipur (ACJM) in MJC Case No.02/2013 whereby the ACJM had ordered by way of interim direction to the petitioner not to create any hindrance in the peaceful residence of the respondent as a shared household.

2. Facts in brief necessary for adjudication of this petition is that, the petitioner and the respondent had got married on 01.06.2009 and barely in a couple of years relation between the two got strained. Subsequently, respondent-wife Taruna Singh is said to have filed an application under the provisions of Protection of Women from Domestic Violence Act, 2005 (for short, the Act, 2005) before the competent authority under the Act known as "Protection Officer". Along with the said application, the respondent-wife had also filed an application for grant of interim protection under Section 23 of the Act, 2005.
3. Pending the proceeding under the Act, 2005, the ACJM, vide order dated 09.04.2014 allowed the interim application and directed the petitioner-Husband, restraining him from putting up hindrance in the way of the respondent-wife from peaceful residence as shared household.
4. The said order dated 09.04.2014 was assailed by the petitioner by way of revision petition before the Additional Sessions Judge (FTC), Raipur, who, vide impugned order dated 15.12.2014 after considering all the objections put fourth by the petitioner, rejected the same holding that the court below has not committed any illegality or infirmity while passing the interim protection on 09.04.2014.
5. Learned counsel appearing for the petitioner submits that solitary ground in the present petition assailing the impugned order dated 15.12.2014 is the fact that the revisional authority has failed to appreciate the fact that the petitioner, in between, had already filed a

divorce petition under Section 13 of the Hindu Marriage Act before the Family Court, Raipur, which is registered as Case No.148 of 2014. In the said case one of the ground for divorce was that, the respondent-wife for no specified reasons was living separately from the present petitioner for a period of more than one year. That, in case if the petitioner is forced to abide by the interim protection given by the ACJM court in a proceeding under the Act, 2005, the ground of respondent's staying separately which is a one of the strong ground for seeking divorce would get defeated and his divorce petition itself would lose strength detriment to the present petition. He thus, prayed for quashing of the order dated 09.04.2014 with a further request that if the order is not quashed, the matter may at least be remitted back after setting aside interim order dated 09.04.2014 for a fresh adjudication of the interim application.

6. Learned counsel appearing for the respondent-wife countering the petition submits that the ground raised by the petitioner in the context of the order dated 09.04.2014 is totally misconceived. According to him, the divorce petition itself was filed much after the respondent's having initiated a proceeding against the petitioner under the provisions of the Act, 2005. Therefore, the ground by the petitioner assailing the order dated 09.04.2014 gets crashed and can not be a valid and justified ground to make out a case. He further submits that the complaint to the protection officer under the Act, 2005 was filed by the respondent-wife on 15.04.2013 whereas, the divorce petition was filed by the petitioner against the respondent-wife on 13.03.2014 i.e.

almost after one year. Since the complaint under the Act, 2005 was initiated at the first instance, the ground raised by the petitioner that the interim order would frustrate the divorce petition filed by the petitioner does not have any legs to stand.

7. Considering the above facts and circumstances of the case, this court is of the opinion that the ground of challenge put fourth by the petitioner is not acceptable and is apparently contrary to the facts on record inasmuch as, the complaint under the Act, 2005 was filed earlier and it was much subsequent that the divorce petition has been filed. Therefore, only because an interim order has been passed and which may prove counter productive to the grounds raised by the petitioner in the divorce petition, cannot be said to be a valid ground which the petitioner can be permitted to agitate the impugned order.
8. For the foregoing reasons, this court is of the opinion that there is no illegality or infirmity in the orders passed by the court of ACJM while passing the interim protection on 09.04.2014 as well as in the order dated 15.12.2014 passed by the revisional court affirming the order of ACJM, Raipur.
9. Accordingly, the petition fails and is dismissed.

Sd/-
(P.Sam Koshy)
JUDGE