

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 599 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. By way of this petition under Section 482 CrPC, the petitioner intends to challenge the order dated 19.06.2015 whereby the Additional Chief Judicial Magistrate, Raipur (for short, ACJM) has ordered for registration of an offence under Section 31 of the Protection of Women from Domestic Violence Act, 2005 (for short, the Act, 2005).
2. Facts in brief necessary for adjudication of this petition are that, the petitioner and the respondent had got married on 01.06.2009 and barely in a couple of years time, relations between the two got strained. Subsequently, respondent-wife Taruna Singh is said to have

filed an application under the provisions of 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, non-applicant before the ACJM court, restraining him from putting up hindrance in the way of the respondent-wife from peaceful residence as shared household.
4. Since the said interim order was not complied with by the petitioner-husband on the alleged ground of petitioner's preferring a revision against the order dated 09.04.2014 and that there was no interim protection against the effect and operation of the order dated 09.04.2014, the ACJM vide order dated 19.06.2015 ordered for registration of an offence under Section 31 of the Act, 2005 alleging non compliance of the interim protection order granted on 09.04.2014. It is this registration of an offence under Section 31 of the Act, 2005 which is under challenge in this petition.
5. Learned counsel appearing for the petitioner submits that the court below could not have taken cognizance of an offence under Section 31 of the Act, 2005 as the nature of order passed by the ACJM on 09.04.2014 does not fall within any of the categories envisaged under Section 18 of the Act, 2005. He further submits that complaint under Section 31 of the Act, 2005 was not maintainable for the reason that

the remedy otherwise available to the respondent was for invoking the provisions envisaged under Section 28 of the Act, 2005 wherein the respondent ought to have initiated proceedings under the provisions of Code of Criminal Procedure for implementation of the order dated 09.04.2014.

6. It is further submitted that the nature of the complaint also does not fall within the definition of protection order as defined under Section 2(o) of the Act, 2005 and since the nature of order dated 09.04.2014 is not one which can be said to be a protection order, the entire proceedings initiated by the ACJM invoking the provisions of Section 31 of the Act, 2005 stands vitiated. In support of his contentions, reliance has been placed upon the judgments of Kerala High Court in cases of **Naseeba Beevi Vs. State of Kerala** (in Criminal Misc. Case No.3829/2009, decided on 15.02.2010), in **Velayudhan Nair Vs. Chimminikkara Karthiayani** (WPC No. 7374 of 2009, decided on 10.07.2009) and lastly judgment of Rajasthan High Court in case of **Kanchan Vs. Vikramjeet Setiya** (CrLJ 2013-0-85).
7. In the light of above referred decision, counsel for the petitioner submits that the order of registration of an offence by the court of ACJM was totally beyond competence jurisdiction and authority, and therefore, the same deserves to be set aside/quashed.
8. Per contra, learned counsel appearing for the respondent-wife categorically submits that the court below i.e. ACJM has not committed any error of law while ordering for registration of an offence under Section 31 of the Act, 2005. He further submits that only

because in the order dated 09.04.2014 it has not been referred to as an order of the protection order as is required under Section 18 or for that matter under Section 19 of the Act, 2005, does not by itself make it of less importance. According to him, they are different colors and shades but have the same meaning, object and intention so far as the interim order of the court below is concerned. The option under Section 31 of the Act, 2005 also envisages the fact that in case of any breach of the order passed by the court having jurisdiction under the Act, 2005, the court can take cognizance of such breach under Section 31 of the Act, 2005.

9. It is further submitted that there may be a claim of civil nature which may also be available to the respondent-wife, but that does not mean that the remedy under Section 31 of the Act, 2005 would not be available to the respondent for the purpose of prosecuting the person who has deliberately violated or not complied with the interim order granted by the court below and also from being punished. So far as the remedy under Section 28 of the Act, 2005 is concerned, counsel for the respondent submitted that, that is only a procedure prescribed under the Act, 2005. if the analogy as floated by the applicant is to be accepted then there would be no substantive provision for the purpose of punishing someone who has disobeyed the order or has willfully tried to avoid compliance of the order of the court under the Act, 2005.
10. It is next submitted that if the object for which the said Act, 2005 was enacted is taken note of, it would clearly give sufficient indication that it is not a strict interpretation of law which has to be given while

construing whether an order amounts to protection order or an interim protection order. Rather, it is a case where the broad and wider interpretation needs to be given for the purpose of construing the provisions of the Act, 2005. It is also submitted that more liberal and pragmatic approach has to be adopted by the court below while considering the case under the provisions of Domestic Violence Act and particularly in a proceeding where the allegation is of a willful deliberate non compliance of the interim order/interim protection order given by the court.

11. So far as the case of the present petitioner is concerned, according to counsel for the respondent-wife, the entire dispute, allegation, contentions put forth by the petitioner in the present petition stands squarely answered by the judgment of Supreme Court in case of **Kunapareddy @ Noorkala Shanka Balaji Vs. Kunapareddy Swarna Kumari & Anr.**, decided on 18.04.2016, wherein, in paragraph-14, the Supreme Court has elaborately discussed with the provisions of Sections 12 to 25 as also Section 31 of the Act, 2005.

For ready reference, paragraph 14 is being reproduced as under :

“14. Procedure for obtaining order of reliefs is stipulated in Chapter IV of the DV Act which comprises Sections 12 to 29. Under Section 12 an application can be made to the Magistrate by the aggrieved person or Protection Officer or any other person on behalf of the aggrieved person. The Magistrate is empowered, under Section 18, to pass protection order. Section 19 of the DV Act authorizes the Magistrate to pass residence order which may include restraining the respondent from dispossessing or disturbing the possession of the aggrieved person or directing the respondent to remove himself from the shared household or even restraining the respondent or his relatives from entering the portion of the shared household in which the aggrieved person resides etc. Monetary reliefs which can be granted by the Magistrate under Section 20 of the DV Act include giving of the relief in respect of the loss of earnings, the medical

expenses, the loss caused due to destruction, damage or removal of any property from the control of the aggrieved person and the maintenance for the aggrieved person as well as her children, if any. Custody can be decided by the Magistrate which was granted under Section 21 of the DV Act. Section 22 empowers the Magistrate to grant compensation and damages for the injuries, including mental torture and emotional distress, caused by the domestic violence committed by the appellant. All the aforesaid reliefs that can be granted by the Magistrate are of civil nature. Section 23 vests the Magistrate with the power to grant interim ex-parte orders. It is, thus, clear that various kinds of reliefs which can be obtained by the aggrieved person are of civil nature. At the same time, when there is a breach of such orders passed by the Magistrate, Section 31 terms such a breach to be a punishable offence.”

12. He further submits that there is yet another decision of Delhi High Court in case of **Shambhu Prasad Singh Vs. Manjari** (2012) 190 DLT 647 (DB) in which the Delhi High Court has again taken the same view. Para-9 of which is being reproduced as under :

“9. The basic objective in enacting the Act is to secure various rights to a woman living in matrimony or in a relationship akin to matrimony, or any domestic relationship. Domestic violence, is, per se, not a criminal offence but is defined extensively and comprehensively to include various conditions. The woman exposed to such domestic violence is given the right to move to Court for any of the reliefs outlined in Section 12 through either a comprehensive proceeding, claiming maintenance, right to residence, compensation etc. or even move to Court seized of any other pending proceeding, such as divorce and maintenance etc. (Section 26). Section 17 has, for the first time, enacted a right to residence in favor of such women. The Act being a beneficial one, the Court should adopt a construction to its provisions which advances the parliamentary intention rather than confining it. If the latter course is adopted the result would be to defeat the object of the law. As noticed earlier, domestic violence is per se not an offence but its incidence or occurrence enables a woman to approach the Court for more than one relief. The Court is empowered to grant ex-parte relief and ensure its compliance, including by directing the police authorities to implement the order, particularly those relating to residence etc. If such an order is violated by the respondent (a term defined in the widest possible terms, to include female relatives of the husband or the male partner etc), such action would constitute a punishable offence, which can be tried in a summary manner under Section 31 of the Act.”

13. A plain reading of above two paragraphs quoted in paragraphs 14 & 9 passed by the Supreme Court as well as by the Delhi High Court respectively, it would evidently make it clear that the Act, 2005 has provided its court sufficient powers to grant more than one relief and has also empowered its court to ensure its compliance.
14. A plain reading of this portion by itself lays to rest of the contentions put forth by the counsel for the petitioner so far as the tenability of the order dated 19.06.2015 is concerned whereby the court of ACJM had ordered for registration of an offence against the petitioner for non compliance/breach of the interim order passed by it on 09.04.2014.
15. To further fortify the opinion of this court, it would be relevant for referring to the decisions of Supreme Court rendered in cases of 2012 (3)SCC 183 (**V.D. Bhanot Vs. Savita Bhanot**), 2013(15)SCC 755 (**Indra Sarma Vs. V.K.V. Sarma**) and 2014(3) SCC 712 (**Saraswathy Vs. Babu**) wherein the Supreme Court has extensively dealt with the object and purpose of enacting the Act, 2005. If the ratio of law laid down by the Supreme Court in the judgments cited in the preceding paragraphs are taken in to consideration, it can be safely concluded that the provisions of the Act, 2005 has been enacted keeping the womens aggrieved under the Domestic Violence Act and that when a complaint or for that matter a report is lodged by the victim of violence, the said complaint should not be throttled at the inception itself giving strict interpretation of law. Rather the provisions of law has to be construed in a more pragmatic, liberal and also has to be given a broad and wider interpretation.

16. As regards the fact of the instant case is concerned, the interim protection by the court below was that admittedly as on date the respondent-wife is the legally wedded wife of the petitioner. The marriage had not been dissolved by any legal order passed by a competent court of law. If while the wife enjoys the status of legally wedded wife, she is subjected to violence and is being chased out of the matrimonial home, she has the remedy under the Act, 2005. The Act, 2005 also envisages for grant of interim relief. In the present case interim order was granted on 09.04.2014 directing the petitioner-husband that he should not create hindrance upon his wife from her peaceful residence as a shared household.
17. Another aspect which has to be borne in mind is that, the provisions of Section 31 of the Act, 2005 was enacted that in the event if an order or an interim order passed by the competent court under the Act, 2005, is not honored/not complied with, then the court below should be sufficiently teathed with the provisions of law to take the defaulter to task.
18. So far as the present case is concerned, the order dated 09.04.2014 till date has not been complied with which stands established from the Cr.MP No.203 of 2015 preferred by the petitioner-husband wherein his stand was that complying with the interim order would be detrimental to a legal proceeding of divorce initiated by him much subsequent to the complaint of respondent-wife being filed before the protection officer under the Act, 2005.
19. In view of the judgment of the Supreme Court in Kunapareddy (Supra)

and the Delhi High Court in Shambhu Prasad Singh (Supra), this is with all due respect is not inclined to accept the view of the Kerla High Court in cases of Naseeba Beevi (Supra) and Velayudhan Nair (Supra) as also the Rajasthan High Court in case of Kanchan (Surpa).

20. Considering the overall facts and circumstances of the case, more particularly, the principle laid down by the Supreme Court in case of Kunapareddy (Supra) and also by the High Court in case of Shambhu Prasad Singh (Supra), this court also is inclined to accept the same analogy and it is held that the ACJM Court has not committed any error of law or facts while ordering for registration of an offence against the petitioner under Section 31 of the Act, 2005.

21. Accordingly, the present petition being devoid of merit is liable to be and is hereby rejected.

Sd/-
(P.Sam Koshy)
JUDGE