

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Criminal Revision No. 882 of 2015**

Smt. Sadhna Singh W/o Jagatpal Singh, aged about 53 years, R/o Gali No.2, Near Gayatri Mandir Vinoba Nagar, P.S. Tarbahar, Tahsil & District Bilaspur, Chhattisgarh

---- Applicant**Versus**

1. Jagatpal Singh S/o Ramdas Singh aged about 60 years R/o Malti Bhawan, in front of Vikram Super Bazar, Vidya Nagar, P.S. Tarbahar, Tahsil & District Bilaspur, Chhattisgarh
2. Lav Singh @ Amolarama Singh S/o Jagatpal Singh, aged about 40 years R/o Malti Bhawan, in front of Vikram Super Bazar, Vidya Nagar, P.S. Tarbahar, Tahsil & District Bilaspur, Chhattisgarh
3. Manju Singh W/o Lav Singh @ Amolarama, aged about 46 years, R/o Malti Bhawan, in front of Vikram Super Bazar, Vidya Nagar, P.S. Tarbahar, Tahsil & District Bilaspur, Chhattisgarh
4. Kamal Koshore Singh S/o unknown aged about 38 years R/o Malti Bhawan, in front of Vikram Super Bazar, Vidya Nagar, P.S. Tarbahar, Tahsil & District Bilaspur Chhattisgarh
5. Sashibala Singh W/o Kamal Kishore Singh, aged about 34 years R/o Malti Bhawan, in front of Vikram Super Bazar, Vidya Nagar, P.S. Tarbahar, Tahsil & District Bilaspur, Chhattisgarh
6. Hariomkant Singh S/o Jagatpal Singh, aged about 29 years R/o Malti Bhawan, in front of Vikram Super Bazar, Vidya Nagar, P.S. Tarbahar, Tahsil & District Bilaspur, Chhattisgarh

---- Respondents

For Applicant	:	Shri J. K. Shastri, Advocate.
For Respondents	:	Shri Sunil Kumar Soni, Advocate

Hon'ble Shri Justice P.Sam Koshy**Order On Board**

02/11/2016

The present revision petition under Section 397 & 401 of CrPC has been filed assailing the judgment dated 25.02.2015 which later on also got modified on 19.05.2015 passed by the Additional Sessions Judge, Bilaspur in Criminal Appeal No. 193 of 2013.

2. The relevant facts for adjudication of the instant case are that the applicant was married to respondent no.1 in February 2004. It was the second marriage for respondent no.1 as his first wife had expired. But barely after a year of the marriage, the relations between the two got strained and an FIR for the first time was lodged on 02.05.2005 against the respondent no.1 under Section 498A of IPC. The said case was finally compromised between the parties. However, later on, the applicant lodged another case against respondent no.1 under the "Protection of Women from Domestic Violence Act, 2005 (for short "the DV Act") seeking for relief of permanent residence, protection from domestic violence, sufficient monetary support, compensation etc. which was registered as Misc. Criminal Case No. 28 of 2013.

3. The trial Court taking into consideration the evidence which had come on record vide its judgment dated 20.06.2013 partly allowed the claim of the applicant-wife by awarding Rs.4,000/- per month to her as maintenance to be paid by the respondent No.1. In addition, the compensation of Rs.50,000/- was ordered to be paid within a period of 2 months. Rs.3,000/- was also awarded for medical treatment and Rs.5,000/- for obtaining the certified copies of her documents. However, the Court below did not grant the relief of sharing the residence in favour of the applicant.

4. The said order dated 20.06.2013 was put to challenge before the Additional

Sessions Judge, Bilaspur in Criminal Appeal No. 193 of 2013. The appellate Court also vide its order dated 25.02.2015 rejected the appeal affirming and upholding the order of the Magistrate dated 20.06.2013.

5. It is this order dated 25.02.2015 which is under challenge by way of the present revision petition.

6. Counsel for the applicant submitted that the Court below has not properly appreciated the evidence which has come on record. He argued that the Court below has also not granted the compensation and the maintenance amount what was otherwise well within the paying capacity of the respondent-husband for which he was duty bound and legally obliged for providing the same. It was argued on behalf of the applicant that the Court below should have taken into consideration the fact that the applicant-wife does not have a proper shelter to stay at and therefore as per the provision of Domestic Violence Act, the Court below ought to have considered the relief of providing the facility of sharing the residence. The Court below having not done so the impugned order deserves to be modified to that extent. In addition, according to the counsel for the applicant, granting of Rs.4,000/- per month as maintenance and the amount awarded towards medical expenses being too meager amount deserves to be enhanced. Likewise, since the applicant-wife is living separately for a considerable period of time, she is also entitled for compensation more than Rs.50,000/- that has been awarded by the Court below. Thus, counsel for the applicant prayed for modification of the order of the JMFC, Bilaspur dated 20.06.2013 accordingly.

7. Per contra, counsel appearing for the respondents opposing the petition submitted that a bare perusal of the two impugned orders by itself clearly reflect that the two orders passed by the Courts below are proper, legal and justified

which do not warrant any interference. According to the respondents, it is an admitted position that the applicant and the respondent no.1 are no longer husband and wife as the marriage has already been dissolved by a decree of divorce dated 30.11.2011 passed by the Competent Court of law and therefore as on date, the applicant is no longer a legally wedded wife of respondent no.1. According to the counsel for the respondents, the applicant in the instant case is not entitled for the relief she has sought for in addition to what has been granted by the JMFC, Bilaspur. According to the counsel for the respondents, the applicant stands debarred from getting the benefits in view of the fact that after the decree of divorce having been passed on 30.11.2011 she cannot be brought within the ambit of an aggrieved person as is defined under Section 2 (a) of the DV Act. In addition, the applicant having been already divorced by respondent no.1 and a decree of divorce having been passed as early as about 5 years back i.e. on 30.11.2011 she is no longer a wife of respondent no.1 as per section 12 (1) of the said Act. Likewise, the applicant also would not be entitled for the benefit of sharing the residence in view of the provisions of Section 19 (1) of the DV Act. Thus, counsel for the respondents prayed for rejection of the revision petition.

8. Having considered the rival contention put forth on either side and on perusal of the records brought before this Court what is an undisputed fact is that there was a marriage between the applicant and the respondent no.1 as early as in February, 2004. But within a couple of years, the relationship between the two got strained. Initially a case under Section 498A was lodged by the applicant which was resolved by way of a mutual settlement arrived at between the parties. Later on, a complaint case was lodged under the provisions of Domestic Violence Act registered as Misc. Criminal Case No. 28 of 2013. The JMFC taking into

consideration the evidence which had come on record allowed the application under Section 12 of the DV Act to the extent of awarding Rs.4,000/- per month as maintenance, Rs.50,000/- as compensation, Rs.3,000/- for medical treatment and Rs.5,000/- to meet the incidental expenses to be paid by the respondent no.1 to the application. Against the said order, the applicant preferred an appeal under Section 29 of the DV Act before the lower Appellate Court. The lower Appellate Court also vide impugned order dated 25.02.2015 affirmed the order of the JMFC holding that the applicant would not be entitled for anything beyond what has already been awarded by the JMFC and thus rejected the appeal. Another aspect which is not in dispute in the present case is that on 30.11.2011 the relationship between the two got severed by virtue of the decree of divorce having been passed by the Court of law. Subsequent to the decree of divorce, the applicant would not remain the wife of respondent no.1.

9. At this juncture, it would be relevant for reproducing the definition of an aggrieved person as defined under Section 2 (a) and also the provisions of Section 17 (1) of the DV Act:

“2.(a) “aggrieved person” means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent;

17. Right to reside in a shared household - (1) Notwithstanding anything contained in any other law for the time being in force, every woman in a domestic relationship shall have the right to reside in the shared household, whether or not she has any right, title or beneficial interest in the same.”

10. It is also pertinent to mention that the High Court of Uttarakhand in one of the recent decisions reported in **2012 CRI.L.J. 1958 (Sunil Kumar Gupta v. Smt. Shalini Gupta)** in paragraph 8 has held as under:

“8. Needless to mention that it is an admitted case that the parties are living separately since 1997. Furthermore, in the

instant case, the status of Smt. Shalini Gupta is of a divorced wife. Now, no matrimonial relationship exists between the parties. Their marriage stood annulled. So, her status cannot be equated with that of an “aggrieved person” as envisaged in the provisions of Section 2 (a) of the Act of 2005. In the decree of divorce, no mention was made by the learned judge, either in the trial or in appeal, regarding the provision of residence of Smt. Shalini Gupta by her husband either by way of rent, as she was residing separately, or in the same shared household. All that was granted to her was the maintenance to the tune of rupees seven thousand per month, which includes all her expenses including the residence.”

Likewise the High Court of Delhi also in the case of **Sudha Mishra Vs. Surya Chandra Mishra in RFA 299/2014 decided on 25.07.2014** in paragraph -13 has held as under:

“13. The legal position which can be culled out from the above reports is that daughter-in-law has no right to continue to occupy the self acquired property of her parents-in-law against their wishes more so when her husband has no independent right therein nor is living there, as it is not a shared household within the meaning of Section 17 (1) of the Protection of Women from Domestic Violence Act, 2005. Wife is entitled to claim a right in a shared household which means a house belonging to or taken on rent by the husband or the house which belongs to joint family of which husband is a member. Daughter-in-law cannot assert her rights, if any, in the property of her parents-in-law wherein her husband has no right, title or interest. She cannot continue to live in such a house of her parents-in-law against their consent and wishes. In my view, even an adult son or daughter has no legal right to occupy the self acquired property of the parents; against their consent and wishes. A son or daughter if permitted to live in the house occupies the same as a gratuitous licensee and if such license is revoked, he has to vacate the said property.”

11. The aforesaid two decisions further stands fortified from the decision of the Supreme Court in the case of **S. R. Batra and Another v. Taruna Batra in Appeal (Civil) No. 5837 of 2006** decided on 15.12.2006 wherein the Supreme Court referring to Section 19 (1) as well as Section 17 (1) of the Act has held as under:

“Learned counsel for the respondent Smt. Taruna Batra has relied upon Section 19 (1) (f) of the Act and claimed that she should be given an alternative accommodation. In our opinion,

the claim for alternative accommodation can only be made against the husband and not against the husband's in-laws or other relatives.

As regards Section 17 (1) of the Act, in our opinion the wife is only entitled to claim a right to residence in a shared household, and a 'shared household' would only mean the house belonging to or taken on rent by the husband, or the house which belongs to the joint family of which the husband is a member. The property in question in the present case neither belongs to Amit Batra nor was it taken on rent by him nor is it a joint family property of which the husband Amit Batra is a member. It is the exclusive property of appellant no.2, mother of Amit Batra. Hence, it cannot be called a 'shared household'."

12. Thus, in view of the aforementioned judicial pronouncements and also taking note of the definition of an aggrieved person as also that of a wife coupled with the fact that there is already a decree of divorce passed between the applicant and the respondent no.1 as early as on 30.11.2011, this Court does not find any strong case calling for an interference with the two impugned orders passed by the two Courts below.

13. In addition, what is not disputed is that the property in which the applicant intends to claim for the right of a shareholder residence cannot be under any circumstance permitted for the reason that the alleged property in which she is claiming for right to residence is not in the name of respondent no.1 but it is in the name of the children of respondent no.1 born from his first wife. Therefore, it is those people who have exclusive ownership and possession over the said property and in which the applicant cannot be permitted to share the residence.

14. For the aforesaid reasons, the present criminal revision fails and is accordingly dismissed.

Sd/-
(P. Sam Koshy)
JUDGE