

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****MCRCA No. 651 of 2017**

- Shivnarayan Sharma S/o Late Sanju Prasad Dubey Aged About 70 Years, R/o Village Mopka, Ramkrisnanagar Fase III, (Kuti), Thana Sarakanda & Tahsil & District Bilaspur, Chhattisgarh.
- Smt. Shitla Sharma S/o Shivnarayan Sharma, Aged About 65 Years, R/o Village Mopka, Ramkrisnanagar Fase III, (Kuti), Thana Sarakanda & Tahsil & District Bilaspur, Chhattisgarh

---- Applicants**Versus**

- State Of Chhattisgarh Through, Station In-Charge, Police Station Sarkanda District Bilaspur, Chhattisgarh.

----Non-applicant

For Applicants: - Shri Akhilesh Kumar and Shri Kuldeep Dubey, Advocate.

For Non-applicant/State:- Shri U.K.S.Chandel, Panel Lawyer.

Hon'ble Shri Justice Chandra Bhushan Bajpai
Order On Board

24.08.2017

1. Heard the matter finally.
2. This application under Section 438 of Code of Criminal Procedure, 1973 (for short 'the Code') has been filed by the applicants apprehending their arrest in connection with Crime No.466/17 registered at Police Station Sarkanda, Distt. Bilaspur (C.G.) for offence punishable under Section 498 (A) of the Indian Penal Code and Section 12 of the Protection of Women from Domestic Violence Act 2005 (in short 'the Act, 2005').
2. Learned counsel for the applicants would submits that Section 12 of the Act 2005 is not applicable in the present matter as the said Section speaks about the Application to

Magistrate by an aggrieved persons seeking protection under the relevant act that requires separate proceedings, cognizance and hearing. Learned counsel for the applicants would further submit that both the applicants are father and mother of Vikash Sharma married to Mamta Sharma, the complainant. The marriage of Vikash Sharma and Mamta Sharma was solemnized on 29.04.2016, thereafter on account of some development between the parties the wife of Vikash Sharma had lodged the report regarding cruelty and other facts. On the basis said report, the police has registered aforementioned matter against the applicants and their son Vikash Sharma.

3. Learned counsel for the applicants would also submit that as Hon'ble the Apex Court in matter of Rajesh Sharma and ors -v- State of UP and another in Criminal Appeal No.1265/2017 arising out of the Special Leave Petition (Criminal) No. 2013/17 vide judgment dated 27.07.2017 in para 19 directed the concerned for compliance. In the present matter the said compliance is not effected, hence, the applicants may be given protection the light of directions issued by Hon'ble the Apex Court.
4. Learned counsel for the State/respondent would submit that there is no material on record to demonstrate regarding the compliance part by the concerned authorities.
5. On due Consideration, the instant MCRCA is disposed of in the light of guidelines given in Arnesh Kumar -v- State of Bihar,

reported in 2014 (8) SCC 273 and thereafter directions given by the Apex Court which is surfaced in para 19 of Rajesh Sharma case (supra) which reads as under:-

“19.....

(i) (a) In every district one or more Family Welfare Committees be constituted by the District Legal Services Authorities preferably comprising of three members. The constitution and working of such committees may be reviewed from time to time and at least once in a year by the District and sessions Judge of the district who is also the Chairman of the District Legal Services Authority.

(b) The Committees may be constituted out of para legal volunteers/social workers/retired persons/wives of working officers/ other citizens who may be found suitable and willing.

(c) The Committee members will not be called as witnesses.

(d) Every complaint under Section 498A received by the police or the Magistrate be referred to and looked into by such committee. Such committee may have interaction with the parties personally or by means of telephone or any other mode of communication including electronic communication.

(e) Report of such committee be given to the Authority by whom the complaint is referred to it latest within one month from the date of receipt of complaint.

(f) The committee may give its brief report about the factual aspects and its opinion in the matter.

(g) Till report of the committee is

received, no arrest should normally be effected.

(h) The report may be then considered by the Investigating Officer or the Magistrate on its own merit.

(i) Members of the committee may be given such basic minimum training as may be considered necessary by the Legal Services Authority from time to time.

(j) The members of the committee may be given such honorarium as may be considered viable.

(k) It will be open to the District and Sessions Judge to utilize the cost fund wherever considered necessary and proper.

(ii) Complaints under Section 498-A and other connected offences may be investigated only by a designated Investigating Officer of the area. Such designations may be made within one month from today. Such designated officer may be required to undergo training for such duration (not less than one week) as may be considered appropriate. The training may be completed within four months from today.

iii) In cases where a settlement is reached, it will be open to the District and Sessions Judge or any other senior judicial officer nominated by him in the district to dispose of the proceedings including closing of the criminal case if dispute primarily relates to matrimonial discord;

iv) If a bail application is filed with at least one clear day's notice to the Public Prosecutor/complainant, the same may be decided as far as possible on the same day. Recovery of disputed dowry items may not by itself be a ground for denial of bail if maintenance or other rights of wife / minor

children can otherwise be protected. Needless to say that in dealing with bail matters, individual roles, prima facie truth of the allegations, requirement of further arrest/custody and interest of justice must be carefully weighed;

v) In respect of persons ordinarily residing out of India impounding of passports or issuance of Red Corner Notice should not be a routine;

vi) It will be open to the District Judge or a designated senior judicial officer nominated by the District Judge to club all connected cases between the parties arising out of matrimonial disputes so that a holistic view is taken by the Court to whom all such cases are entrusted; and

vii) Personal appearance of all family members and particularly outstation members may not be required and the trial Court ought to grant exemption from personal appearance or permit appearance by video conferencing without adversely affecting progress of the trial.

viii) These directions will not apply to the offences involving tangible physical injuries or death.”

6. The authorities concerned are directed to comply with the directions given by Hon'ble the Apex Court, till then the applicants shall not be arrested in the light of directions and other connected procedural laws. Accordingly, MCRC is disposed of.

7. Certified copy as per rules.

Sd/-
(Chandra Bhushan Bajpai)
Judge