

HIGH COURT OF CHHATTISGARH, BILASPUR

CR.M.P. No. 387 of 2016

1. Ajay Kumar Reddy, S/o. Parmanand Reddy, Aged About 46 Years.
2. Parmanand Reddy, S/o. Shrinivas Reddy, Aged About 82 Years,
3. Smt. Geeta Devi Reddy, W/o. Parmanand Reddy, Aged About 72 Years, R/o. Sector 01, Devendra Nagar, Police Station - Devendra Nagar, Raipur, Civil & Revenue District - Raipur Chhattisgarh..

---- Petitioners

Versus

1. State Of Chhattisgarh, Through : Distt. Magistrate- Durg, Police Station, Civil & Revenue District – Durg, Chhattisgarh
2. Smt. Rajshree, D/o. Brahama Raj Naidu, Aged About 43 Years, Present R/o. 01 A, Street 36, Sector 08, Bhilai, Tahsil & Civil & Revenue District – Durg, Chhattisgarh

-----Respondents

For Petitioners	: Mr. Manoj Paranjpe, Advocate
For State/respondent No.1	: Mr. Anil S. Pandey, Govt. Advocate
For respondent No.2	: Mr. Raj Kamal Singh, Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

19/07/2017

Heard.

1. This petition under Section 482 of Cr.P.C. has been filed with prayer to exercise inherent jurisdiction for quashing the impugned order passed by the learned Additional Sessions Judge, Durg in Criminal Appeal No.98/2015 dated 16.11.2015 maintaining the order dated 04.09.2015, passed by the Court of J.M.F.C., Durg in dismissing the preliminary objection raised by the petitioners.
2. Petitioners have raised the question, whether the protection provided under Protection of Women from Domestic Violence Act,

2005 (herein after referred to as 'the Act of 2005') is available to a divorcee wife.

3. It is submitted that marriage of petitioner no.1 and respondent No.2 was solemnized on 25.06.1994 and due to differences between them, respondent No.2 left her matrimonial house on 20.10.2006 and thereafter a decree of divorce was granted by the competent Court on 15.04.2010, which is an admitted fact.
4. Respondent No.2 filed an application on 10.12.2014 before the Court of Judicial Magistrate First Class, Durg under the provisions of Section 12, 16, 18, 19, 20 and 22 of the Act of 2005 submitting that after the decree of divorce dated 15.04.2010, respondent No.2 along with her children is residing in the house, which was purchased by the petitioner No.1 in the year 2002 from Bhilai Steel Plant. During her residence in this house in question, petitioner along with other unsocial elements is regularly disturbing the peace by using abusive words and interfering in the affairs of the house in possession of the respondent No.2, which has resulted in complaint lodged by both the sides in police Station Sector-6, Bhilai. It was also stated that petitioner No.1 is not making any arrangement for education and maintenance of children and Stridhan of respondent No.2 has not been returned by petitioner No.1. On this ground it was prayed that order be passed for return of Stridhan and a protection order be passed for non-interference in the affairs of respondent No.2, order be passed to compensate the expenses made by the respondent No.2, order be passed for monthly maintenance of Rs.15,000/- for maintenance and education of

children in custody of respondent No.2 and also prayed for compensation of Rs.10,00,000/- from the petitioners.

5. Preliminary objection was raised by the petitioner No.1 that decree of divorce has been granted in favour of the petitioner no.1 by the judgment dated 15.04.2010 by Additional Principal Judge, Family Court, Durg and this decree was appealed by the respondent No.2 before the High Court and that appeal has been dismissed. Consequent to this situation, the respondent No.2 can not be regarded to be in any domestic relationship as it is defined in Section 2(f) of the Act of 2005. For this reason, respondent No.2 can not be regarded as entitled to file a complaint under the Act of 2005. Hence, the complaint filed by the respondent No.2 before the Court of Judicial Magistrate First Class, Durg is not maintainable.
6. It is submitted by the counsel for the respondent No.2 that decree of divorce in this case had not been on the basis of mutual consent of the parties. Status of wife in a case for divorce which is contested stands differently. Wife is defined in Section 125 of Cr.P.C. is applicable to the proceeding under the Act of 2005. Hence this petition is not maintainable.
7. Counsel for the respondent No.1 duly assisted the Court.
8. The petitioner has placed reliance on the judgment passed in case of ***Inderjit Singh Grewal Vs. State of Punjab and another***, reported in ***(2011) 12 Supreme Court Cases 588***, in which it was held that in a proceeding by wife under the Act of 2005, challenge to the decree of divorce can not be entertained. Reliance has also been placed in Para-18 of judgment passed in case of ***Krishna***

Bhatacharjee Vs. Sarathi Choudhury and Anr. reported in **(2016)**

2 SCC 705, which reads as under :-

“18. The core issue that is requisite to be addressed is whether the appellant has ceased to be an “aggrieved person” because of the decree of judicial separation. Once the decree of divorce is passed, the status of the parties becomes different, but that is not so when there is a decree for judicial separation. A three-Judge Bench in Jeet Singh and Others Vs. State of U.P. and Others, 1993 1 SCC 325 though in a different context, adverted to the concept of judicial separation and ruled that the judicial separation creates rights and obligations. A decree or an order for judicial separation permits the parties to live apart. There would be no obligation for either party to cohabit with the other. Mutual rights and obligations arising out of a marriage are suspended. The decree however, does not sever or dissolve the marriage. It affords an opportunity for reconciliation and adjustment. Though judicial separation after a certain period may become a ground for divorce, it is not necessary and the parties are not bound to have recourse to that remedy and the parties can live keeping their status as wife and husband till their lifetime.”

9. Reliance has also been placed in case of ***Juveria Abdul Majid Patni Vs. Atif Iqbal Mansoori & Anr.*** reported in **(2014) 10 SCC 736** referring to para 30 of the judgment, which reads as under :-

“30. An act of domestic violence once committed, subsequent decree of divorce will not absolve the liability of the respondent from the offence committed or to deny the benefit to which the

aggrieved person is entitled under the Domestic Violence Act, 2005 including monetary relief under Section 20, child custody under Section 21, compensation under Section 22 and interim or ex parte order under Section 23 of the Domestic Violence Act, 2005.”

10. It is submitted that it is clear from the ratio laid down by the Supreme Court the act of domestic violence was committed, decree of divorce was passed subsequent to that, whereas, in this case, the decree of divorce as has been passed earlier in the year 2010, whereas the application under the provision of Protection of Women from Domestic Violence Act have been brought in the year 2014.
11. Heard the parties and perused the material on record.
12. The question before this Court is with respect to the applicability of the provisions of the Act of 2005. In the circumstances of this case, the parties stand as divorced husband and wife, their marital relationship has been sheared off and the decree has attained the finality. In the situation, whether the compliant can be made under the Act of 2005 by a divorced wife seeking reliefs.
13. Definition under Section 2(a) of the Act of 2005 is as under :-

“2(a) “aggrieved person” means any women 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;”
14. Further the definition of domestic relationship under Section 2(f) of the Act of 2005 is as under :-

“2(f) “domestic relationship” means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage or through a relationship in the nature of marriage, adoption or are family members living together as a joint family;”

15. In the context of the facts of this case, definition of shared household under Section 2(s) under the Act of 2005 is also relevant, which is as under :-

“2(s) “shared household” means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household;”

16. It shall not be out of the scope of consideration in this case to refer to the judgment of Hon'ble Supreme Court passed in case of **Krishna Bhattacharjee (supra)** in para -31, which is as under :-

“31. Regard being had to the aforesaid statement of law, we have to see whether retention of stridhan by the husband or any other family members is a continuing offence or not. There can be no dispute

that wife can file a suit for realization of the stridhan but it does not debar her to lodge a criminal complaint for criminal breach of trust. We must state that was the situation before the 2005 Act came into force. In the 2005 Act, the definition of "aggrieved person" clearly postulates about the status of any woman who has been subjected to domestic violence as defined under Section 3 of the said Act. "Economic abuse" as it has been defined in Section 3(iv) of the said Act has a large canvass. Section 12, relevant portion of which have been reproduced herein before, provides for procedure for obtaining orders of reliefs. It has been held in *Inderjit Singh Grewal* (supra) that Section 498 of the Code of Criminal Procedure applies to the said case under the 2005 Act as envisaged under Sections 28 and 32 of the said Act read with Rule 15(6) of the Protection of Women from Domestic Violence Rules, 2006. We need not advert to the same as we are of the considered opinion that as long as the status of the aggrieved person remains and stridhan remains in the custody of the husband, the wife can always put forth her claim under Section 12 of the 2005 Act. We are disposed to think so as the status between the parties is not severed because of the decree of dissolution of marriage. The concept of "continuing offence" gets attracted from the date of deprivation of stridhan, for neither the husband nor any other family members can have any right over the stridhan and they remain the custodians. For the purpose of the 2005 Act, she can submit an application to the Protection Officer for one or more of the reliefs under the 2005 Act. In the present case, the wife had submitted the application on 22.05.2010 and the said authority had forwarded the same on

01.06.2010. In the application, the wife had mentioned that the husband had stopped payment of monthly maintenance from January 2010 and, therefore, she had been compelled to file the application for stridhan. Regard being had to the said concept of "continuing offence" and the demands made, we are disposed to think that the application was not barred by limitation and the courts below as well as the High Court had fallen into a grave error by dismissing the application being barred by limitation."

17. The Hon'ble Supreme Court in case of **A. Ashok Vardhan Reddy & Others Vs Smt. P. Savitha & Another**, reported in **2012 Cr.L.J. 3462** has reiterated the view expressed in case of **D. Velusamy Vs. D. Patchaiammal** reported in **(2010) 10 SCC 469** and examined the provisions of the Act and noted that the expression 'domestic relationship' includes not only the relationship of marriage but also a relationship 'in the nature of marriage' to be akin to common law marriage and directed the Family Court to decide whether the man and woman had lived together for a reasonably long period of time in a relationship which was in the nature of marriage. The Supreme Court specifically noted the term 'wife' to be including, under Section 125 of the Code of Criminal Procedure, a woman who has been divorced by a husband or who has obtained a divorce from her husband and has not remarried. A woman not having the legal status of a wife was noted to have been, thus, brought within the inclusive definition of the term 'wife' consistent with the objective. The principles laid down by the Apex Court also may be in tune with the understanding of the word 'wife' as inclusive of a woman who

has been a wife.

18. In the matter before this High Court in case of ***Santoshi Bai Vs. Gangaram & Ors.***, reported in ***2015 Cr.L.J. 3600***, this Court has held at Para -10 11, which is quoted as here under :-

"10. The aforesaid scheme of the Act is clearly intended to come to the aid and protection of an "aggrieved person" defined under Section 2 (a) to mean 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 non-applicant.

"Domestic relationship" has also been defined under Section 2 (f) of the Act of 2005 and being relevant for the purposes of the present case is extracted hereinbelow "

2 (f) – "domestic relationship" means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family.

11. A logical and fair reading of the aforesaid definition of domestic relationship reveals that the legislation, in its wisdom, intended to protect a woman as an aggrieved person having domestic relationship of a very wide import and not merely confined to legally wedded wife. This is clear from the plain language of the provision aforesaid where domestic relationship would include those who live or have, at any point of time, lived together in a shared household when they are related by

consanguinity, marriage or through relationship in the nature of marriage or adoption or are family members living together as a joint family.

The aforesaid wide definition of domestic relationship, as manifested, not only includes a woman validly married but also includes one who lives or have lived at any point of time together in a shared household through a relationship in the nature of marriage. Therefore, while seeking protection by a woman claiming to be an aggrieved person i.e. one who alleges to have been subjected to any act of domestic violence by the non-applicant, the beneficent provisions of the Act will come to her aid, if she is able to establish "domestic relationship as defined and meant under Section 2 (f) of the Act of 2005."

19. In case of ***Sunil Kumar V. Sumitra Panda***, reported in **2014 Cri.L.J. 1293, (Orissa High Court)**, at Para 9, 10, 11 12 has held as as under :-

"9. A similar question arose before the Bombay High Court. A Single Judge of Goa Bench of the Bombay High Court in Smt. Bharati Naik v. Ravi Ramnath Halarnkar and another, 2011 Cri. Law Journal 3572 has held as follows :

"8. In my view, the definition of the "aggrieved person" and the "Respondent" are the defining definitions in so far as the issue that arises for consideration in the present petition is concerned. The definition of "aggrieved person" postulates a woman who is, or "has been" in a domestic relationship with the Respondent and the Respondent means any adult male person who is, or "has been" in a domestic

relationship with the aggrieved person. Since a domestic relationship is a sine qua non for invoking the provisions of the said Act. [Section 2\(f\)](#) also becomes material, [Section 2\(f\)](#) as can be seen from a reading of the said provision means a domestic relationship between two persons who live or "have", at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family. Therefore, the aforesaid three definitions take in their sweep even a past relationship as the words "has been" or "have lived" have been used in the said definitions. The said words therefore have been used purposefully as the said Act has been enacted to protect a woman from domestic violence and, therefore, there cannot be any fetter which can come in the way by interpreting the provisions in a manner to mean that unless the domestic relationship continues on the date of the application, the provisions of the Act cannot be invoked. The words "has been" and the words "have lived" have been used for the purpose of showing the past relationship or experience between the concerned parties. To interpret the said provisions so as to mean that only subsisting domestic relationship are covered would result in turning the provisions of the said Act otiose. As is well settled by the judgments of the Apex Court in cases of beneficent Legislations, an interpretation

which furthers its purpose must be preferred to the one which obstructs the object and paralyses the purpose of the Act. Reference could be made to the judgment of the Apex Court reported in (2009) 14 SCC 546: (AIR 2010 SC 1253: 2010 Lab IC 1104) the matter of [Union of India v. Devendra Kumar Pant and others](#). Apart from that a literal construction of the provisions would show that even if the woman was in the past in a relationship she would be entitled to invoke the provisions of the said Act. The words "has been" or "have lived" appearing in the definitions are plain and clear and therefore effect would have to be given to them. In the instant case, the petitioner who is the aggrieved person and the Respondent no.1 had lived together in the shared household when they were related by marriage. The petitioner though divorced continued to stay in the shared household till she was allegedly forcefully evicted by the Respondent no.1, she would therefore be entitled to invoke the provisions of the said Act, as the petitioner and the Respondent no.1 are squarely covered by the provisions of the said Act."

10. Observing thus, the Single Judge of Goa Bench of the Bombay High Court held that in so far as the application filed by the divorcee for residing in the shared household on an interpretation of the provisions of the said Act, it would have to be held that even a divorced wife is entitled to invoke the provisions of the said Act, whether she is entitled to protection or not in a given fact situation, would be

for the concerned Court to decide.

11. Similar question arose before a Division Bench of the Rajasthan High Court in the case of Smt. Sabana @ Chand Bai and another Vs. Mohd. Talib Ali and another, in Criminal Revision Petition No. 362 of 2011. 2014 CRI.L.J. 866. The specific question that arose for determination in that case is as hereunder.

"Whether the Protection of Women from [Domestic Violence Act](#), 2005 can be applied retrospectively specially where the aggrieved party (wife) was divorced by the respondent (husband) prior to the Act coming into force on October 26, 2006 or not ?"

12. Thus, there are two questions which have been decided in the said unreported case. The first question is, whether the Act is to be applied retrospectively and secondly, whether a divorcee-wife can claim relief under [Section 12](#) of the Act. After discussing various provisions of the Act, the Division Bench of the Rajasthan High Court held that it is not necessary that an applicant- woman should have a marriage or relationship in the nature of marriage existing and subsisting with the respondent as on the date of coming into force of the Act or at the time of filing of the application under [Section 12](#) of the Act before the Magistrate for one or more reliefs as provided for under the Act. In other words, the aggrieved person, who had been in domestic relationship with the respondent at any point of time even prior to coming into force of the Act and was subjected to domestic violence, is entitled to invoke the remedial measures provided for under the Act. It, therefore, appears on the face of the two cases that there is conflicting

views on the point. However, the view taken by the Division Bench of the Rajasthan High Court at Jodhpur appears to be more acceptable than the other views.

In that view of the matter, this Court comes to the conclusion that the view taken by the Rajasthan High Court and the Goa Bench of the Bombay High Court is the correct approach and an application is maintainable even by a divorced wife.

20. Considering the view of the Division Bench of Rajasthan High Court in case of **Smt. Sabana @ Chand Bai and another Vs. Mohd. Talib Ali and another**, reported in **2014 CRI.L.J. 866**, that so far nothing has been brought to the notice of this Court with respect to any ratio of law laid down by the Supreme Court, this Court shall be bound by the view expressed by the Division Bench as it is binding precedent according to view expressed by the Supreme Court in case of **Tribhovandas Purshottamdas Thakkar Vs. Ratilal Motilal Patel & Others**, reported in **AIR 1968 SC 372**.
21. In view of the judgment discussed herein above, it appears that for present, the aggrieved person defined in Section 2(a) of the Act, 2005, shall include a divorcee wife so far it concerns to her claim which are related to and are connected with marriage, which has been dissolved by a decree of divorce. Wide scope definition has been given by the Supreme Court in case of **D. Velusamy v. D. Patchaiammal (Supra)**. Hence for these reasons, the question raised in this petition is answered that in case of divorcee wife, the complaint by the divorcee wife under the provisions of the Act, 2005 shall be maintainable so far it relates to divorced husband for lawful

responsibilities arising out of the marriage that existed between them at one point of time.

22. In view of the forgoing discussions and on the basis of observations made herein above, this petition is dismissed accordingly.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Balram