

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Misc. Criminal Case (A) No.522 of 2017**

1. Onkarpuri Goswami S/o Late Shyampuri Goswami, Aged About 70 Years Occupation Retired Head Master, R/o Dipra Para Ward No. 13, Police Station & Tehsil Sarangarh, District Raigarh, Chhattisgarh.
2. Smt. Priti Goswami W/o Shri Onkarpuri Goswami, Aged About 60 Years R/o Dipra Para Ward No. 13, Police Station & Tehsil Sarangarh, District Raigarh, Chhattisgarh.

---- Applicants**Versus**

- State Of Chhattisgarh Through District Magistrate (D.M.) Raigarh, District Raigarh, Chhattisgarh.

---- Respondent

For Applicant : Shri SN Nande, Advocate
 For Respondent/State : Shri Arvind Shukla, Panel Lawyer

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order On Board****18.8.2017**

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.193/2017 registered at Police Station Sarangarh, Distt. Raigarh (CG) for offence punishable under Section 498(A), 34 of the Indian Penal Code.

3. Learned counsel for the applicant submits that as the Hon'ble Apex Court while deciding a Criminal Appeal No.1265/2017 arising out of the Special Leave Petition (Criminal)

No.2013/17 (Rajesh Sharma & Ors. vs. State of UP & Anr.) vide judgment dated 27.7.2017 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 in the light of directions issued by the Hon'ble 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, instant MCRCA is disposed of in the light of guidelines given in 2014 (8) SCC 273 (Arnesh Kumar Vs. State of Bihar) and thereafter directions given in the aforementioned matter by the Apex Court, surfaced in para 19 of the Judgment which is hereby reproduced for relevance:

“19. Thus, after careful consideration of the whole issue, we consider it fit to give following directions:-

“(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 the Hon'ble Apex Court, till then the applicants shall not be arrested.

7. Accordingly MCRCA is disposed of.

Sd/-
(Chandra Bhushan Bajpai)
JUDGE