

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 810 of 2013**

Smt. Saraswati Devi Soni W/o Late Raghuveer Prasad Soni, Aged About 65 Years, Presently Residing At Near Laxman Auto Center, Shanti Chowk, Purani Basti, Sonkarpara, Raipur, Civil And Distt. Raipur C.G.

---- Petitioner

Versus

1. Rajendra Soni S/o Late Raghuveer Soni, Aged About 45 Years, R/o Chaandak Chowk Old Employment Office R.K. Lodge, In Front Of Chandan Kirana Stores, Katni M.P., Sarafa Bazaar, Katni M.P., Through National Refinery Center, Sarafa Katni, Madhya Pradesh
2. Smt. Neelkamal Soni W/o Late Pramod Soni, Aged About 35 Years, R/o Chaandak Chowk, Old Employment Office R.K. Lodge In Front Of Chandan Kirana Stores Katni M.P. Sarafa Bazar Katni Mp Through National Refinery Center, Sarafa Katni M.P., District : Katni, Madhya Pradesh

---- Respondents

For Petitioner	:	Mr. Chandresh Shrivastava, Advocate.
For Respondents	:	Mr. Manoj Paranjpe, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****20/09/18**

1 This writ petition is directed against the order dated 11.09.2013 (Annexure – P/1) whereby the appeal filed under Section 29 of The Protection of Women from Domestic Violence Act, 2005 (for brevity, 'Act of 2005') has been rejected by the trial Court.

2. Mr. Manoj Paranjpe, learned counsel for the petitioner submits that this writ petition is not maintainable as the remedy of the petitioner is to file a revision under Section 397 read with Section 401 of CrPC in view of the decision rendered by this Court in the case of **Smt. Sangita Tiwari**

(Pandey) v. Digambarnath Pandey and Others¹.

3. Learned counsel for the petitioner opposes the submissions of learned counsel for the respondents.

4. I have heard learned counsel for the parties, considered their rival submissions made herein-above and went through the records with utmost circumspection.

5. In the matter of *Smt. Sangita Tiwari (Pandey)* (supra) it has been held by this Court in Para – 9 as under :-

“9. So far as the legal position of the present Cr.M.P. is concerned, from perusal of Section 29 of the Act, 2005, it is apparent that appeal shall lie to the Court of Sessions. There is no provision of revision in the present Act. As per settled law, if no nay provision of revision is mentioned or expressly debarred then general procedural law shall be followed. As per Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 (in short 'the Cr.P.C.'), the High Court may call for record and examine regarding any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court. Undisputedly, the Court of Judicial Magistrate First Class and the Court of Sessions are inferior Courts as provided in Section 397 of the Cr.P.C. As per provision of Section 401 of the Cr.P.C., the High Court can exercise the powers conferred on a Court of Appeal by sections 386, 389, 390 and 391 and regarding other provisions. As a settled law, Section 482 of the Cr.P.C., i.e., the inherent jurisdiction of

1 2016(2) C.G.L.J. 191

High Court, except for the exceptional circumstances, be exercised when there is no any forum for the same. In the present matter, from the perusal of the above provisions of law, it goes to show that High Court has power and jurisdiction to examine the matter as a revision under the provision of Section 397 read with Section 401 of the Cr.P.C. and also can pass order as per power of appellate Court given under Section 386 of the Cr.P.C. reserving the other provisions as are in Section 401 in sub-section (3) of the Cr.P.C. The petitioner failed to demonstrate the reason why he had not preferred to invoke jurisdiction of revisional power of this Court and why he straightway prayed for application of exercising of inherent jurisdiction, though the remedy was available under the provisions of law.”

6. The principles of law laid down in *Sangita Tiwari (Pandey)* (supra), squarely applies to the facts of the present case. As such, the writ petition is not maintainable. However, the petitioner is at liberty to move to appropriate jurisdiction as stated in above stated decision.

7. Certified copy of the impugned order be returned to the counsel for the petitioner on furnishing attested photocopy thereof.

SD/-

(Sanjay K. Agrawal)
Judge