

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 691 of 2019****Order Reserved on : 14/10/2019****Order Delivered on : 24/10/2019**

1. Priyank Shukla, S/o Shri Ashok Kumar Shukla Aged About 38 Years R/o Behind Ganga Nursing Home Dhimrapur Road Raigarh Tehsil Raigarh, District-Raigarh Chhattisgarh.
2. Ashok Shukla, S/o Late Shri Sushi Kumar Shukla Aged About 65 Years R/o Behind Ganga Nursing Home Dhimrapur Road Raigarh Tehsil Raigarh, District Raigarh Chhattisgarh.

---- Petitioners**Versus**

- Yugal Kishori Shukla, W/o Priyank Shukla, Aged About 36 Years, R/o Near Masjid Kota, Raipur, District-Raipur, Chhattisgarh.

---- Respondent

For petitioners	:	Mr. Dhiraj Kumar Wankhede, Advocate.
For Respondent	:	Mr. Rahim Ubwani, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**CAV Order****24/10/2019**

Heard.

1. The petition has been filed under Section 482 of CrPC praying for quashment of criminal proceedings pending against the petitioner in the Court of learned Judicial Magistrate 1st Class, Raipur in Criminal MJC No.618/18 for the offence under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (for short 'the Act of 2005').

2. It is submitted by the counsel for petitioners that petitioner No.1 was married to respondent in the year 2011. On 7.4.2015 the respondent lodged FIR in Mahila Thana based on which offence under Sections 498A, 506, 323 & 34 of IPC were registered against the petitioners and others. On completion of investigation, charge-sheet was filed. Subsequent to filing of charge sheet, respondent filed an application under Section 125 of CrPC claiming maintenance. After passing of about more than 3 years, the application under Section 12 of the Act of 2005 was filed on 5.9.2018.
3. Petitioners have challenged the initiation of criminal proceedings against them under the provisions of the Act of 2005 mainly on the ground of delay and laches. It is submitted that there is delay of almost 7 years in filing application under the Act of 2005. The maximum punishment which can be imposed under Section 31 of the Act of 2005 is of one year and therefore, as per Section 468 of CrPC, the limitation for taking cognizance in respect of offences, which are punishable with imprisonment for a term not exceeding one year, shall be only one year. Hence, the instant petition is barred by limitation.

Reliance has been placed on the judgment delivered in the matter of ***Inderjit Singh Grewal vs. State of Punjab & Anr., reported in (2011) 12 SCC 588*** in which it was held that the provisions of Section 468 of CrPC is applicable to the proceeding under Section 12 of the Act of 2005. Reliance has also been placed on the decision of the Karnataka High Court dated 5.4.20136 passed in Criminal Petition NO.2419/2009 (J. Srinivas vs. G. Dhanalakshmi) wherein it was held that on account of delay in filing the application under Section 12 of the Act of 2005 i.e. beyond the period of one year, since the cause of action accrued, it was barred by limitation. Therefore, it is prayed that the proceedings initiated against the petitioner on the application filed by respondent be quashed.

4. It is submitted by the counsel for respondent, that respondent had been waiting for a proposal with regard to compromise/settlement from the side of petitioners and when there was no such proposal for sufficient long time, she has then filed an application under Section 12 of the Act of 2005. In these circumstances, it cannot be said that

application filed by the respondent is barred by limitation in any manner. Hence, it is prayed this petition be dismissed.

5. I have heard both the parties and perused the documents on record.

6. Section 12 of the Act is reproduced as under:-

“12. **Application to Magistrate.**—(1) An aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person may present an application to the Magistrate seeking one or more reliefs under this Act: Provided that before passing any order on such application, the Magistrate shall take into consideration any domestic incident report received by him from the Protection Officer or the service provider.

(2) The relief sought for under sub-section (1) may include a relief for issuance of an order for payment of compensation or damages without prejudice to the right of such person to institute a suit for compensation or damages for the injuries caused by the acts of domestic violence committed by the respondent: Provided that where a decree for any amount as compensation or damages has been passed by any court in favour of the aggrieved person, the amount, if any, paid or payable in pursuance of the order made by the Magistrate under this Act shall be set off against the amount payable under such decree and the decree shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), or any other law for the time being in force, be executable for the balance amount, if any, left after such set off.

(3) Every application under sub-section (1) shall be in such form and contain such particulars as may be prescribed or as nearly as possible thereto.

(4) The Magistrate shall fix the first date of hearing, which shall not ordinarily be beyond three days from the date of receipt of the application by the court.

(5) The Magistrate shall endeavour to dispose of every application made under sub-section (1) within a period of sixty days from the date of its first hearing.”

On perusal of above quoted provision, it is clear that the 'person aggrieved' is competent to file an application for seeking one or more relief and on filing such

application, the Magistrate shall take into consideration any domestic incident report received by him from the Protection Officer or the service provider. It provides for procedure to be followed and the reliefs that can be claimed under Section 12. Section 17 of the Act of 2005 grants right to every woman to reside in the shared household. Section 18 deals with passing of 'protection orders' and Section 19 deals with passing of 'residence orders'. Section 20 deals with 'monetary reliefs'; section 21 deals with 'custody orders' and section 22 deals with 'compensation orders'.

Therefore, on a plain reading of Section 12 of the Act of 2005, it is apparent that the provisions of Section 12 of the Act 2005 are not penal in nature as it does not provide for any punishment. On the other hand, the same are enabling provisions to decide entitlement of an aggrieved person for grant of relief as mentioned herein above.

7. Section 31 of the Act is reproduced herein:-

“31. Penalty for breach of protection order by respondent.—[\(1\)](#) A breach of protection order, or of an interim protection order, by the respondent shall be an offence under this Act and shall be punishable with imprisonment of either description for a term which may extend to one year, or with fine which may extend to twenty thousand rupees, or with both.

[\(2\)](#) The offence under sub-section (1) shall as far as practicable be tried by the Magistrate who had passed the order, the breach of which has been alleged to have been caused by the accused.

[\(3\)](#) While framing charges under sub-section (1), the Magistrates may also frame charges under section 498A of the Indian Penal Code (45 of 1860) or any other provision of that Code or the Dowry Prohibition Act, 1961 (28 of 1961), as the case may be, if the facts disclose the commission of an offence under those provisions.”

This provision is restricted to enforcement of protection order ordered under Section 18 of the Act of 2005. In this section, a breach of any protection or interim protection order passed on the part of respondent party has been made punishable and the punishment provided is open to the extent of one year or with fine which may extend to Rs.20,000/- or with both. On reading of this provision itself, it is clear that this

penal provision is not connected with Section 12 of the Act of 2005 or not to be read with Section 12 of the Act of 2005. On the other hand, it can be read only with Section 18 of the Act. The provision under Section 12 has very limited purpose which enables the aggrieved person to file application praying for reliefs which may be granted under the Act of 2005.

8. Section 468 of CrPC is a specific provision which puts restriction on the Courts in taking cognizance of an offence committed after the expiry of period of limitation. Application under Section 12 of the Act is not an application to prosecute any person. Only the breach of protection order which may be passed under Section 18 of the Act, has been made punishable under Section 31 of the Act of 2005. Therefore, when it is an application under Section 31 of the Act of 2005 only then the person making breach of protection order shall be held accountable and in that case also the accountability of such person shall arise from the date when the order passed under Section 18 of the Act, 2005 was breached by him.
9. Reliance on the petitioners on the judgment of Inderjit Singh Grewal(supra) is of no help to them because Hon'ble Supreme Court has not given any conclusive finding in this regard. Similarly this Court is not in agreement with the decision of Karnataka High Court for the reasons which are mentioned herein above.
10. After over all consideration, I do not find any substance in this petition which is liable to be dismissed and is accordingly dismissed.

Sd/-

(Rajendra Chandra Singh Samant)

JUDGE

Nisha