

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Order reserved on 09.8.2019****Order delivered on 08.11.2019****CRR No. 483 of 2018**

- Radheshyam Sharma S/o Chhaju Lal Sharma Aged About 60 Years R/o Osiya Vihar Collony, Post Office And Police Station Dhamtari, District Dhamtari Chhattisgarh, District : Dhamtari, Chhattisgarh

---- Applicant**Versus**

1. Smt. Chandani Sharma D/o Ganesh Sharma Aged About 26 Years R/o Neta Bagicha, Murra Bhatti Road (wrongly mentioned as Mur rra Bhaththi Road in the rejection order of the Court below), Post Office And Police Station Gudhiyari, District Raipur Chhattisgarh, District : Raipur, Chhattisgarh
2. State Of Chhattisgarh Through District Magistrate/collector, Raipur District Raipur Chhattisgarh, District : Raipur, Chhattisgarh

----Respondents

For Applicant	: Shri Shivendu Pandya, Advocate
For Respondent No.1	: Shri Vivek Bhakta, Advocate
For Respondent No.2	: Shri Anil Tripathi, P.L.

Hon'ble Smt. Justice Rajani Dubey**CAV Order**

1. This revision is directed against the order dated 25.1.2018, passed by the Second Additional Judge to the Court of First Additional Sessions Judge, Raipur (CG) in Cr. Appeal No. 269/2017, whereby the learned appellate court has affirmed the order dated 19.9.2017 passed by the Judicial Magistrate First Class, Raipur in Cr. Complaint Case No. 869/2016, rejecting the appeal filed by the applicant.
2. Brief facts of the case are that respondent No.1 filed a complaint before the Judicial Magistrate First Class, Raipur, District

Raipur(CG) under Section 12 read with Sections 18, 20, 21, 22 of the Protection of Women from Domestic Violence Act, 2005 against the husband, mother-in-law, father-in-law, sisters-in-law, and uncle-in-law (present applicant) on 25.10.2016. The applicant filed an application before the Judicial Magistrate First Class, Raipur for deleting his name from the complaint, but the learned trial Court rejected his application on 19.9.2017. Thereafter, the applicant preferred an appeal against the order passed by the Judicial Magistrate First Class, Raipur, but the appellate Court dismissed his appeal. Hence, this revision has been filed by the applicant for quashment/discharge him of the charge.

3. Learned counsel for the applicant submits that the impugned order dated 25.1.2018 and 19.9.2017 passed by both the courts below are bad, perverse and contrary to law and not applicable to the facts and circumstances of the case and material on record. The applicant has filed the application for deleting/discharge his name from the complaint filed by respondent No.1 on the ground that the applicant is residing at Dhamtari and respondent No.1 and her husband and her in-laws are residing at village Belargaon, District Dhamtari(CG) which is at a distance of 125 km. Respondent No.1 is residing with her husband and in-laws and the applicant had attended the function once at the time of marriage at Belargaon. The applicant neither resided at village Belargaon with respondent No.1 nor he used filthy language as well as cruelty or harassed/ill-treated respondent No.1, therefore, his name may be omitted/discharged from the complaint filed by

respondent No.1. He further submits that both the courts below have failed to see this important aspect of the matter. The applicant has never fixed the marriage of respondent No.1 with her husband and he does not know the husband of respondent No.1 before their marriage and he was not mediator for fixing the marriage as well as he never resided with the family members of respondent No.1 at village Belargaon. He prays for quashing the orders passed by the courts below. He placed reliance on **Ashish Dixit and Ors. Vs. State of U.P. and Anr.** passed by the Hon'ble Apex Court in **Cr. Appeal No.43 of 2013, decided on 7.1.2013(2013 (1) ANJ (SC) (Suppl.) 58)**; and **S.R. Batra and Anr. Vs. Smt. Taruna Batra**, passed in **Civil Appeal No. 5837 of 2006 decided on 15.12.2006 (2007 (1) ANJ (SC) 154)**.

4. On the other hand, learned counsel for respondent No.1 as well as learned counsel for the State supported the impugned orders and submitted that there is illegality or infirmity in the orders passed by both the courts below. Learned counsel for respondent No.1 placed reliance on **Ajay Kumar Vs. Lata @ Sharuti & Ors, in Cr. Appeal Nos.617 of 2019 and (SLP(Crl.) No.652 of 2019)** passed by the Hon'ble Apex Court.
5. I have heard learned counsel for the parties and perused the evidence and material available on record.
6. It is clear from the written complaint filed by respondent No.1 that the applicant(non-applicant No.4 before the trial Court) was a middle man (mediator) at the time of marriage of respondent No.1

and her husband. In the whole complaint respondent No.1 has levelled allegations against the non-applicants 1, 2, 3, 4, 5, 6, who are husband, father-in-law, mother-in-law, uncle in law and sisters-in-law before the trial Court regarding torturing her by them. In the present revision filed by the applicant (non-applicant No.4 before the trial Court), the applicant's address is Osiya Vihar Colony, Dhamtari, whereas in complaint 2 other addresses have been mentioned i.e. (1) Gram Belargaon (Nagari), P.S. Nagari, District (CG) and (2) Flat No.217, Second Floor, Mahalaxmi Enclave, Mahal Ghasidas Ward, Sihawa Road, Dhamtari (CG).

7. In 2013 (1)ANJ(SC)(Suppl) 58, Ashish Dixit and Ors. (supra), Hon'ble the Apex Court has observed in para 3 as under :

“3. In the petition filed by respondent No.2, apart from arraying her husband and her parents-in-law as parties to the proceedings, has included all and sundry, as respondents. To say the least, she has even alleged certain actions said to have been done by the tenant whose name is not even known to her.”

The Hon'ble Apex Court directed the trial Court to proceed with the case only against the husband, father-in-law and mother-in-law”.

8. In 2007 (1) ANJ (SC) 154, S.R. Batra and Anr. (supra) the Hon'ble Apex Court held in para 29 as under :

“29.As regards Section 17(1) of the Act, in our opinion the wife is only entitled to claim a right to residence in a shared household, and a 'shared household', would only mean the house belonging to or taken on rent by the husband, or the house which belongs to the joint family of which the husband is a member. The property in question in the present case neither belongs to Amit Batra nor was it taken on rent by him nor is it a joint family

property of which the husband Amit Batra is a member. It is the exclusive property of appellant No.2, mother of Amit Batra, Hence, it cannot be called a 'shared household'.

9. In the present case also it is clear from the complaint that the applicant is residing at another place which is at a distance of 125 km from the place of resident of respondent No.1 and respondent No.1 has filed complaint against the applicant on the ground that the applicant fixed her marriage with her husband. Even if it is construed that the applicant has fixed the marriage of respondent No.1 with her husband, then also it would not fall within the definition of "domestic violence" and the applicant cannot be held guilty of the said act. It is also evident that the applicant is not residing with respondent No.1 and his family members and residing at a distance of 125 km, therefore, it is not possible to commit domestic violence or cruelty from such a distance.
10. In the light of above mentioned two judgments of the Hon'ble Apex Court, the revision is allowed and the proceedings against the applicant(non-applicant No.4 before the trial Court), filed by respondent No.1 are hereby quashed. The applicant is discharged from the charge levelled against him.
11. The revision is allowed.

Sd/

(Rajani Dubey)

JUDGE

12. In 2013 (1)ANJ(SC)(Suppl)58, Ashish Dixit and Ors. (supra), Hon'ble the Apex Court has observed in para 3 as under :

“3. In the petition filed by respondent No.2, apart from arraying her husband and her parents-in-law as parties to the proceedings, has included all and sundry, as respondents. To say the least, she has even alleged certain actions said to have been done by the tenant whose name is not even known to her.”

The Hon'ble Apex Court directed the trial Court to proceed only against the husband, father-in-law and mother-in-law.