

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 615 of 2019

- Annepu Chandar, S/o A Janak Ramaiyya, aged about 53 Years, R/o House No. 349/24, Janjgir B.M.Y. Charoda, police Station Bhilai 03, Tahsil & District-Durg, Chhattisgarh, Presently residing at Village Balrampur, Post Lingalvalsa, Mandal, Tekkali, District-Shrikakulam (Andhra Pradesh) .

---- Applicant

Versus

- Smt. Annepu Vijaylaxmi, W/o Annepu Chandar Rao, Aged About 40 Years, R/o Shri Sai, Complex, Umda Road, Aishwarya Gas Agency Pass, Bhilai-03, Police-Station-Bhilai-03, District-Durg, Chhattisgarh.

---- Respondent

For applicant	:	Mr. Ganesh Burman, Advocate.
For Respondent	:	Mr. Avinash Chand Sahu, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant
Order On Board

15/11/2019

Heard.

1. This revision petition has been brought being aggrieved by the judgment dated 19.3.2019 passed by the Sessions Judge, Durg in CRA No.229/2018 by which the appellate Court has upheld the order of the learned JMFC passed under Sections 18, 20 & 22 of the Protection of Women from Domestic Violence Act, 2005 (for short' the Act').
2. Respondent filed an application under Section 12 of the Act making statement that she was married to the applicant on 1.3.1991 and she has three sons from this wedlock. The applicant used to torture the respondent for demand of dowry and also used to treat her with cruelty on various pretext and ultimately he has driven her out of his house.

She has stated that applicant has fraudulently obtained her signature on a stamp paper, which he is projecting as a divorce deed and on that basis he has married another woman named Laxmi Saujanya. It is stated that applicant is neglecting in providing maintenance to the respondent, whereas applicant is the man of means. A prayer was made for protection under Section 18 of the Act, residence order under Section 19 of the Act, financial assistance under Section 20 of the Act and for compensation under Section 22 of the Act.

3. The applicant had contested the application and except admitting his marriage with the respondent, he has denied all the other averments made in the application. He has alleged that the respondent has made false allegations, lodged false complaint and is making false claims against the applicant. It is submitted that applicant himself is maintaining his three sons. Because of the various complaints made by respondent to the department where the applicant was serving, he had to take voluntary retirement and now he is residing in Andhra Pradesh with his parents. He has made all efforts and given all support for proper education of his sons. He has also made allegations against the respondent that she was having illicit relation with her sister's husband because of which dispute arose and then the respondent has willingly signed a divorce-deed on 23.4.2011 which has been registered in the office of sub-Registrar. The applicant had been paying Rs.6,000/- to the respondent in accordance with the terms of divorce-deed and thereafter at the instance of respondent herself, he has stopped paying the maintenance to her. He has stated that the respondent herself is engaged in business of clothes, she is owner of vehicles, commercial plots and two houses from which she is receiving income. She is running a business of hardware in the name and style of "Maa Durga Enterprises" and submitting income tax returns. She has never taken care of her children, hence, on this basis the entitlement of the respondent was challenged by the applicant.
4. The Court of learned JMFC allowed the application of respondent and granted relief according to the prayer made by the respondent.
5. The learned appellate Court, while deciding the appeal has held that the respondent is residing in the house which belongs to the applicant.

Therefore, there was no need for any residence order, hence, the relief under Section 19 of the Act was set aside. However, the relief granted under other provisions were maintained and upheld.

6. It is submitted that the applicant never acted in such manner with the respondent which can be regarded as domestic violence. The learned Courts below have not considered the fact that respondent was a woman of compromised integrity which is the reason of separation of applicant and respondent. The learned Courts below have also not appreciated that respondent herself is having means and source of income, as she has borrowed loan from banks, which shows her financial status. It is also submitted that the marriage of the applicant with respondent was already dissolved on 23.4.2011 and since then he and respondent No.3 are living separately. After passing of about four years, the application under the Act was filed on 23.9.2015 and prior to that the respondent had filed an application under Section 125 of CrPC in the Court, which was later on withdrawn by her. The applicant has produced evidence before the Court to establish that respondent is not entitled for any relief which has not been appreciated, therefore, the orders passed by the Courts below are incorrect, improper and illegal which may be set aside.
7. Learned counsel of respondent opposes the submissions made and submits that respondent has very clearly established in her evidence that the acts on the part of applicant amount to domestic violence as defined under Section 3 of the Act. It is also submitted that for the purposes of granting relief under the Act, there is no requirement to consider on the criteria of eligibility as it is required to be considered under Section 125 of CrPC. Therefore, the reliefs granted to the respondent are proper and cannot be interfered with. It is also submitted that the alleged divorce between the parties is illegal and fraudulent, therefore, it is prayed that this revision petition be dismissed.
8. I have heard both the parties and documents on record.
9. It is not in dispute that the marriage between applicant and respondent was performed in the year 1991. The divorce deed in question, as it

has been projected by the applicant side, is not permissible under law. Dissolution of marriage by a decree of divorce can be ordered only by a Court and any agreement in this respect between the parties does not amount to lawful dissolution of marriage. As it appears that the parties are 'Hindus', therefore, the provisions of the Hindu Marriage Act, 1955 shall be applicable for dissolution of marriage between the parties. Admittedly, neither of the parties has approached any Court for obtaining a decree of divorce, therefore, on this basis, it can be lawfully said that the applicant and respondent have the status of marriage even today.

10. Respondent A. Vijaylaxmi has stated before the Court that she was very much tortured by the applicant by beating and abusing her; the applicant has performed second marriage and he is not residing with the respondent and the applicant is neglecting her maintenance. In cross-examination, she has clarified that she is living separately from her husband since 2014, when he performed second marriage. She has denied all the suggestions given by applicant side regarding having her own sources of income. She has also denied the suggestions of her having illicit relation with other person. Her statement remained unrebutted in cross-examination. A Dileshwar Rao AW-2 examined on behalf of respondent has submitted that the treatment of his father with his mother i.e. respondent, was cruel and violent regarding which he himself had complained to the elders of the family. He has further stated that all of sudden the applicant had performed second marriage regarding which the witness had raised objection. In cross-examination, he has denied all the adverse suggestion given by the applicant side and also denied the suggestions on the basis of the grounds raised in reply of the applicant.
11. Applicant A. Chander Rao NAW -1 has made allegation in his statement that the respondent had developed liking with one Narendra Chouksey and therefore she wanted divorce. The respondent herself had called the advocate and got prepared divorce-deed. He has also alleged that the respondent has lodged various false complaints against the applicant. The applicant has given details of the properties standing in the name of respondent and details of the other banking

transactions. In cross-examination, he has admitted that he has not produced any document that respondent is proprietor of any type of business.

12. On perusal of the whole deposition of the applicant, it is found that applicant has not made any rebuttal regarding his second marriage, therefore, this fact is established that the applicant has performed second marriage when his marriage with respondent was existing and not dissolved lawfully by any Court having jurisdiction.
13. Savitri Tundu NAW-2 has given statement regarding details of the bank documents in the name of A. Dileshawara Rao, which has no relevance.
14. D.P. Samant Rai NAW-3 has given statement regarding the gold loan taken by respondent by pledging gold ornaments. Borrowing from any bank is one time event and it cannot be shown as source of income because a loan is taken for some purposes and that purpose is not clarified from the evidence that is present. The statement of applicant before the Court of learned JMFC is oral without any documentary support that the respondent is engaged in some kind of business and having her own financial resources. Whereas all the documents i.e. the sale-deeds, bank pass-books etc. have been produced in original by the applicant before the Court below, however, he failed to explained as to how he came into possession of all these documents. It also suggests that the property, bank accounts regarding which the applicant was in possession of original documents of properties Benami held by the applicant himself.
15. Therefore, after appreciating the evidence brought by both the sides the learned JMFC and the learned appellate Court have come to the correct conclusion that the applicant by performing second marriage has driven out his wife from his house and he is neglecting to maintain her. It is nowhere proved that the respondent has means to maintain herself. Apart from that the act of the applicant is widely covered under Section 3 of the Domestic Violence Act defines that any act, omission or commission or conduct of the person shall constitute the domestic violence which harms or injures or endangers the health, safety, life,

limb or well-being, whether mental or physical, of the aggrieved person. Driven away of a woman from her matrimonial home and including to maintain her is definitely a danger to her health, safety, limb or well-being. Therefore, I am of this view that this petition is without any substance. No incorrectness, impropriety or illegality is found in the orders passed by the Court below.

16. Accordingly, the petition is dismissed.

Sd/-

(Rajendra Chandra Singh Samant)
Judge

Nisha