

HIGH COURT OF CHHATTISGARH, BILASPUR

Order Reserved on : 14.11.2019

Order Passed on : 13/12/2019

Cr.M.P. No.1264 of 2018

1. Varun Gopal S/o. Manmohan Gopal, Aged About 30 Years (Formal Party In This Petition)
2. Manmohan Gopal, S/o. Vansgopal, Aged About 60 Years
3. Smt. Sunita Gopal, W/o. Manmohan Gopal, Aged About 55 Years
(All are r/o 108, Louis Road, Forest Field Western Australia 6058
Permanent Address- WZ 294/9, G Block, Harinagar, Jail Road, New Delhi
Present Address- Flat No. 3092, Tower No. 3, Parker Residency, Sector- 61 G.T, Karnal Road, Kundli, Sonipat, Haryana)

---- Applicants

Versus

- Smt. Shilpi Shrivastava D/o. Late K K Shrivastava, Aged About 29 Years
R/o. Om Nivas, Jora Talab, Behind Manorama Dairy, Jorapara, Sarkanda, Tehsil And District Bilaspur Chhattisgarh

---- Respondent

And

Cr.R. No. 825 of 2018

1. Varun Gopal S/o. Manmohan Gopal, Aged About 30 Years (Formal Party In This Petition)
2. Manmohan Gopal, S/o. Bansgopal, Aged About 60 Years
3. Smt. Sunita Gopal, W/o. Manmohan Gopal, Aged About 55 Years
(All are r/o 108, Louis Road, Forest Field Western Australia 6058
Permanent Address- WZ 294/9, G Block, Harinagar, Jail Road, New Delhi.
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Versus

- Smt. Shilpi Shrivastava D/o. Late K K Shrivastava, Aged About 29 Years
R/o. Om Nivas, Jora Talab, Behind Manorama Dairy, Jorapara,
Sarkanda, Tehsil And District Bilaspur Chhattisgarh

---- Respondent

For Applicants	: Mr. Pawan Kesharwani, Advocate.
For Respondent	: Mr. Ranbir Singh Marhas along with Mr. Aman Tamboli, Advocates.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

C A V Order

13/12/2019

1. This Cr.M.P. No.1264 of 2018 has been brought praying to quash the entire proceeding pending before the Court of J.M.F.C., Bilaspur in M.J.C. No.14/2016 and Cr.R. No.825 of 2018 also has been brought being aggrieved by the order Dated 22.12.2017 passed against the applicants in the same case.
2. The case in brief in Cr.M.P. No.1264 of 2018 is this that applicant No.1, Varun Gopal and respondent got married on 18.10.2012. As there arose matrimonial discord between both of them, therefore, applicant No.1 filed a divorce petition No.494-A/2015 before the Family Court, Bilaspur. After service of notice of this case to the respondent, she lodged a complaint in Police Station Sarkanda, alleging domestic violence against the applicants. Subsequent to which, the learned Court in the instant case has passed order for payment of interim maintenance of Rs.8,000/- per month to the respondent on 29.04.2017. The appeal was preferred under Section 29 of Protection of Woman from Domestic Violence Act (in short "the Act, 2005"), which was also dismissed on 22.12.2017. Subsequent to which, the applicants have complied with the order, even then the respondent filed an application under Section 31 of

the Act. Despite the fact that the order of payment of maintenance was already complied by the applicants, learned Court has then passed order for issuance of warrant of arrest against the applicants, which is totally on mala-fide grounds. Hence, there was no requirement of any proceeding to be initiated under Section 31 of D.V. Act. Therefore, it is prayed that proceeding against the applicants be quashed in Cr.M.P. No.1264 of 2018.

3. In Cr.R. No.825 of 2018, learned counsel for applicants submits that the applicant No.2 and 3 are in-laws of respondent and they have no liability under the provisions of the Act, 2005. The income that has been taken into consideration for payment of interim maintenance to the respondent is not the income of applicant No.1. On the basis of the documents filed, it is very clearly proved that it was income of applicant No.2 and there is no liability on applicant No.2 to make any such payment of interim maintenance to the respondent and no such order could have been passed.
4. Reliance has been placed on the judgment of Supreme Court in ***Vimlaben Ajitbhai Patel Vs. Vatslaben Ashokbhai Patel and Ors.*** reported in **2008 (4) SCC 649**, in which it was held that liability of maintenance of a wife during subsistence of marriage is on the husband and it is a personal obligation. The obligation to maintain daughter-in-law arise only when the husband is dead. Such an obligation of husband cannot be burdened to any property, unless the husband has his share in such property. Therefore, on this basis the order on maintenance could not have been passed against applicant No.2 and 3.
5. Reliance has also been placed on the judgment of Full Bench of Allahabad high Court in ***Dinesh Kumar Yadav Vs. State of U.P. & Anr.*** reported in **AIR 2017 Allahabad 29**, in which it was held that a Criminal

Revision is maintainable against order passed in appeal under Section 29 of Act, 2005. On this basis, it is prayed that the impugned order dated 29.04.2017 passed by the learned J.M.F.C. in the Appellate order dated 22.12.2017 both be set aside.

6. On behalf of respondent, it is submitted in Cr.M.P. No.1264 of 2018 that the prayer made for quashing the proceeding under Section 31 of Act, 2005 is not maintainable. Despite service of notice to the applicant, he has not complied with the order. The applicants have remedy available under Section 29 of D.V. Act, therefore, direct filing of this petition under Section 482 of Cr.P.C. is not maintainable.
7. Relying on the judgment of Supreme Court in ***Hiral P. Harsora and Ors. Vs. Kusum Narottamdas Harsora*** reported in (2016) 10 SCC 165, it is submitted that the Act, 2005 itself provides and the proviso under Section 2 (q) that an aggrieved wife may also file a complaint against the relative of the husband. Therefore, applicants No.2 and 3 are relatives of the husband against whom the complaint has been directly filed.
8. Relying on the judgment of Supreme Court in ***Sandhya Manoj Wankhede Vs. Manoj Bhimrao Wankhede*** reported in (2011) 3 SCC 650, it is submitted that it was held by the Supreme Court that although the word "female" has not been used in the proviso to Section 2(q) but no restrictive meaning can be given to the word "relative" which will include the female relatives also. The applicants have very clearly defied the Court orders, therefore, the proceeding drawn against them is totally justified and legal which need no interference.
9. In Cr.R. No.825 of 2018, it is submitted by the learned counsel for the respondent that revision is not maintainable under Section 397 of Cr.P.C. and the only remedy available to the applicant is through writ

petition under Article 227 of Constitution of India because the case is of civil nature. Preferring to the submissions made on behalf of respondent in Cr.M.P. No.1264 of 2018, it is submitted that revision petition is also not maintainable which may also be dismissed.

10. Heard learned counsel for both the parties and also perused the documents present.

11. The provision under Section 31 of Protection of women from domestic violence Act is reproduced as under:-

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 has 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.

Therefore, from bare reading of the provision itself, it is clear that Section 31 of the Act provides for penalty regarding breach of any protection order only.

12. The Protection order is defined under Section 2(o) which means an order in terms of Section 18 of the Act which provides differently, which is reproduced as under:-

18. Protection orders.—The Magistrate may, after giving the aggrieved person and the respondent an opportunity of being heard and on being prima facie satisfied that domestic violence has taken place or is likely to take place, pass a protection order in favour of the aggrieved person and prohibit the respondent from—

- (a) committing any act of domestic violence;
- (b) aiding or abetting in the commission of acts of domestic violence;
- (c) entering the place of employment of the aggrieved person or, if the person aggrieved is a child, its school or any other place frequented by the aggrieved person;
- (d) attempting to communicate in any form, whatsoever, with the aggrieved person, including personal, oral or written or electronic or telephonic contact;
- (e) alienating any assets, operating bank lockers or bank accounts used or held or enjoyed by both the parties, jointly by the aggrieved person and the respondent or singly by the respondent, including her *stridhan* or any other property held either jointly by the parties or separately by them without the leave of the Magistrate;
- (f) causing violence to the dependents, other relatives or any person who give the aggrieved person assistance from domestic violence;
- (g) committing any other act as specified in the protection order.

13. The challenge in Cr.M.P. No.1264 of 2018 is regarding making a prayer for execution of order for payment of maintenance against the petitioners. The grant of maintenance under the Act, 2005 is governed by Section 20 which is titled as monetary relief. Therefore, Section 31 of the Act nowhere penalizes the default in payment of maintenance as was under Section 20 of the Act. On the contrary, it is an independent provision for breach of protection order only. Therefore, the proceeding

initiated against the petitioners under Section 31 of the Act, 2005 is misconceived and without the authority of law and such proceeding cannot continue against the applicant, hence, the prayer in the Cr.M.P. No.1264 of 2018 deserves to be allowed.

14. The point raised in the Criminal Revision No.825 of 2018 is only to this extent that the applicants namely applicant No.2 & 3 cannot be saddled with burden of paying maintenance to the respondent regarding which argument has been advanced. On this basis that the income taken into account is not the income of applicant No.1, who is the only person responsible for making payment of maintenance to the respondents.

15. In ***Vimlaben Ajitbhai Patel*** (Supra), the Supreme Court has held in paragraph 20, 21, 22 and 48:-

20. The matters relating to grant of maintenance are now governed by the provisions of Hindu Adoptions and [Maintenance Act](#), 1956. Sections 3 (b), 18 and 19 of the said Act read as under :-

"3. (b) "Maintenance" includes-

(I) in all cases, provision for food, clothing, residence, education and medical attendance and treatment;

[18](#) - Maintenance of wife. (1) Subject to the provisions of this section, a Hindu wife, whether married before or after the commencement of this Act, shall be entitled to be maintained by her husband during her life time.

Sub-section (2) of Section 18 thereof, however, lays down certain exceptions therefor. Sub-section (3) of [Section 18](#) reads :-

"18. (3) A Hindu wife shall not be entitled to separate residence and maintenance from her husband if she is unchaste or ceases to be a Hindu by conversion to another religion."

"19. Maintenance of widowed daughter-in-law (1) A

Hindu wife, whether married before or after the commencement of this Act, shall be entitled to be maintained after the death of her husband by her father-in-law:

Provided and to the extent that she is unable to maintain herself out of her own earnings or other property or, where she has no property of her own, is unable to obtain maintenance-

(a) from the estate of her husband or her father or mother, or

(b) from her son or daughter, if any, or his or her estate.

(2) Any obligation under sub-section (1) shall not be enforceable if the father-in law has not the means to do so from any coparcenary property in his possession out of which the daughter-in-law has not obtained any share, and any such obligation shall cease on the re-marriage of the daughter-in-law."

21. Maintenance of a married wife, during subsistence of marriage, is on the husband. It is a personal obligation. The obligation to maintain a daughter-in-law arises only when the husband has died. Such an obligation can also be met from the properties of which the husband is a co-sharer and not otherwise. For invoking the said provision, the husband must have a share in the property. The property in the name of the mother-in-law can neither be a subject matter of attachment nor during the lifetime of the husband, his personal liability to maintain his wife can be directed to be enforced against such property.

22. Wholly uncontentious issues have been raised before us on behalf of Sonalben (wife). It is well settled that apparent state of affairs of state shall be taken a real state of affairs. It is not for an owner of the property to establish that it is his self-acquired property and the onus would be on the one, who pleads contra. Sonalben might be entitled to maintenance from her husband. An order of maintenance might have been passed but in view of the settled legal

position, the decree, if any, must be executed against her husband and only his properties could be attached therefor but not of her mother-in-law.

48. Sympathy or sentiment, as is well known, should not allow the Court to have any effect in its decision making process. Sympathy or sentiment can be invoked only in favour a person who is entitled thereto. It should never be taken into consideration as a result whereof the other side would suffer civil or evil consequences.

16. The learned Court of J.M.F.C. has held in the order dated 29.04.2017 that it is undisputed that applicants No.2 and 3 are in-laws of the respondents and they are the only persons having the title and possession of the property from which they are receiving monthly rent at Rs.38,000/- in which the applicant No.1 has no share, therefore, the order was passed against applicants No.2 and 3 for granting maintenance of Rs.8,000/- per month is erroneous.
17. In view of the pronouncement in the judgment of Supreme Court and the settled position of law, it is now clear that the applicants No.2 & 3 cannot be burdened with payment of maintenance to their daughter-in-law. Therefore, this revision petition deserves to be allowed.
18. Accordingly, the prayer made in both Cr.M.P. No.1264 of 2018 is allowed and the proceeding against the applicant under Section 31 of Protection of Women from Domestic Violence Act is set aside.
19. Similarly, Cr.R. No.825 of 2018 is allowed and the impugned order is set aside.

Sd/-
(Rajendra Chandra Singh Samant)
Judge