

HIGH COURT OF CHHATTISGARH, BILASPUR**Order reserved on - 30.07.2019****Order delivered on – 27.09.2019****CRR No. 1009 of 2018**

- Thakur Ram Sahu, aged about 46 years S/o Dharam Singh Sahu R/o Q.No. 1955 Yamuna Vihar NTPC, Jamnipali P.S. Darri District Korba (C.G.)

---- Applicant**Versus**

- Smt. Poonam Sahu, aged about 36 years, W/o Thakur Ram Sahu, R/o Gali No. 01 Brahmpuri, P.S. Purani Basti, Dist- Raipur (C.G.) present address- Mohan Talkies Road, Jamnipali, P.S. Darri, District Korba C.G.

---- Respondent

For Appellant	:	Shri L.K. Mishra, Adv.
For Respondent	:	Shri S.R.J. Jaiswal. Adv.

Hon'ble Smt. Justice Rajani Dubey**C.A.V. Order****27.09.2019**

1. The present revision has been filed by the applicant against the order dated 04.07.2018 passed by the learned Additional Sessions Judge, Katghora C.G. in Misc. Criminal appeal No. 28/2017, whereby the learned Additional Sessions Judge has allowed the appeal preferred by the respondent against the order dated 30.05.2017 passed by learned Judicial Magistrate First Class, Katghora District Korba in Misc. Criminal Case No. 62/2014.

2. Brief facts of the case are that respondent filed an application under Section 12 of Protection of Women from Domestic Violence Act 2005, (in short DV Act) before the learned Judicial Magistrate First Class, Katghora, District Korba, on the ground that she was married with the petitioner according to Hindu rites & customs on 21.03.2010. But after some time of marriage, petitioner started abusing and assaulting her for which she lodged a written complaint before the

Police Station Darri, District Korba. It has been further alleged that her economical condition is too weak and she prayed for relief for residence in share house, compensation of Rs. 5,00,000/- (Five Lakh Rupees Only) and maintenance of Rs. 25,000/- per month.

3. In his reply, the petitioner denied all the allegations levelled by respondent and stated that respondent is not his legally married wife. He kept the respondent under an agreement executed on 21.03.2010 for taking care of his wife, who was suffering from cancer. The learned Family Court, Raipur, has rejected the application preferred by the respondent under Section 125 of Cr.P.C. on 29.01.2014 on the ground that the respondent is not legally wedded wife of the petitioner.

4. After considering the oral and documentary evidence of both the parties, learned trial Magistrate rejected the application of respondent on 30.05.2017. Thereafter, respondent preferred an appeal before the Appellate Court and the learned Additional Sessions Judge partly allowed the application of respondent on 04.07.2018, granting her maintenance of Rs. 15,000/- per month from the petitioner. Hence, this revision.

5. Learned counsel for the applicant submits that Appellate Court has passed the order without considering the facts and the material circumstances and failed to appreciate the contradictory statements of the witnesses. Respondent has falsely stated in her application under Section 12 of DV Act that she is not having sufficient means for her livelihood, whereas from the revenue records filed by the petitioner (in Ex. D-3 to D-8), it is apparent that the respondent is having agricultural land in her own name. Learned counsel for the applicant further submits that the Appellate Court has overlooked this finding of trial Court that the respondent failed to establish the contents of domestic violence. Respondent, in her cross examination, admitted that she left the company of the petitioner 15 days before the death of the petitioner's wife i.e. on 12.02.2012.

Learned counsel for the applicant further submits that the learned Appellate Court has failed to appreciate that petitioner had married with

Ganga Bai on 19.03.2014 according to the custom (chudi pratha) and before the said marriage of the petitioner, the application under Section 125 Cr.P.C. of the respondent was rejected by the Family Court. He further submitted that as per the Domestic Violence Act 2005, any person aggrieved by the judgment of the trial Court can prefer an appeal under Section 29 of the act whereas the respondent has preferred her appeal under Section 374 (3) of Cr.P.C. Thus, the finding of the learned Family Court is bad and perverse in law and facts, therefore, impugned order is liable to be set-aside.

6. Supporting the impugned judgment, learned counsel for the respondent submits that the Court below was fully justified in awarding the maintenance.

7. Heard learned counsel for the parties and perused the material on record including the impugned judgment.

8. It is not disputed that trial Court has rejected the maintenance application of respondent on 29.01.2014 (Ex. D/1) on the ground that respondent is not legally wedded wife of applicant. After rejection of maintenance application, she filed an application under Section 12 of D.V. Act alleging that same ground.

9. Sections 2(a) and 2(f) of Domestic Violence Act provides as under.

“ (a) “aggrieved person” means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent;

(f) “domestic relationship” means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family.”

10. The applicant has admitted in his cross-examination that he had executed an agreement (Ex- P/1) and stated in his reply that respondent was in relationship with him. The contents of agreement is as under:-

“Today i.e. on 21.03.2010, Sunday, Chirnjeev Thakur Ram Sahu S/o Shri Dharam Shingh Sahu, aged about 44 years Village Hasda, Block Amanpur District Raipur (C.G.) has accepted Smt. Poonam Sahu D/o Bhuvan Lal Sahu, aged about 34 years, Village Bellar Block Figeshwar, District C.G., who is a widow, as his life partner after bangles ceremony before the members of the society of both village with social ritual. This ceremony has been performed in the august presence of both the family members, relatives and members of the society. From today (21.03.2010), Smt. Poonam Sahu shall be entitled to every rights being the wife of Shri Thakur Ram Sahu.”

11. From the contents of an agreement, it is evident that applicant has accepted the respondent as his wife, and being a wife she covered as an aggrieved person under Domestic Violence Act. The learned Appellate Court has rightly found that, the trial Magistrate on the basis of 125 of Cr.P.C, has not considered the respondent as his legal wife, and erred in dismissing the application filed under Section 12 of D.V. and allowed the appeal of respondent.

7. Considering the facts and circumstances of the case and evidence available on record, this Court finds that the Court below is fully justified in granting the award in favour of the respondent, requiring no interference by this Court

8. Accordingly, this revision has no substance and it is liable to be and is hereby dismissed.

Sd/-
(Rajani Dubey)
JUDGE