

HIGH COURT OF CHHATTISGARH, BILASPUR

Cr.R. No. 1187 of 2018

1. Kamleshwar @ Sanjay S/o Budhram Aged About 32 Years
2. Budhram S/o Late Banduram Aged About 55 Years
3. Shrimati Sonmati W/o Budhram Aged About 50 Years
4. Parwati D/o Budhram Aged About 27 Years
5. Amriya D/o Budhram Aged About 25 Years
6. Sarita D/o Budhram Aged About 22 Years

(All are r/o Village Gumgara, post Jamgala, Police Station And Tehsil Lakhanpur, District Korea Chhattisgarh)

---- Applicants

Versus

- Smt. Bindiya @ Rashim D/o Kamlesh @ Sanjay R/o Sakariya, Police Station And Tehsil Khadgavan, District -Korea Chhattisgarh

---- Respondent

For Applicant	: Mr. Shobhit Koshta, Advocate.
For Respondent	: Mr. Rajkumar Pali, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

07-11-2019

Heard.

1. This petition has been brought against the order dated 29.08.2018 by which the Court of First Additional Sessions Judge, Manendragarh, District- Korea, C.G. has dismissed the Criminal Appeal No.54/2016 brought under Section 29 of Protection of Women from Domestic Violence Act, 2005 (in short 'the Act, 2005').
2. The respondent had filed an application under Section 12 of Act, 2005 praying for grant of maintenance of Rs.11,000/- per month and the other orders. The learned Court of Judicial Magistrate First Class, Chirmiri, District- Korea, C.G., allowed the application and passed a protection order under Section 18 of Act, 2005 in favour of the respondent, also

ordered for alternative arrangement of residence under Section 19 of Act, 2005, granted maintenance under Section 20 of Act, 2005 of Rs.3,000/- per month and compensation of Rs.2,000/- under Section 22 of Act, 2005. This order was challenged before the Court of Additional Sessions Judge, Manendragarh in appeal under Section 29 of Act, 2005, in which the order of learned J.M.F.C. has been upheld and the appeal was dismissed.

3. Learned counsel for the applicant submits that the respondent had failed to prove that she was subjected to any domestic violence or cruelty. The allegations regarding demand of dowry are false and fabricated. The evidence of village meeting is also in favour of the applicants. It is also submitted that the Courts below have failed to appreciate that applicant No.1 is mentally and physically unfit, therefore, he is unable to earn livelihood. Hence, no order could have been passed against him. Therefore, the orders passed by the Courts below are illegal, arbitrary and against the facts and circumstances of the case.
4. Placing reliance on the judgment of High Court of Himachal Pradesh passed in **Anil Kumar Vs. Sashi Bala and Ors.** reported in **2017 Cri.L.J. 4821**, wherein on the basis of the evidence produced by complainant, it was held that the case of the complainant was not proved. Similar reliance has been placed on the judgment of Calcutta High Court in **Abhijit Saha and Ors. Vs. Smt. Sangita Saha** reported in **2015 SCC Online Cal 7119**, in which it was held that before passing any order under the Act, the Court must hold that the domestic violence has been caused. This order was challenged before the Supreme Court in Special Leave Petition(S) (Cri.) No.2600-2601/2016, in which the order of the High Court was upheld, therefore, prayed that petition be allowed.

5. Learned counsel appearing on behalf of respondent submits that respondent as complainant has proved the fact of domestic violence to the satisfaction of the Court below. Therefore, there is no error in the order passed which may be upheld.
6. Heard learned counsel for both the parties and also perused the documents present.
7. The facts of the case are these that the respondent got married to applicant No.1 on 14.06.2012 and they have one female child out of this wedlock. The respondent alleged in her complaint under Section 12 of Act, 2005 that soon after marriage, she was subjected to cruelty for demand of dowry by the applicants. A village meeting was held on 12.11.2014, in which the applicants were advised to behave properly with the respondent. Thereafter, no change was seen in the behavior of the applicants and, thereafter, cruelty with the respondent continued. Therefore, respondent lodged one F.I.R. in the Police Station and also filed application under Section 12 of the Act, praying for various orders.
8. The ground in appeal and the ground in this revision petition was totally based on the evidence only. As the claim of the applicant is only to this extent that the respondent has failed to prove that she was subjected to domestic violence. Therefore, before drawing any conclusion in this revision, the evidence in this case has to be looked into.
9. Respondent as P.W.1 has stated that soon after marriage, she was subjected to cruel treatment for demand of dowry in which she was abused, beaten and tortured by the applicants. The dispute was brought before the village community and a meeting was held, in which the applicants were given advice to behave properly and a Panchanama vide Ex.P/1 was also recorded in this respect. The respondent has again stated in her deposition that she was again beaten and demanded

dowry and her jewellery were snatched from her and then she was driven away from her matrimonial home. In cross-examination, she stated that she stayed in her matrimonial home for only about two months after the village meeting. She has denied that she has left her matrimonial home on her own free will. Manmati (P.W.-2) has supported the version of respondent and similar is the statement of Laxmi Nath (P.W.-3).

10. Applicant No.1 (N.A.W.-1) has made a statement in denial and also stated that the respondent herself used to quarrel with her parents and she has willingly left her matrimonial home. Similar is the statement of Budhram Sahu (N.A.W.-2), who is applicant No.2. In the other evidence brought by the applicants' side, Gyan Prasad (N.A.W.-3) has stated that the respondent herself used to quarrel with her father-in-law and mother-in-law because of which, it was decided in the village meeting that respondent and her husband should be given a separate residence. A separate residence with household items was provided to them but even then, the respondent left her matrimonial home just after 15 days and has not come back. In cross-examination, he has denied the knowledge that the respondent was driven out of her matrimonial home and that she has lodged F.I.R. against the applicants.

11. It is a matter of quasi civil nature, therefore, the degree of proof in such cases is only to the extent of preponderance of probability. The evidence brought by the respondent that she was demanded dowry and for that purpose, she was treated with cruelty by the applicants has remained un rebutted in her evidence. It finds support from the Panchanama vide Ex-P/1 which is also admitted by the applicants' side. It is also admitted that respondent has lodged one F.I.R. against the applicants in the police Station. The applicants' evidence on the other hand is simply of

denial. The statement of one Panchanama witness- Gyan Prasad (N.A.W.-3) examined by applicant side stands rebutted by the statement of Laxmi Nath (P.W.-3), who is also the witness of this Panchanama. Therefore, there is no preponderance of probability in favour of the applicants' side. On the contrary, it appears to be in favour of the respondent side.

12. The only ground raised in this revision petition is this that there is no evidence of domestic violence. The evidence that has been brought that respondent was subjected to cruel treatment, by abusing her, beating her and demanding dowry from her. It is clearly an act which is defined under Section 3 of the Act, 2005. Further, the decision taken in the village meeting is itself suggested that the respondent was provided a separate residence from her in-laws, which shows that her protection was taken care of in that meeting also. The cases cited by the applicants' side i.e. **Anil Kumar** (Supra) and **Abhijit Saha and Ors.** (Supra) give no guidance in decision of this revision petition for the simple reason that both the decisions of the Himachal Pradesh High Court and Calcutta High Court states that the findings on the basis of the evidence are in favour of the respondent and against the applicants. Another ground of mental incapacity of applicant No.1 has not been proved on the basis of medical evidence, therefore, this ground raised is without any force. Hence, I do not find any substance in this petition and there is nothing to hold against the legality, propriety and correctness of the order passed by the Courts below. Hence, this revision petition is dismissed accordingly.

Sd/-

(Rajendra Chandra Singh Samant)

Judge