

HIGH COURT OF CHHATTISGARH, BILASPURCriminal Misc. Petition No.2354 of 2019

Smt. Kawaljeet Kaur @ Khushbu Dua, aged about 29 years, W/o
 Rahul Dua, R/o Street No. 4, Lala Kashyap Marg, Geetanjali Nagar,
 Karbala Road, Bilaspur, Police Station City Kotwali, Tahsil & District
 Bilaspur (C.G.)
 Mo.No. 9893888840

(Non-Applicant No. 2)
 ---- Petitioner

Versus

1. Surjeet Dua, aged about 58 years, S/o Late M.R. Dua,
2. Smt. Anju Dua, aged about 57 years, W/o Surjeet Dua,
 (Applicants)
3. Rahul Dua, aged about 30 years, S/o Surjeet Dua,
 (Non-Applicant No. 1)

All are R/o Street No. 4, Lala Kashyap Marg, Geetanjali Nagar,
 Karbala Road, Bilaspur, Police Station City Kotwali, Tahsil & District
 Bilaspur (C.G.)

---- Respondents

For Petitioner: Mr. Ratnesh Kumar Agrawal, Advocate.
 For Respondents No.1 and 2: -
 Ms. Deepali Dubey, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

06/12/2019

1. Respondents No.1 & 2 herein filed a complaint against the petitioner herein and respondent No.3 herein stating inter alia that the petitioner & respondent No.3 being their daughter-in-law & son, respectively, have committed the offence punishable under Section 24 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for short, 'the Act of 2007'), as they are parents and the petitioner & respondent No.3 have abandoned them and thereby they have committed the offence under Section 24 of the Act of 2007. The

learned Chief Judicial Magistrate considered the matter and took cognizance of the offence punishable under Section 24 of the Act of 2007 and issued notices to the petitioner and respondent No.3 herein. The petitioner herein questioned that order before the revisional Court, but she remained unsuccessful necessitating the filing of this petition under Section 482 of the CrPC against which no reply has been filed.

2. Mr. Ratnesh Kumar Agrawal, learned counsel appearing for the petitioner, would submit that Section 24 of the Act of 2007 can be invoked only by the senior citizens as defined in Section 2(h) of the Act of 2007 according to which senior citizen means any person being a citizen of India, who has attained the age of sixty years or above. Since respondents No.1 & 2 herein, admittedly, on the date of complaint, were below the age of 60 years, therefore, the complaint could not have been entertained by the Chief Judicial Magistrate and as such, the order directing registration of offence deserves to be set-aside.
3. Ms. Deepali Dubey, learned counsel appearing for respondents No.1 & 2 herein, would support the order impugned.
4. I have heard learned counsel for the parties, considered their submissions made herein-above, perused the impugned orders and also perused the copies of other documents with utmost circumspection.
5. Section 24 of the Act of 2007 states as under: -

“24. Exposure and abandonment of senior citizen.—Whoever, having the care or protection of senior citizen, leaves such senior citizen in any place with the intention of wholly abandoning such senior citizen, shall be punishable with imprisonment of either description for a term which may extend to three months or fine which may extend to five thousand rupees or with both.”

6. A focused perusal of the above-stated provision reveals that any person who is having care or protection of any senior citizen, only intentionally abandons senior citizens, shall be liable for punishment. This provision has been enacted to protect senior citizens from unnecessary and uncalled for abandonment by person having their care and protection. It is only available to senior citizens. It is unavailable to parents who are not senior citizens.

7. The term “senior citizen” for whom Section 24 of the Act of 2007 is invocable, is defined under Section 2(h) of the Act of 2007 which states as under: -

“(h) “senior citizen” means any person being a citizen of India, who has attained the age of sixty years or above;”

8. The question would be, whether the complaint made by respondents No.1 & 2 in the capacity of senior citizens was maintainable before the learned Chief Judicial Magistrate?

9. Admittedly and undisputedly, as mentioned in the photocopy of the complaint Annexure P/3, age of respondent No.1 has been stated to be 58 years and age of respondent No.2 has been stated to be 57 years, whereas according to Section 2(h) of the Act of 2007, in order to come within the meaning of Section 24 of the Act of 2007, senior citizens must have attained the age of 60 years or above. Admittedly, respondents No.1 & 2, both, on the date of filing complaint, were less than 60 years of age and Section 24 of the Act of 2007 is invocable only to the senior citizens and not to the parents who are not senior citizens, as they have not completed the age of 60 years. Therefore, the learned Chief Judicial Magistrate ought not to have taken cognizance of the offence, as the complaint was not filed by the person who is senior citizen and who has completed the age of 60

years or above and respondents No.1 & 2 though in-laws of the petitioner and parents of respondent No.3, have not completed the age of 60 years and as such, they are not senior citizens, therefore, they cannot invoke Section 24 of the Act of 2007. Accordingly, the trial Magistrate as well as the revisional Court have committed illegality in holding the complaint to be maintainable and thereafter in taking cognizance of the offence punishable under Section 24 of the Act of 2007, as the complaint is not at the instance of senior citizen in view of the definition contained in Section 2(h) of the Act of 2007.

10. As a fallout and consequence of the aforesaid discussion, the entire proceeding of Criminal MJC No.14/2019 (Surjeet Dua and another v. Rahul Dua and another) including the order taking cognizance of the offence, are hereby quashed against the petitioner only and the petition is allowed to the extent indicated herein-above.

Sd/-
(Sanjay K. Agrawal)
Judge

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