

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****CRR No. 1332 of 2018**Order reserved on : 06.08.2019Order delivered on : 24.10.2019

1. Smt. Saraswati Devi Soni, W/o Late Raghuveer Prasad Soni, aged about 70 years, presently residing at Near Laxman Auto Center, Shanti Chowk, Purani Basti, Sonkarpara, Raipur, Civil and Revenue District Raipur

----Applicant**Versus**

1. Rajendra Soni S/o Late Raghuveer Soni, aged about 45 years, R/o Chaandak Chowk, Old Employment Office (R.K. Lodge), in front of Chandan Kirana Stores, Katni (M.P.) Sarafa Bazaar, Katni (M.P.) through National Refinery Center, Sarafa Bazaar, Katni (M.P.)
2. Smt. Neelkamal Soni W/o Late Pramod Soni, aged about 35 years, R/o Chaanda Chowk, Old Employment Office (R.K. Lodge), in front of Chandan Kirana Stores, Katni (M.P.) Sarafa Bazaar, Katni (M.P.)

---- Respondents

For Applicant	:	Shri Pawan Kesharwani, Advocate
For Respondent No.1	:	Shri Vivek Mishra, counsel on behalf of Shri Manoj Paranjape, Advocate.
For Respondent No.2	:	Shri Sumesh Bajaj, Advocate.

Hon'ble Smt. Justice Rajani Dubey**CAV order****24/10/2019**

1. This criminal revision is directed against the order dated

11.09.2013 passed by the 7th Additional Sessions Judge, Raipur in Criminal Appeal No.137/2012 confirming the judgment and order dated 03.08.2012 passed by Additional Chief Judicial Magistrate, Raipur, in Criminal Case No.631/2009.

02. Brief facts of the case are that, the applicant had filed a complaint under Section 12 (1) along with an application under Section 20 (1) (c) of the Protection of Women from Domestic Violence Act, 2005 (for short 'the Act, 2005) praying for protection under Section 18, residence order under Section 19 and monetary relief of Rs.2,00,000/- each from non-applicants on the ground that the applicant is widow lady and the respondent No.1 is her elder son whereas the respondent No.2 is widow of her younger son late Pramod Soni. Further case is that the applicant was having three sons and one daughter among whom her husband late Raghuveer Prasad Soni partitioned the entire property and given them their separate share. After marriage of all her children, the applicant along with her husband started residing in their house situated at Chaandak Chowk which was purchased and built up by the applicant from her Stridhan, to which she is the sole owner being herself acquired property and after the death of her husband, the applicant was residing in the said house all alone. All of a sudden, in the month of August, 2007, her elder son respondent No.1 and her daughter-in-law-

respondent No.2 along with her father broke open the lock of ground floor and first floor and took illegal possession of the same. Thereafter, respondents started torturing the applicant mentally and physically abusing in filthy language and also locked the main gate of the applicant's house. Due to continuous harassment of respondents, the applicant left her house and came to Raipur where her daughter and son-in-law are residing and made complaint of domestic violence against the respondents before the Superintendent of Police, Katni, Chief Minister (M.P.), Women Commission (M.P.), acting over which, the Kotwali Police recorded the statements of applicant and respondents and submitted before Protection Officer, Katni and with the help of Protection Officer, Katni and Raipur, she filed complaint under Section 12 along with an application under Section 20(1)(c) of the Act, 2005 for monetary relief before the Chief Judicial Magistrate, Raipur having jurisdiction to try the same which was registered as Criminal Case No.631/2009.

03. Before the trial Court, respondents submitted their reply and denied all the allegations levelled against them. The learned Chief Judicial Magistrate, after hearing both the parties and recording their submission, vide order dated 03.08.2012 partly allowed the application filed by the applicant. This order was appealed by the applicant and the learned appellate Court below confirmed the order passed by the Additional Chief Judicial Magistrate. Hence, this revision

petition.

04. Learned counsel for the applicant submits that the learned Court below committed gross error by ignoring the fact that respondent No.1 himself has admitted in affidavit that his father partitioned the entire property during his lifetime and the house in dispute is of the applicant and after the death of his father the applicant is residing there. He further submits that proviso to Section 19(1)(b) only bars any order to be passed against a woman who is residing in shared household house, whereas in the instant case, the applicant is the sole owner of the said house. The Court below has not considered the definition of 'shared household' as defined under Section 2 (s) of the Act, 2005 that categorically excludes the possession of the respondent No.2 from the purview of 'shared household'. The respondent No.2 is in illegal possession of the house which is owned by the applicant and it does not fall within the definition of 'shared household'. In support of this contention, learned counsel placed reliance on the decision of Hon'ble Supreme Court in the matter of **S.R. Batra and another Vs. Smt. Taruna Batra**¹. It has been also argued that both the Courts below committed error in law by not allowing the relief prayed by the applicant under Section 20 of the Act as the said section empowers the Magistrate to direct the non-applicants to pay monetary relief to meet out the expenses incurred and losses

1 (2007) Air SCW 1088

suffered as a result of domestic violence. In the instant case, it is a categorical finding by the learned trial Court which has been affirmed by the appellate Court that the respondents committed domestic violence as a result of which the applicant has to leave her own house and reside with her daughter at Raipur but the learned Court below misinterpreted Section 20 of the Act, 2005. It is next submitted that the applicant is also entitled for the monetary relief from the non-applicants in accordance with Section 20 and also compensation in accordance with Section 22 of the Act, 2005.

05. On the other hand, learned counsel for respondents supported the impugned order passed by the both the Courts below.

06. Learned counsel for respondent No.2 made additional submission that the respondent No.2 is also a widow lady and Section 19 (1) (b) of the Act, 2005 and the proviso at the bottom of sub-section (1) ensures that no woman is evicted from the 'shared household'. In support of his submission, he placed reliance on the decision of Hon'ble Supreme Court in the matter of **Manmohan Attavar Vs. Neelam Manmohan Attavar**²

07. I have heard learned counsel for the parties and perused the material available on record.

08. Before the trial Court, the parties produced their respective oral and documentary evidence in their support.

2 AIR 2017 SC 3345

The learned trial Court found that respondents broke open the door of house of applicant and passed the protection order under Section 18 of the Act, 2005 against both the respondents and under Section 19(1) (b) of the Act, 2005 only against the non-applicant No.1, the son of the applicant.

09. With regard to residence order, the Magistrate, may under Section 19(1)(b), direct the respondent to remove himself from the shared household provided that no order under clause (b) shall be passed against any person who is a woman. The Hon'ble Supreme Court has elaborately dealt with the provisions of the Act of 2005 in the matter of **Manmohan Attavar (supra)**, para 15 thereof reads thus:-

“15. A reading of the aforesaid provisions show that it creates an entitlement in favour of the woman of the right of residence under the “shared household” irrespective of her having any legal interests in the same. The direction, inter alia, can include an order re-straining dispossession or a direction to remove himself on being satisfied that domestic violence had taken place.”

10. The learned trial court and the appellate Court passed the order only against respondent No.1 who is the son of applicant. This order is strictly in accordance with the provisions of the Act, 2005 and according to the principle laid down by the Hon'ble Supreme Court in the matter of **Manmohan (supra)**. The applicant had also filed application

before the trial Court under Section 12 (1) of the Act, 2005 along with an application under Section 20 (c) of the Act.

11. So far as relief under Section 20 (c) of the Act, 2005 is concerned, Section 20 of the Act, 2005 is reproduced herein below, which reads thus:-

20. Monetary reliefs.—

(1) While disposing of an application under subsection (1) of section 12, the Magistrate may direct the respondent to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of the domestic violence and such relief may include but is not limited to—

(a) the loss of earnings;

(b) the medical expenses;

(c) the loss caused due to the destruction, damage or removal of any property from the control of the aggrieved person; and

(d) the maintenance for the aggrieved person as well as her children, if any, including an order under or in addition to an order of maintenance under section 125 of the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force.

(2) The monetary relief granted under this section shall be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved person is accustomed.

(3) The Magistrate shall have the power to order an appropriate lump sum payment or monthly payments of maintenance, as the nature

and circumstances of the case may require.

(4) The Magistrate shall send a copy of the order for monetary relief made under sub-section (1) to the parties to the application and to the in-charge of the police station within the local limits of whose jurisdiction the respondent resides.

(5) The respondent shall pay the monetary relief granted to the aggrieved person within the period specified in the order under sub-section (1).

(6) Upon the failure on the part of the respondent to make payment in terms of the order under sub-section (1), the Magistrate may direct the employer or a debtor of the respondent, to directly pay to the aggrieved person or to deposit with the court a portion of the wages or salaries or debt due to or accrued to the credit of the respondent, which amount may be adjusted towards the monetary relief payable by the respondent.

12. The applicant in her evidence stated that the non-applicants broke the lock, opened the ground as well as first floor, locked the main gate, caused damaged to the house in question and also threatened her for dire consequences. The learned trial Court has rightly observed in para 30 of its order that the applicant has not been able to produce any incriminating evidence to show that the non-applicants acted in such a manner and the house was vandalized by respondents and any damage was caused to the applicant due

to said vandalization and, thus, no relief was granted to the applicant under this Section 20 of the Act, 2005. This Court also finds from the record that the applicant could not produce any such evidence which established that any damaged was caused to her or the house. The order of both the Courts below is based on proper appreciation of the evidence on record and it has passed the order for which the applicant was entitled.

13. In the result, the criminal revision is liable to be dismissed and is hereby dismissed.

Sd/-

(Rajani Dubey)
JUDGE

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