

HIGH COURT OF CHHATTISGARH, BILASPUR

Order Reserved on : 28.02.2020

Order Passed on : 20/05/2020

Cr.R. No.653 of 2014

- Nilima Janardan D/o. Sakharam Janardan, Aged About 28 Years R/o. Shiksha Karmi Verg-I, Higher Secondary School, Kudna, Presently Jila Panchayat D.P.C. Kabirdham, Kailash Nagar, Kawardha, P.S. Kabirdham, Civil & Revenue Distt. Kabirdham (Kawardha) C.G.

---- Applicant

Versus

1. Rajkumari Magre W/o. Anil Magre Aged About 31 Years
2. Ku. Mahi Magre D/o. Anil Magre Aged About 6 Years Minor, Legal Parentage And Guardianship of her Mother Rajkumari Magre Non-applicant No.1
3. Ku.Bhumi Agre S/o. Anil Magre Aged About 3 Years Minor, Legal Parentage And Guardianship of her Mother Rajkumari Magre Non-applicant No.1

(All are R/o. Ward No.09, Near Jailswal Hotel, Bodla, Tahsil And P.S. Bodla, Distt. Kabirdham C.G.)

---- Non-applicants

Cr.R. No. 654 of 2014

- Anil Magre S/o Jaggu Magre Aged About 36 Years Occupation Shiksha Karmi Grade-II, Posted At Village Bami, P.S. And Block- Sahaspur Lohara, Civil And Rev. Distt. Kabirdham C.G., Chhattisgarh

---- applicant

Versus

1. Rajkumari Magre W/o Anil Magre Aged About 31 Years
2. Ku. Mahi Magre D/o Anil Magre Aged About 6 Years Minor Through her Natural Guardian Mother Non Applicant No. 1 Rajkumari Magre,
3. Ku. Bhumi Magre D/o Anil Magre Aged About 3 Years Minor Through her Natural Guardian Mother Non Applicant No. 1 Rajkumari Magre,

(all are r/o Ward No. 9, Near Jaiswal Hotel, Bodla, PS Bodla, Distt.

Kabirdham C.G.)

4. Kumari Neelima Janardan D/o Sakharam Janardan Aged About 28 Years R/o Village Kunda, Tah. Pandariya, Distt. Kabirdham C.G. At Present R/o Maruti Ward, Devangan Para, Ward No. 11, Kawardha, Distt. Kabirdham C.G.

---- Non-applicants

For applicant	:	Mr. Saurabh Kumar Pandey & Mr. F.S. Khare, Advocates.
For respondents	:	Mr. Ashok Verma along with Mr. Gajendra Sahu, Advocates.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

C A V ORDER

20/05/2020

1. Both these Criminal Revisions arise out of the same order dated 30.07.2014 passed by the Additional Sessions Judge (F.T.C.), Kabirdham (Kawardha), C.G. in Criminal Appeal No.77/2013 and 76/2013, therefore, they are being disposed off by this common order.
2. Applicant in Cr.R. No.653 of 2014 shall be referred to as applicant and the respondents in this case who are applicants in Cr.R. No.654 of 2014 shall be referred to as respondents in this order.
3. Respondent had filed an application under Section 12 of Protection of Women from Domestic Violence Act against this applicant and one another stating that respondent No.1 is married to Anil Magre and was residing in her matrimonial home and that respondent No.2 and 3 were born from this wedlock. Subsequently, because of the cruel treatment of the respondent and her husband, she started living separately from her husband Anil Magre. The cruel treatment and mis-behaviour of the

husband of the respondent No.1 continued and then he declared his love for the applicant in this case. The husband of respondent No.1 then has deserted her and is living with this applicant. The respondent No.1 approached the police but she was not assisted in any manner. The husband of respondent No.1 is neglecting the maintenance of the respondents, therefore, prayer was made for protection order, monetary relief etc.

4. The husband of the respondent no.1 contested the case separately and then applicant has also contested separately denying the allegations and praying for the rejection of the applicant against her.
5. The court of Chief Judicial Magistrate passed the order dated 31.10.2013 by which the relief was given to the respondents against her husband. Separate relief were granted against this applicant by the same order, that she shall not interfere in the domestic life of the respondent No.1, also the applicant has been ordered to pay a compensation of Rs.50,000/- to the respondents for causing mental and emotional harassment to them. Applicant then preferred Criminal Appeal No.77 of 2013, by the impugned order, the appeal has been dismissed.
6. It is submitted by the learned counsel for the applicant in Cr.R. No.653 of 2014 that the impugned order and the order of the Chief Judicial Magistrate both are erroneous and against the provisions of law. According to definition of 'aggrieved person' under Section 2(a) of Domestic Violence Act, it is necessary that there must exist a domestic relationship with the respondent. The domestic relationship is defined under section 2(f) of the D.V. Act and the respondent has been defined under section 2(q). In all the definitions, the essential ingredient is 'domestic relationship' between the applicant and the respondent. The applicant and the respondents have never been in any domestic

relationship and the applicant is neither a relative of the husband of respondent No.1

7. Judgment in **State of Punjab Vs. Gurmit Singh and others** quoted in **1996 (2) SCC 384** has been relied upon. It is submitted that the learned C.J.M. and the appellate Court both have wrongly appreciated the provisions under D.V. Act. The applicant nowhere falls under the definition of respondent, therefore, no order could have been passed against her and also for the reason that Section 2(q) defines that only a male relative can be a respondent in the case. Hence, the orders passed are totally unsustainable. Therefore, it is prayed that the impugned order and the order of C.J.M. both may be set aside.
8. Learned counsel for the respondents in this case and applicants in Cr.R. No.654 of 2014 submits that according to the facts present in the case, the applicant is person because of whom, the family life of the respondent No.1 has got disturbed. The evidence of witnesses also demonstrates the same. The objective of D.V. Act is to provide more protection to the rights of woman guaranteed under the constitution, who are victims of violence of any kind occurring within the family and matters connected therewith or incidental thereto. Therefore, the allegations that are against this applicant are connected with the affairs of the respondent's family life and also directly incidental thereto.
9. It is further submitted that the applicant cannot claim that she being a woman cannot be made a respondent in this case which has been settled by judicial pronouncements. It was firstly held by the Andhra Pradesh High Court in the case of **Afzalunnisa Begum & Etc. Vs. State of Andhra Pradesh & Anr.** reported in **2009 Cri.L.J. 4191**, that respondent under Section 2(q) of D.V. Act also includes female relatives of the husband. It was similarly held by the Bombay High Court in the

case of **Archana Hemant Naik Vs. Urmilaben I. Naik & Anr.** reported in **2010 Cri.L.J. 751**. The Supreme Court has in the case of **Sou. Sandhya Manoj Wankhade Vs. Manoj Bhimrao Wankhade & Ors.** reported in **2011 Cri.L.J. 1687**, affirmed the view of the High Courts of Andhra Pradesh and Bombay High Court and held that definition of respondent and Section 2(q) of Domestic Violence Act cannot be read as excluding woman from being arrayed as respondent in a complaint.

10. Reliance has also been placed on the judgment of Jharkhand High Court in the case of **Bindu Tripathi @ Bindu Pandey Vs. State of Jharkhand & Anr.** reported in **2013 Cri.L.J. 2012**. It is submitted that the applicant was having a live-in relationship with the husband of the respondent, therefore, she falls under the definition of female relative. The learned Court of C.J. M. and the appellate Court both have not committed any error in passing the impugned order. Therefore, this revision petition is without any substance which may be dismissed.

11. Learned counsel for the respondents have also rebutted the arguments submitted in Cr.R. No.653 of 2017.

12. Rebutting the arguments on behalf of respondents, who are applicants in Cr.R. No.654/2017. In reply, it is submitted by the learned counsel for the applicant that applicant has never lived with respondents, therefore, she has no domestic relation with the respondents. It is essential that the applicant should have been a relative of the respondents in any sense and this is a fact which cannot be denied that the applicant has no relation with the respondents or neither with the husband of respondent No.1. Hence, the petition be allowed and relief may be granted to the applicant.

13. I have heard learned counsel for the both the parties and perused the

documents placed on records.

14. Applicant had in reply given to the respondents, application clearly denied any relation with the husband of respondent No.1 and the other allegations regarding their residing together. In the evidence presented, the respondent No.1 has stated that her husband used to have telephonic conversation with the applicant and subsequently he left and started residing with the applicant, regarding which she was informed by her brother in law, who in turn got the information from one friend of another brother-in-law. Subsequently, the matter was also taken to the police but nothing could be resolved.
15. Sunil Kumar Magre (P.W.-2) and Jitendra @ Jitu Mishra (P.W.-3) made similar statements.
16. Anil Magre (N.A.W.-1) stated that respondent No.1 who is wife is a women of irritating nature, who always used to quarrel with him doubting about his relations with other persons. In cross-examination, he denied about having any affair with the applicant. The applicant Nilima Janardan examined herself and stated that she always used to reside singly in the rented house in Kawardha. In cross-examination, she has admitted that she had acquaintance with the husband of the respondent No.1, but she has clearly denied about having any kind of affair or relation with him.
17. On the basis of the evidence itself, it is nowhere established that the applicant had an affair with the husband of the respondent No.1 and thus there is no preponderance of the probability in favour of the respondent. It is nowhere disputed that the applicant is not a relative of the respondents or the husband of the respondent No.1 therefore, the question raised by the applicant in this case is whether she can be

arrayed as a respondent in this case, in the complaint filed by respondents which is mainly attracted against the husband of respondent no.1. The definition of aggrieved person under Section 2(a) of Domestic Violence, is as under:-

“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;”

According to this definition, it is necessary that the aggrieved person must have a domestic relationship with the respondent. The domestic relationship is defined under Section 2F:-

“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;

18. The applicant cannot be said to have any relationship with the respondent, because the domestic relationship defined is in connection with the person aggrieved and not any other person. Therefore, this domestic relationship should be a relationship as defined should be present between the person aggrieved the respondent and the person complained against. This definition does not give any scope for a third person and the applicant here appears to be a third person.

19. At present, the law has been settled that in the definition of respondent under Section 2(q) of the Act, the female relative of husband is also included and this interpretation has been set at rest by the Supreme

Court in the case of **Sandhya Manoj Wankhade** (Supra). According to this interpretation, a female person which in this definition of respondent must be a relative of the husband of the aggrieved person. According to Section 2(q) of the Act, respondent means any male person which now includes a female relative also, who is or has been in domestic relationship with the aggrieved person. There is practically no evidence that the applicant and the respondent had been in any kind of relationship which can be regarded as domestic relationship. In the case of **Bindu Tripathi** (Supra), the learned Single Judge of Jharkhand High Court has clarified that according to definition under Section 2(q), the respondent can be a person in domestic relationship, relative of a husband or the male partner in live-in relationship. This definition clearly not includes a female partner. The applicant in this case had been a female partner in live-in relationship with the husband of respondent No.1, has not been found proved in evidence. Therefore, the situation of applicant is clearly out of the purview of Domestic Violence Act, according to law and also according to the facts of the case. Hence, the order of Chief Judicial Magistrate as well as the order of the appellate Court both are unsustainable. The revision is allowed and impugned order and the order of C.J.M. Kawardha both are set aside.

20. Accordingly, the petition stands disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge