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HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 594 of 2014****Order Reserved on 16.12.2019****Order Delivered on 21.01.2020**

Smt. Mallika Bal W/o. Shailesh Jaikab Aged About 36 Years R/o. Mission Compound Jarhabhatha Bilaspur C.G., Chhattisgarh.

---- Applicant**Versus**

1. Shailesh Jaikab S/o. Late M.C. Jaikab, Aged About 40 Years R/o. Mission Compound Jarhabhata Bilaspur, P.S. Civil Line Bilaspur, Dist. Bilaspur, Chhattisgarh
2. Smt. Pushpa Jaikab Wd/o. Late M.C. Jaikab Aged About 74 Years R/o. Mission Compound Jarhabhata Bilaspur, P.S. Civil Line Bilaspur, District : Bilaspur, Chhattisgarh
3. Smt. Suchita Roy D/o. M.C. Jaikab, aged about 40 years, R/o. Mission Compound Jarhabhata Bilaspur, P.S. Civil Line Bilaspur, District : Bilaspur, Chhattisgarh
4. Shalaj Jaikab S/o. Late M.C. Jaikab. Aged about 33 years, R/o. Mission Compound Jarhabhata Bilaspur, P.S. Civil Line Bilaspur, District : Bilaspur, Chhattisgarh

---- Respondents

For the Applicant	:	Present in person.
For the Respondents	:	Shri Suryakant Mishra, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**CAV ORDER**

1. This revision has been brought challenging the legality, propriety and correctness of the judgment dated 17.7.2014 passed in Criminal Appeal No.342 of 2013 by the Learned Fifth Additional Sessions Judge, Bilaspur by which the appeal was dismissed and the order of the Judicial Magistrate First Class, Bilaspur in Criminal Case No. 54 of 2013 dated 27.11.2013 was upheld.

2. The applicant and respondent No.1 – Shailesh Jaikab are wife and husband who got married in the year 2000 and subsequent to that, the applicant and respondent No.1 are living separately. The applicant has alleged that respondent No.1 treated her with cruelty and also made demands of dowry and then in the year 2004, the applicant was beaten and driven out of her matrimonial home. Some compromise took place and thereafter, the applicant went to live with him and she was again treated with cruelty and on 12.7.2011, an attempt was made to burn her alive. Thereafter, the applicant filed a complaint before JMFC on 20.7.2011 praying for grant of various reliefs under Domestic Violence Act, 2005 (for short 'DV Act, 2005').

3. It is submitted by the applicant in person that there had been no denial regarding the relation of the applicant with the respondents and that evidence has been produced showing that the applicant was subjected to domestic violence on various occasions, which has been erroneously disbelieved by the Courts below. Respondent No.2 – Smt. Pushpa Jaikab in her deposition has made admission that the applicant had lodged FIR in the police station regarding the attempt to set her ablaze and she has also admitted that her son respondent No.1 does not want to have the applicant back and they have not made any arrangement for the residence of the applicant. Thus, the said admissions have been ignored by the Courts below. The medical examination report vide Ex. A/17 is present on the record which shows that the applicant suffered burn injury on the date of incident which has also not given any consideration. It is also submitted that the respondents used to allege upon the character of the applicant which is also an act of domestic violence. The Courts

below, without appreciating the evidence present, have come to a wrong conclusion and dismissed the application and the appeal of the applicant. Hence, it is prayed that this revision be allowed.

4. Learned counsel for the respondents opposes the submissions made and submits that the applicant is a woman of aggressive and arrogant nature because of which, the life of respondent No.1 has never been peaceful. The conduct of the applicant is reflected from the complaint given by her own mother vide Ex. D/1 in which she has alleged that her daughter/ the applicant has threatened to kill her. Because of the quarrel and dispute between the applicant and the respondents, a complaint was filed before the City Magistrate, Bilaspur for proceedings under Section 107 read with Section 116 of the Cr.P.C. regarding which the document is filed as Exs. D/2 and D/3 by the respondents in the proceedings before the Courts below. Respondent No.2 had also filed complaints vide Exs. D/9 to D/16 regarding the abuse, assault and threat made by the applicant. This shows the conduct of the applicant herself and that it is not the applicant who was subjected to cruel treatment. On the contrary, the respondents, were continuously harassed, threatened and abused by the applicant. Therefore, learned Courts below have not committed any error in rejecting the application of the applicant and dismissing her appeal.

5. In reply, it is submitted by the applicant in person herself that the respondents have made various allegations against her. The applicant had filed a complaint to the police alleging that she had caught her husband/ respondent No.1 with a female labour because of which, she

was beaten and tortured by her husband and apart from that, there is medical evidence regarding the torture given to the applicant. Hence, she is entitled for relief as prayed for in the application.

6. Heard both counsel for the parties and perused the material available on record.

7. There is no dispute that the applicant and respondent No.1 got married in the year 2000. The applicant has stated in her deposition before the Court of JMFC that the parents of her husband/ respondent No.1 were not happy with the marriage because of which they quarreled and then the applicant and her husband started living in Raipur, in a rented house. She stated that during the stay at Raipur, her husband used to abuse her and make demands of money. Thereafter, her husband took away her jewelery and cash and deserted her because of which, she was compelled to come back to her parental house. The applicant being a law graduate started practicing in Bilaspur High Court. Thereafter, a compromise took place and the applicant went to live in her matrimonial home, but again the respondents made demands from her on various pretexts and she was also beaten by them. Thereafter, respondent No.2 made a demand of Rs.2,00,000/- from the applicant and when that could not be fulfilled, then respondent No.2 turned the applicant out of her house. The applicant then made an attempt to commit suicide by consuming tablets, however, she was saved by the neighbours who admitted her in CIMS Hospital, Bilaspur. This incident has taken place in the year 2003.

8. Then, her husband/ respondent No.1 filed a divorce petition in the Family Court in September, 2003. Again a compromise took place and the applicant went back to live in her matrimonial home, where she gave birth to a son on 6.12.2004. Thereafter, she was sent back to her matrimonial house where she lived up to 2006. As she has stated that she had no means for maintenance and her husband was neglecting her, therefore, she filed an application for maintenance before the Family Court, Bilaspur and the Family Court passed an order for grant of maintenance. Thereafter, respondent No.1 again took her back to her matrimonial home. The applicant was then appointed as the Secretary of the State Bar Council and the entire salary she used to receive, was being taken away and spent by her husband. When the applicant found respondent No.1 in a compromise position with a female labour, she had filed a complaint to the police. The applicant was then beaten by her husband and in-laws regarding which, she made a complaint on 24.9.2009. Counseling took place and thereafter, a compromise also took place in which the respondents gave assurance that they will not torture the applicant. She has stated that on 15.5.2010 her husband/ respondent No.1 gave beating and threatened her because of which, she made a complaint to the police.

9. The applicant had to attend her father because of which, she was again beaten by the respondents. Another incident happened in which respondent No.1 sold the car gifted to him by father of the applicant and when the applicant demanded the money of that sale she was again beaten by her husband. Then in the month of March 2011, she was beaten by the respondents and her father was also beaten by them, for

that she again filed a complaint to the police and again a compromise took place. On 12th July, 2011, the respondents quarreled with the applicant because a demand of money was not fulfilled by the applicant. Respondent No.1 caused burn injuries to her by using hot oil and she was also beaten by them regarding which, she had filed a complaint to the police. She has filed the medical documents, photographs and also various complaints filed by her. In cross-examination, her statement in examination-in-chief has remained rebutted, however, she has admitted that her mother had filed a complaint in the police station but she does not know about the allegation in the complaint. She has denied other adverse suggestions given to her. She has denied knowledge about the complaints given by respondent No.2 to the police station. She has denied suggestions that she has made false allegations against the respondents. No other witness has been examined by the applicant's side.

10. Respondent No.1 examined himself as NAW1 and stated that after the Court Marriage with the applicant on 16.10.2000, he was living in Raipur with the applicant up till 2002, then the applicant left him and came to live with her parents in Bilaspur. He made attempts to take her back and then on her refusal, he then filed a divorce petition in the year 2003 before the Family Court, Bilaspur. He has stated that he used to live with the applicant on the first floor of the house, whereas, his father used to live in the ground floor of the house. The applicant then gave birth to a male child on 6.12.2004. Thereafter, the applicant went to live with her parents who did not come back despite repeated requests made by him. Then, the applicant filed an application under Section 125 of the

Cr.P.C. in the year 2006 in which order was passed for maintenance against respondent No.1. Subsequent to that, the applicant apologized to respondent No.1 and others and came back to live in her matrimonial home, where she lived from the year 2006 to 15.11.2011. He has alleged that the applicant used to quarrel for petty matters and also used to beat him. When the applicant was appointed as Secretary of State Bar Council, she then threatened and quarreled with respondent No.1 and his other family members. He has stated that the applicant was never tortured for any reason and was never demanded for money etc. He has further stated that on 22.3.2011 he caught the applicant in a compromising position with a man regarding which, the applicant could not offer any explanation. The arrogant behavior of the applicant continued because of which the parents of respondent No.1 provided the whole first floor of the house for the purpose of living the applicant and respondent No.1. He has stated that neither he or any other tortured the applicant nor made any demand. It is also stated by him that the applicant is an earning woman and regarding which the documentary proof has been produced. In cross-examination, he has admitted that at present the applicant is not residing in the first floor of the house. He has denied all the adverse suggestions given to him by the applicant's side. He has denied knowledge about the burn injury caused to the applicant and the document regarding her medical examination.

11. Pushpa Jaikab (NAW2) has made similar statement regarding the quarrelsome nature of the applicant and regarding the complaints made by her against the applicant. In cross-examination, she has admitted that at present, the applicant is not residing on the first floor of her house.

She has also denied adverse suggestions given by the applicant's side.

12. It is found that the learned JMFC and the Appellate Court have not made any appreciation of the evidence given by the applicant regarding the cruel treatment given to her by the respondents and also regarding the incident of beating and burning that have taken place. The statement of the applicant and the depositions of the applicant have remained unrebutted. In cross-examination, although respondent No.1 and two others have made similar allegations against the applicant regarding her being of quarrelsome nature and that she herself was torturing the respondents, various complaints were given by the applicant to the police on which some action was taken by the police which has not resulted in the prosecution, however, the statement of the applicant finds support from Ex. A/17 present in the record of the learned JMFC which discloses that she had suffered burn injuries. On the other hand, the various complaints that were filed by the respondents' side against the applicant have not resulted in lodging of any FIR or drawing of any other proceeding against the applicant by the police. In the matter of grant of reliefs under the provisions of DV Act, 2005 such proceedings are regarded as proceeding of civil nature. Therefore, on the basis of the appreciation that has been made in this order, it is found that the preponderance of probability lies in favour of the applicant and it can be safely concluded that the applicant was subjected to domestic violence by the respondents, and as such, the applicant is an aggrieved person within the meaning of definition of under Section 2A of the DV Act, 2005 and therefore, her entitlement can be considered for grant of relief under this Act.

13. As there is evidence that the respondents have been violent against the applicant, the applicant has entitlement for issuance of protection order in her favour under Section 18 of the DV ACT, 2005. Similarly, she is also entitled for residence order according to Section 19 of the DV Act, 2005. Regarding monetary relief under Section 20 of the DV Act, 2005, it is found that the applicant is already receiving a monthly maintenance of Rs.3,000/- by the order of the Family Court under Section 125 of the Cr.P.C. and also that the applicant herself stated and admitted that she is engaged as a legal practitioner in the High Court. She had been employed as Secretary of the State Bar Council for sometime but her engagement as legal practitioner in High Court is continuing, therefore, I am of this view that no case is made out for grant of monetary relief to the applicant and there is no prayer for compensation order under Section 22 of the DV Act, 2005.

14. After overall consideration of the facts and circumstances and the evidence of the case, I am of this view that the learned JMFC and the learned Appellate Court both have passed erroneous orders which are against the provisions of law, incorrect and improper. Therefore, these orders are liable to be set aside. Accordingly, this revision petition is allowed and the impugned order and the order of the JMFC both are set aside and it is ordered that the respondents are prohibited for committing any act of domestic violence against the applicant or aiding or abetting any such act or entering the place of employment of the applicant for such purposes. It is also ordered that the respondents shall provide the applicant with a place of residence in the same shared household where

she had earlier resided, which shall be sufficient according to requirement and it is also directed that the respondents shall keep away from the place of residence so provided to the applicant.

Sd/-

(Rajendra Chandra Singh Samant)
Judge

Nimmi