

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No.905 of 2019

- Pramod Wasnik S/o Devidas Wasnik Aged About 61 Years Caste - Mahar, R/o Trimurti Chowk, Sundar Nagar, Raipur Chhattisgarh

---- Petitioner

Versus

- Anita Wasnik W/o Pramod Wasnik Aged About 54 Years Presently Residing At Rajendra Nagar Ward, Jagdalpur District Bastar Chhattisgarh

---- Respondent

For Petitioner : Mrs. Aditi Singhvi, Advocate.

For Respondent : Mr. Vikash A. Shrivastava and Mr. Santosh Bharat, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

19/02/2020

1. This petition has been brought being aggrieved by the order dated 31.10.2019 passed by the Sessions Judge, Jagdalpur, District- Bastar, C.G., in Criminal Appeal No.35/2019, by which the order of the J.M.F.C. Jagdalpur, Bastar dismissing the application filed by the petitioner under Order 7 Rule 11 of C.P.C. was dismissed, was upheld.
2. Learned counsel for the petitioner submits that the respondent has filed an application under the provisions of Protection of Women from Domestic Violence Act, 2005 (In short 'the Act of 2005'). The petitioner challenged the maintainability of that application by filing an application under Order 7 Rule 11 of C.P.C. stating that he and the respondent are not married to each other, therefore, the application filed under the

provision of Domestic Violence or D.V. Act of 2005 was not maintainable. The trial Court dismissed the application vide order dated 21.02.2019. That order was challenged in Criminal Appeal No.35/2019 before the Court of Sessions Judge and the same has been dismissed by the impugned order. It is further submitted that the learned Sessions Judge has erroneously held that the matter before the J.M.F.C. is a criminal procedure in which the provision under C.P.C. and specific provision under Order 7 Rule 11 of C.P.C. are not applicable. It is submitted that clearly the proceeding under the Act of 2005 are deemed to be of quasi civil and quasi criminal in nature.

3. Placing reliance on the judgment of Supreme Court in **T. Nagappa Vs. Y. R. Muralidhar** reported in **(2008) 5 SCC 633**, that merely by mentioning and incorporating provision of law, which is incorrect provision of law, that Court if has jurisdiction, cannot refuse to pass proper order.
4. It is also submitted that according to the facts present in the application, itself the respondent residing separately from the applicants since 2013, therefore, the application has been filed belatedly and barred by limitation.
5. Relying on the judgment of Supreme Court in **Inderjit Singh Grewal Vs. State of Punjab & Anr.** reported in **(2011) 12 SCC 588**, it is submitted that even after the respondent claims, that the order of the Sessions Court in Criminal Revision No.108/2003, by which, it was held that the respondent was not a legally married wife of the applicant is existing, that has not been challenged in any Court, therefore, without challenging the same, the respondent cannot make any claim against the applicant under the provisions of Act of 2005. It is also submitted that the provisions of Code of Civil Procedure shall be applicable

because in Section 28 of the Act, 2005, it is clearly provided that nothing shall prevent the Court from laying down its own procedure for disposal of an application under Section 12 or under Section 23 of the Act 2005, therefore, it is prayed that impugned order be set aside.

6. Learned counsel for respondent opposes the submissions and submits that clearly the application under Order 7 Rule 11 of C.P.C. was not at all maintainable, therefore, the Courts below have not committed the error in dismissing that application.
7. Heard learned counsel for the parties and also perused the documents present.
8. The respondent has filed application under Section 12 of Act, 2005 claiming that she and the applicant had been in a domestic relationship between 2003-13. The applicant had instead of submitting any reply to the petitioner's application filed an application under Order 7 Rule 11 of C.P.C. challenging the maintainability of that application. The first question raised is this that whether provision of C.P.C. are applicable to the proceeding under the provision of D.V. Act 2005.
9. Provision 28 of the Act, 2005 laid down the procedure:-

28.Procedure:- (1) Save as otherwise provided in this Act, all proceedings under sections 12, 18, 19, 20, 21, 22 and 23 and offences under section 31 shall be governed by the provisions of the Code of Criminal Procedure, 1973 (2 of 1974).

(2) Nothing in sub-section (1) shall prevent the court from laying down its own procedure for disposal of an application under section 12 or under sub-section (2) of section 23.
10. Sub-Section 1 of Section 28 very clearly provides that which of the provisions of Cr.P.C. shall be applicable to the proceedings whereas

Sub-Section 2 provides that the Court has liberty to lay down its own procedure. This liberty does not include to adopt any procedure which is codified in any other law. If it had been the intention of the legislature then it would have been clearly provided in the Act of 2005 that the procedure as provided in C.P.C. shall be adopted and made applicable to the proceedings under the proceedings of any application filed under D.V. Act. Instead of referring to specific provisions under Section 28(1). That not being so, this cannot be assumed that all the provisions of C.P.C. shall be applicable to any proceedings under D.V. Act, 2005.

11. Another argument advanced is that the applicant is not married to the respondent and that there is an order in revision petition by the Sessions Court holding that respondent is not the legally married wife of the applicant. The claim of the respondent is only to this extent that she had been in a domestic relationship with the applicant. What is a domestic relationship, that has been defined in Section 2 (f) of the Act, 2005, which does not restrict to a relationship by marriage. On the other hand it speaks of a relationship in the nature of marriage. Similar is the expression in the definition of aggrieved person in Section 2(A) and the proviso to definition of respondent in Section 2(q) makes it further clear that an aggrieved female living in a relationship in the nature of a marriage may also file a complaint against the relative of the husband or the male partner. Thus, the definition makes it very exhaustive and the claim of the respondent in her application is relating to her relationship, that application needs to be considered and determined by the Court simply for the reason that there was a relationship in the nature of marriage. The applicant, therefore, does not become entitled to be relieved from the proceeding against him. Hence, argument is found to be without any substance.

12. Another objection raised that the application is Section 12 of the Act 2005 is barred by limitation. There is no specific provision under the Limitation Act to make any such requirement of filing any such application within a time frame. The D.V. Act, 2005 does not by itself speak of any limitation for filing such application. It may be a ground for consideration by the Court to seek whether the delayed application has been filed with bona-fide intention or not. Therefore, there being no express provision for filing application under Section 12 of D.V. Act within any limitation period. This ground raised is also totally without any substance. Resultantly, I do not find any substance in this petition which is dismissed at motion stage.

13. Accordingly, this petition is disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Monika