

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Order Reserved on 22.10.2021****Order delivered on 23.11.2021****Cr.M.P.No. 626 of 2019**

1. Shyam Sundar Singh, S/o Late Rambilash Singh, aged about 38 years (at present 43 years old)
2. Mahendri Kunwar, aged about 65 years, W/o Late Rambilash Singh.
3. Akshaya Kumar Singh, S/o Shyam Sundar Singh, aged about 21 years.
4. Akanchha Singh, D/o Shyam Sundar Singh, aged about 19 years.

R/o Village Jahriwa, Post Sahpur, PS Chainpur, District Palamu, State-Jharkhand. Pin- 822110

**---- Petitioners
(Non-applicant Nos.1 to 4)**

Versus

- Smt. Sulochana Devi, W/o Shyam Sundar Singh, aged about 32 years, R/o Village Jahriwa, Post Sahpur, PS Chainpur, District Palamu, State-Jharkhand.
At present R/o village Katghari, PS and Tahsil Akaltara, District Janjgir-Champa (CG)

---- Respondent (Complainant)

For Petitioners	:	Mr. Kalyaan Kalamkar, Advocate
For Respondent	:	Mr. F.S. Khare, Advocate

Hon'ble Mr. Justice Parth Prateem Sahu

CAV Order

1. Petitioners have filed this petition seeking quashment of Complaint Case No.1/2019 pending before the learned Judicial Magistrate 1st Class, Akaltara on the ground that marriage between petitioner No.1 and respondent has been dissolved by decree of divorce passed by the Family Court, Daltonganj (Jharkhand); application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (for short 'the Act of 2005') is filed after seven months from the date of grant of decree of divorce by the Court of competent jurisdiction; application under Section 12 of the Act of 2005 is barred by limitation under Section 468 of CrPC.

2. Mr. Kalyaan Kalamkar, learned counsel for the petitioners would submit that application under Section 12 of the Act of 2005 is filed on 7.12.2018 i.e. after seven months of grant of decree of divorce in favour of petitioner No.1; respondent was residing separately since long time as appearing from application filed under Section 12 of the Act of 2005, hence application itself is barred by limitation, as envisaged under Section 468 of CrPC. 'Aggrieved Person' is defined under Section 2 (a) of the Act of 2005 and 'domestic violence' is defined under Section 2 (f). As the Family Court has passed the order granting decree of divorce under Section 13 of the Hindu Marriage Act, 1955 (for brevity 'the Act of 1955') in favor of petitioner No.1 and in that proceedings respondent appeared through her counsel, therefore, application under Section 12 of the Act of 2005 filed by respondent is not maintainable because respondent and petitioner No.1 were not having any domestic relationship on the date of filing of application. In support of his contention, he places reliance on decision of Hon'ble Court in case of **Indrajeet Grewal vs. State of Punjab** reported in **(2011) 12 SCC 588**.
3. Per contra, Mr. F.S. Khare, learned counsel for respondent opposes the submissions made by learned counsel for the petitioners and submits that prior to threat given to respondent and her brother, which is specifically pleaded in application filed under Section 12 of the Act of 2005, respondent was not aware about grant of decree of divorce by learned Principal Judge, Family Court, Palamu at Daltonganj in favour of petitioner No.1. There is no delay in filing of application under Section 12 of the Act of 2005 because respondent has also sought for relief of grant of maintenance / monetary relief as envisaged under Section 20 of the Act of 2005, which is continuous in nature. In application under

Section 12 of the Act of 2005 respondent has specifically pleaded that petitioner No.1 had obtained her signatures on some blank papers keeping her in dark that signatures are required for bank purposes. Even a divorced wife is entitled for amount of maintenance under Section 125 CrPC, therefore, in view of provision under Section 3 (5) & 20 of the Act of 2005, application filed under Section 12 of the Act of 2005 by respondent is maintainable. It is further argued that in view of language used under the Act of 2005 with regard to status of applicant seeking relief under the Act of 2005, respondent, who lived together in a shared household at any point of time, can file an application under Section 12 of the Act of 2005. Mere dissolution of marriage, as alleged in this petition, would not dis-entitle respondent to seek benefits under the Act of 2005, which has been enacted with an object to protect rights and interest of a woman as also children. In support of his contention, he places reliance upon the decision rendered in **Ajay Kumar Reddy & ors vs. State of CG & ors** reported in **2017 (4) CGLJ 331**; **Juveria Abdul Majid Patni vs. Atif Iqbal Mansoori & anr** reported in **(2014) 10 SCC 736**;

4. I have heard learned counsel for parties and perused the documents placed on record.
5. To appreciate rival submissions of learned counsel for respective parties, it will be appropriate to extract relevant provisions of the Act of 2005. The **Preamble** of the Act of 2005 reads as under:-

“An Act to provide for more effective protection of the rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family and formatters connected therewith or incidental thereto.”

6. Section 12 of the Act of 2005 provides for filing of an application before

the Magistrate by an 'aggrieved person' or a 'Protection Officer'. Section 2 (a) of the Act of 2005 defines '**aggrieved person**' which reads as under:-

“(a) “**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”

7. The word '**domestic relationship**' is defined under Section 2 (f) of the Act of 2005 which reads as under:-

“(f) “**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;

Section 2 (g) of the Act of 2005 says that “**domestic violence**” has the same meaning as assigned to it in section 3. Section 3 of the Act of 2005 defines '**domestic violence**', as under:-

“3. 'domestic violence'.—For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it—

- (a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or
- (b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or
- (c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or

(d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person.”

8. A bare reading of above quoted provisions would demonstrate that **'aggrieved person'** means any woman who is, or has been, in a domestic relationship with the respondent and alleges that she has been subjected to domestic violence by the respondent. **'Domestic relationship'** means a relationship between two persons who live or have, at any point of time, lived together in a shared household in the nature of marriage.
9. As per Explanation-I (iv) appended to Section 3 of the Act of 2005, 'economic abuse' includes deprivation of all or any economic or financial resource to which aggrieved person is entitled under any law or custom, deprivation of stridhan, property, jointly or separately, owned by the aggrieved person. Perusal of application filed under Section 12 of the Act of 2005 would reveal that there is allegation of snatching of ornaments of respondent, keys of almirah and ousting of respondent and her children from house. There is also allegation of taking signature on blank papers. In prayer clause of application (Annexure P-1), respondent has prayed for grant of maintenance for food, clothes, residence, medical etc. The issue with regard to award of maintenance to divorced wife had come into consideration of Hon'ble Supreme Court in cases of **Vanamala vs. H.M. Ranganatha Bhatta** reported in **(1995) 5 SCC 299**; **Kalyan Dey Chowdhury vs. Rita Dey Chowdhury Nee Nandy** reported in **(2017) 14 SCC 200** and Hon'ble Supreme Court had decided the issue in favour of divorced wife. In case of **Krishna Bhattacharjee vs. Sarathi Choudhury & anr** reported in **(2016) 2 SCC 705** Hon'ble Supreme Court has discussed various provisions of the Act of 2005 including the Preamble and the words 'economic abuse'

explained under Explanation-1 to Section 3 of the Act of 2005 in Paragraph 2 & 3, which are as follows:-

“2. Prior to the narration of facts which are essential for adjudication of this appeal, we may state that the 2005 Act has been legislated, as its Preamble would reflect, to provide for more effective protection of the rights of the women guaranteed under the Constitution who are victims of violence of any kind occurring within the family and for matters connected therewith or incidental thereto. The 2005 Act is a detailed Act. The dictionary clause of the 2005 Act, which we shall advert to slightly at a later stage, is in a broader spectrum. The definition of “domestic violence” covers a range of violence which takes within its sweep “economic abuse” and the words “economic abuse”, as the provision would show, has many a facet.

3. Regard being had to the nature of the legislation, a more sensitive approach is expected from the courts where under the 2005 Act no relief can be granted, it should never be conceived of but, before throwing a petition at the threshold on the ground of maintainability, there has to be an apposite discussion and thorough deliberation on the issues raised. It should be borne in mind that helpless and hapless “aggrieved person” under the 2005 Act approaches the court under the compelling circumstances. It is the duty of the court to scrutinise the facts from all angles whether a plea advanced by the respondent to nullify the grievance of the aggrieved person is really legally sound and correct. The principle “justice to the cause is equivalent to the salt of ocean” should be kept in mind. The court of law is bound to uphold the truth which sparkles when justice is done. Before throwing a petition at the threshold, it is obligatory to see that the person aggrieved under such a legislation is not faced with a situation of non-adjudication, for the 2005 Act as we have stated is a beneficial as well as assertively affirmative enactment for the realisation of the constitutional rights of women and to ensure that they do not become

victims of any kind of domestic violence.”

Hon'ble Supreme Court in **Krishna Bhattacharjee's case (supra)** while considering application filed by wife against whom there was decree of judicial separation, has held in Paragraph 18 thus:-

“18.The core issue that is requisite to be addressed is whether the appellant has ceased to be an “aggrieved person” because of the decree of judicial separation. Once the decree of divorce is passed, the status of the parties becomes different, but that is not so when there is a decree for judicial separation. A three-Judge Bench in Jeet Singh and Others Vs. State of U.P. and Others¹¹ though in a different context, adverted to the concept of judicial separation and ruled that the judicial separation creates rights and obligations. A decree or an order for judicial separation permits the parties to live apart. There would be no obligation for either party to cohabit with the other. Mutual rights and obligations arising out of a marriage are suspended. The decree however, does not sever or dissolve the marriage. It affords an opportunity for reconciliation and adjustment. Though judicial separation after a certain period may become a ground for divorce, it is not necessary and the parties are not bound to have recourse to that remedy and the parties can live keeping their status as wife and husband till their lifetime.”

10. In the aforementioned judgment the Hon'ble Supreme Court has taken note of its earlier decision in case of **Inderjit Singh Grewal vs. State of Punjab & another** reported in **(2011) 12 SCC 588** wherein claim of wife, who took divorce under Section 13B of the Hindu Marriage Act, 1955, was subject in issue and considering plea that decree of divorce was obtained by playing fraud or misrepresentation has held as under:-

“18.However, the question does arise as to whether it is permissible for a party to treat the judgment and order as null and void without getting it set aside from the competent

court. The issue is no more res integra and stands settled by a catena of decisions of this Court. For setting aside such an order, even if void, the party has to approach the appropriate forum. [Vide State of Kerala v. M.K. Kunhikanna Nambiar Manjeri Manikoth³ and Tayabbhai M. Bagasarwalla v. Hind Rubber Industries (P) Ltd.⁴

19. In Sultan Sadik v. Sanjay Raj Subba⁶ this Court held that there cannot be any doubt that even if an order is void or voidable, the same requires to be set aside by the competent court.

20. In M. Meenakshi v. Metadin Agarwal⁶, this Court considered the issue at length and observed that if the party feels that the order passed by the court or a statutory authority is non-est/void, he should question the validity of the said order before the appropriate forum resorting to the appropriate proceedings. The Court observed as under:-

"It is well settled principle of law that even a void order is required to be set aside by a competent Court of law, inasmuch as an order may be void in respect of one person but may be valid in respect of another. A void order is necessarily not non-est. An order cannot be declared to be void in collateral proceedings and that too in the absence of the authorities who were the authors thereof." (emphasis added)

A Similar view has been reiterated by this Court in Sneh Gupta v. Devi Sarup⁷.

21. From the above, it is evident that even if a decree is void ab initio, declaration to that effect has to be obtained by the person aggrieved from the competent court. More so, such a declaration cannot be obtained in collateral proceedings.

30. In the facts and circumstances of the case, the submission made on behalf of Respondent 2 that the judgment and decree of a civil court granting divorce is null and void and they continued to be the husband and wife, cannot be taken note of at this stage unless the suit filed by Respondent 2 to declare the said judgment and decree dated 20-3-2008 is decided in her favour. In view thereof,

the evidence by her particularly the record of the telephone calls, photographs attending a wedding together and her signatures in school diary of the child cannot be taken into consideration so long as the judgment and decree of the civil court subsists. On a similar footing, the contention advanced by her counsel that even after the decree of divorce, they continued to live together as husband and wife and therefore the complaint under the 2005 Act is maintainable, is not worth acceptance at this stage.”

11. In case of **Krishna Bhattacharjee (supra)** Hon'ble Supreme Court has further considered its earlier decisions in cases of **Savitaben Somabhai Bhatiya v. State of Gujarat** reported in **(2005) 3 SCC 636**; **D.Velusamy v. D. Patchaiammal** reported in **(2010) 10 SCC 469** and held them to be cases distinguishable from the facts of that case as they deal with dispute with regard to live-in relationship and not of divorce.
12. Reverting back to facts of present case. Along with petition, petitioners have filed the proceedings of Principal Judge, Family Court, Palamu at Daltonganj recorded in Original Suit No.100/16 along with judgment and decree dated 7.5.2018 allowing application filed under Section 13 (1) (i) (ia) of the Act of 1955, granting decree of divorce in favour of petitioner No.1 and dissolving marriage between petitioner No.1 and respondent. On the date of filing of application under Section 12 of the Act of 2005, respondent was aware of threat given by petitioner No.1 that he has taken divorce. As appearing from order sheets of Family Court, respondent was represented by an advocate who also submitted reply to application. Even if submissions of learned for respondent as also pleadings of respondent are taken to be correct that petitioner No.1 had fraudulently obtained signature of respondent on blank papers and she was not aware about proceedings of divorce, then also on coming to know about such decree, the respondent could have filed an application

for setting aside of decree of divorce for reasons available to her or could have challenged the same by filing an appeal. Instant petition is filed by petitioners with main ground that there is decree of divorce in favour of petitioner No.1. On issuance of notice of this proceeding, vakalatnama is filed on behalf of respondent on 16.9.2019. Thereafter an application under Section 23 of the Act of 2005 is filed seeking interim monetary relief but not made any submission whether she assailed decree of divorce and final order is passed in that proceedings. Even, during the course of final hearing, there is no submission on the part of respondent that decree of divorce (Annexure P-4) has been set aside by the Court below.

13. In case of **Krishna Bhattacharjee (supra)** Hon'ble Supreme Court has discussed the difference between decree of divorce and decree of judicial separation and held thus:-

“23. In view of the aforesaid pronouncement, it is quite clear that there is a distinction between a decree for divorce and decree of judicial separation; in the former, there is a severance of status and the parties do not remain as husband and wife, whereas in the later, the relationship between husband and wife continues and the legal relationship continues as it has not been snapped. Thus understood, the finding recorded by the courts below which have been concurred by the High Court that the parties having been judicial separated, the appellant wife has ceased to be an “aggrieved person” is wholly unsustainable.”

14. Considering the facts and circumstances of present case, as discussed above; decisions of Hon'ble Supreme Court in cases of **Inderjit Singh Grewal (supra)** & **Krishna Bhattacharjee (supra)** wherein Hon'ble Supreme Court in earlier case has arrived at conclusion that unless and until decree of divorce is set aside, it will remain in force and treated the marriage to be dissolved without quashing proceedings in earlier case; in latter case Hon'ble Supreme Court has treated decree of judicial separation different from that of decree of dissolution of marriage, there

is no severance and while interpreting provisions of the Act of 2005, particularly the provision that as at one point of time lived together in a shared household, came to the conclusion that 'domestic relationship' will continue for the judicially separated woman also.

15. In the facts of present case, it is not in dispute that there is decree of divorce passed by the Court of competent jurisdiction. Though the counsel for respondent submitted that respondent was not aware of any 'divorce proceedings' before the Court, but order sheets would show that the respondent was represented by counsel. Be that as it may, it is not the case of respondent that the decree of divorce was challenged and it was set aside. In view of above, there is severance of relationship of husband and wife between the petitioner and respondent, and at present are not having any domestic relationship. For maintaining an application under the Act of 2005, there shall be 'domestic relationship' existing between the parties, which in the case in hand is not there as there was severance of domestic relationship.
16. For the foregoing discussions, I am of the view that continuing with the proceedings under Section 12 of the Act of 2005 will amount to abuse of process of law.
17. In view of above, the petition is allowed and the proceedings pending before the Judicial Magistrate 1st Class, Akaltara, District Janjgir Champa (CG) in Complaint Case No.1/2019 are quashed.

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-