

**NAFR**

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**WPCR No. 220 of 2017**

**Order Reserved on : 12.07.2021**

**Order Delivered on : 28.07.2021**

Deepak Das, S/o Janthir Das, Aged About 41 Years, R/o Safia, Tehsil Janjgir, District- Janjgir-Champa, presently posted as Associate Professor Hidayatullah National Law University, Abhanpur, Naya Raipur, District- Raipur (C.G.)

**---- Petitioner**

**Versus**

Smt. Anita Das, W/o Deepak Das, Aged About 32 Years, R/o Quarter No. 223, Ward No. 33, Shanti Nagar Grih Nirman Mandal Colony, Balco Nagar, Korba, Thana- Balco, District & Tehsil- Korba (C.G.)

**---- Respondent**

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| For Petitioner | : | Ms. Juhi Jaiswal, Advocate. |
| For Respondent | : | Mr. S.V. Purohit, Advocate. |

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**Hon'ble Shri Justice Narendra Kumar Vyas**

**CAV Order**

1. The petitioner/ husband has filed this writ petition under Article 226 of Constitution of India, challenging the order dated 05.05.2017 (Annexure P/1) passed by learned Sessions Judge, Korba (C.G.) in Criminal Appeal No. 03/2017 (Smt. Anita Das Vs. Deepak Das), whereby the appeal preferred by the respondent/wife has been allowed and restored M.Cr.C. No. 20/2015 which was dismissed by Judicial Magistrate First Class, Korba (C.G.) for want of prosecution on 16.12.2016.
2. The brief facts as projected by the petitioner are that the marriage between the petitioner and the respondent was solemnized on 07.07.2002 at Balco, Korba according to Hindu customs and out of their wedlock, one male child was born on 08.06.2003. Till birth of the male child, they were peacefully and happily residing together. The petitioner is presently working as an Assistant Professor in Hidayatullah National

Law University, Raipur. On 19.10.2003 Amrit Das, who is the elder brother of the respondent came to the house of the petitioner and informed that the father of the respondent is sick. Hence, the respondent along with their son namely Paras Das went away with her elder brother to her parental home on the pretext of illness of her father. When the petitioner went to house of the respondent, it was found that her father was not ill and the same was only a lie told to the petitioner by the respondent to leave his house. Since then the respondent has not been residing with the petitioner, deserted her matrimonial house and is living with her parents. Despite several attempts and requests made by the petitioner, the respondent had refused to come back to her matrimonial house and cohabited with the petitioner, therefore, the petitioner moved an application before Family Conciliation Centre for resolution of family dispute and approached the President of their Community for re-union of their marital life. Ultimately, the petitioner went to the house of the respondent along with his father in the year 2011 asking her to come back. However, despite all the efforts made by the petitioner, the respondent refused to come home with him and hence, she had not been living with him till their divorce. The respondent filed an application under Section 125 of the Cr.P.C. seeking maintenance of herself and their son Paras Das. Since, the petitioner was deserted by his wife, he has filed an application under Section 13 of the Hindu Marriage Act, 1955 before Family Court, Korba on 28.01.2012 seeking decree of divorce on the ground of cruelty that the respondent had voluntarily left the house of the petitioner and the complaint was made premeditatedly after the petitioner cleared his intention for divorce. Thereafter, the respondent filed an application under Section 9 of the Hindu Marriage Act, 1955 for restitution of conjugal rights before Family Court, Korba, which was dismissed vide order dated 22.08.2015. The petitioner also filed an application under Section 25 of

Guardians and Wards Act, 1980 before Family Court, Korba and the same was dismissed.

3. After filing of the petition for divorce on 28-1-2012 by the petitioner, on 22.06.2013, the respondent filed a complaint under Section 12 (1) of the Protection of Women from Domestic Violence Act, 2005 (for short "the Act, 2005") before Project Officer, Integrated Child Development Scheme, Korba contending that the petitioner used to torture and manhandled her, removed her from his house and he was unwillingly married to her. She further contended that the petitioner has already got second marriage and out of that wedlock, he has two children. Her complaint was registered as Complaint Case No. 20/2015 by the Judicial Magistrate First Class, Korba, who dismissed the complaint for want of prosecution vide its order dated 16.12.2016. The respondent being aggrieved by this order of dismissal of complaint, has filed an appeal as provided under Section 29 of the Act, 2005 before the learned Sessions Judge, Korba contending that the petitioner was continuously harassing and torturing her right from the beginning and he has deserted her. He is working as an Assistant Professor in Hidayatullah National Law University, Raipur and still he is not maintaining her though he is having agricultural land at Village- Sepia, P.S.- Dabhra, District- Janjgir-Champa. The petitioner created pressure to settle their dispute, therefore, she prayed that the petitioner may be directed to give Rs. 90,000/- as monthly maintenance of herself and their son under Section 12 (1) of the Act, 2005.
4. The petitioner filed reply denying the aforesaid allegations made by the respondent. The respondent has filed various interim applications before the Judicial Magistrate First Class, Korba who on 16.12.2016 dismissed the same for want of prosecution. The learned Sessions Judge, Korba considering the fact that the counsel is not present, therefore, the interim application should have been decided on merit and the case should have been fixed for further hearing, but the learned

Judicial Magistrate taking the hypothetical view dismissed the case, which is not proper, as such, the order dated 16.12.2016 was set aside and the appeal was allowed. The petitioner has filed this petition assailing dated 05.05.2017 (Annexure P/1) passed by learned Sessions Judge, Korba (C.G.) in Criminal Appeal No. 03/2017 (Smt. Anita Das Vs. Deepak Das)

5. Learned counsel for the petitioner would submit that the entire proceeding initiated by the respondent has been only to seek vengeance against the petitioner for divorcing her. He would further submit that the petitioner has to travel from Korba to Raipur for every hearing and when he was absent on the date of hearing, the respondent had deliberately misused the judicial process to further harass the petitioner. He would also submit that the respondent has failed to avail the opportunity of hearing before the court below, hence, it is prayed that this petition may kindly be allowed.
6. On the other hand, learned counsel for the respondent would submit that on 16.12.2016 at the time of calling the above mentioned case, she was busy in her mother's treatment, therefore, she could not appear before the court, hence, the case was dismissed for want of prosecution. It is further contended that the submission made by learned counsel for the petitioner is false, baseless and is not acceptable. He would further submit that the details of amount mentioned in the counter affidavit has been filed in pursuance of the order passed by this Court, which is not sufficient amount. The order passed by learned Sessions Judge is legal and justified. The court below has rightly passed the order, which does not warrant any interference by this Court, therefore, it is prayed that the present petition is liable to be dismissed.
7. I have heard learned counsel for the parties and perused the documents annexed to the petition. Learned counsel for the petitioner has filed written submission reiterating grounds taken by her in the Writ Petition and would submit that

initiation of criminal proceedings against the petitioner is nothing but is an abuse of process of law, which is liable to be quashed by this Court exercising power conferred upon this under Article 226 of the Constitution of India . He has placed reliance on **Kapil Agrawal and others Vs. Sanjay Sharma and others**, reported in **2021 SCC online SC 154**, **Pepsi Foods Ltd. & others Vs. Special Judicial Magistrate & others**, reported in **1998(5) SCC749**. **Inderjit Singh Grewal Vs. State of Punjab**, reported in **(2011) 12 SCC 588**. This Court vide order dated 20.07.2017 has stayed the proceeding pending before the Judicial Magistrate First Class, Korba.

8. So far as legal preposition as submitted by learned counsel for petitioner is concerned it is not in dispute that if criminal proceedings are nothing but an abuse of process of law, this court would certainly interfere and quash the proceedings but from perusal of the pleading and the material placed on record, there is neither illegality, irregularity nor any abuse of process of law found in the order of court below (Annexure P/1) dated 05.05.2017, which warrants any interference by this Court exercising power under Article 226 of the Constitution of India. From records, it is clear that the case was pending for orders on various interim applications and instead of rejecting the same, the learned Judicial Magistrate First Class has dismissed the entire case, which was nothing but an absolute illegality committed by Judicial Magistrate First Class, Korba, the same has been rightly rectified by the learned Sessions Judge by restoring the complaint. Even otherwise, it is well settled by Hon'ble the Supreme Court that the Court should have given helping hand to the litigant by adopting liberal approach while restoring the case or condoning the delay because ultimate object of the judicial system is that the case should be decided on merits instead of dismissal for want of prosecution on some technicality. Therefore, order passed by the Sessions Judge is legal and justified which is not liable to be interfered with by this Court.

Therefore, I do not find any illegality or irregularity in the order passed by the Sessions Judge, warranting interference by this Court in exercise of power under Article 226 of the Constitution of India, therefore, this petition is liable to be and is hereby dismissed.

9. As the matter is pending since 2017, it is directed that the learned Judicial Magistrate First Class shall decide the case within an outer limit of one year from the date of appearance of both the parties after affording an opportunity of hearing to the parties to adduce evidence, if any. The parties are directed to appear before the Judicial Magistrate First Class on 23<sup>rd</sup> August 2021 and thereafter, the matter will be decided within a period of one year from the first date of appearance given before that Court. It is made clear that this Court has considered the submissions made by the parties for the purpose of deciding the legality and propriety of impugned order dated 05.05.2017 only and the same will not adversely affect the right of petitioner to take any stand to defend or to protect his interest before the learned trial Court. All the contentions raised by the parties are left open which may be decided by learned trial Court without being influenced by any observation made by this Court .
10. In view of the above, the instant writ petition is dismissed. No order as to costs.
11. The interim order passed by this Court on 20-07-2017 stands vacated.

**Sd/-**  
**(Narendra Kumar Vyas)**  
Judge