

HIGH COURT OF CHHATTISGARH, BILASPUR**Proceedings through Video Conferencing****Criminal Revision No. 357 of 2021**

Deepak Chaudhary, aged about 33 years, son of Late Makhan Lal Chaudhary, resident of Matrachaya Bhavan, Santosh Nagar Chowk, Chhatisgarh Nagar, P.S. Takarapara, Tehsil & District Raipur (C.G.)

---- Petitioner

Versus

Ritika Das, aged about 27 years, wife of Deepak Chaudhary (wrongly mentioned as son of, in the impugned order), resident of D-314, Aamrrapali Vanchal City, Near Indian Oil Petrol Pump, Bhilai Power House, District Durg (C.G.)

----Respondent

For Petitioner	:	Mr. Ankur Agrawal, Advocate.
For Respondent	:	None present, though served.

Hon'ble Shri Justice N.K. Chandravanshi**Order On Board**

24.08.2021

(1) This criminal revision has been preferred against the order dated 28.01.2021 passed by First Upper Sessions Judge, Raipur in Criminal Appeal No. 404/18 whereby appeal filed by the applicant against the order dated 28.11.2019 passed by Judicial Magistrate, First Class, Raipur in Criminal (Complaint) Case No. 216/2019 has been dismissed.

(2) Facts of the case leading to filing of this criminal revision are that non-applicant/wife (henceforth "wife") has filed complaint under Section 12 of The Protection of Women from Domestic Violence Act, 2005 (henceforth "Act, 2005")

against the applicant/husband (henceforth “husband”) stating *inter alia* that husband and his family members have caused her domestic violence by various physical and mental torture, therefore, she be provided compensatory allowance to the tune of Rs.10 lakhs, maintenance allowance to the tune of Rs. 50,000/- per month and other relief provided by-law.

(3) In that case, husband has filed preliminary objection mentioning that he has filed an application before the 2nd Additional Principal Judge, Family Court, Raipur for declaring their marriage null & void; physical relation as husband & wife has never been established between them and non-applicant/wife has lived with him only for 3 months & 11 days, therefore, she is not entitled to get any relief under the Act, 2005. Thus, her application filed under Section 12 of the Act, 2005 is liable to be dismissed.

(4) After hearing the parties, learned Judicial Magistrate, First Class, Raipur vide its order dated 28.11.2019 dismissed the preliminary objection application filed by the husband. In an appeal preferred by him, learned First Upper Sessions Judge, Raipur has also dismissed the appeal by affirming the order of trial Magistrate stating that there have been domestic relation between husband & wife, and wife has also filed an application under the Act, 2005 mentioning various torture committed by the husband, therefore, she is very much competent to file application under the Act, 2005 and reasons assigned by husband with regard to non-maintainability of the case is subject matter of merits of the case.

(5) Learned counsel for the husband would submit that when dispute arose between husband and wife, then several efforts were made to settle their dispute in counseling but wife has refused to live with husband, after that husband filed divorce petition, thereafter, wife has filed various applications against him. He would further

submit that Rs.20,000/- monthly maintenance has already been awarded in favour of wife in a proceeding under Section 125 of the Code; Rs. 500/- per hearing for travelling expenses and Rs.15,000/- lumpsum amount as litigation expenses has also been granted in favour of wife in a divorce petition filed by husband. He further submits that since husband has filed an application before the Second Additional Principal Judge, Family Court, Raipur to declare their marriage null & void, as physical relation between them has never been established and wife has lived only 3 months & 11 days with the husband and also she has been granted maintenance amount and other expenditure in other cases, therefore, she is not entitled to get any further relief. Despite that, learned First Upper Sessions Judge, Raipur has dismissed the appeal preferred by the husband, which is erroneous and unsustainable in law, therefore, the impugned order is liable to be set aside.

(6) I have heard learned counsel for the applicant and perused the material available on record.

(7) It is not in dispute that marriage between husband & wife was solemnized on 13.12.2017 and they were living together as husband & wife for a period of 3 months & 11 days. It is also mentioned in the impugned order that during this period, they went to Thailand for a week. These facts were also mentioned by counsel for the husband during the course of hearing.

(8) Considering the aforesaid facts, learned Appellate Court while mentioning relevant provisions of the Act, 2005 has held that domestic relation between husband and wife is well established. Although, it is argued that physical relation between them has never been established but it is not necessary to have domestic relation between them because aforesaid facts show that they were living together as husband & wife for

more than three months and also they had gone to Thailand for a week. Wife has filed an application under Section 12 of the Act, 2005 mentioning that her husband and his relatives have tortured her and also committed domestic violence with her.

(9) Looking to the aforesaid facts, I do not find any substance in the argument advanced on behalf of learned counsel for the husband with regard to non-maintainability of the application filed by wife. If amount of maintenance and amount for other expenses has been granted to the non-applicant/wife, then it can be considered during passing of the order on an application filed under Section 12 of the Act, 2005, but this also could not be a ground for dismissal of the said application filed by wife.

(10) In view of the foregoing discussion, I do not find any illegality or infirmity in the impugned order warranting interference by this Court in the instant revision petition.

(11) Consequently, the criminal revision, being without substance, is liable to be and is hereby dismissed at the admission stage itself.

Sd/-

(N.K.Chandravanshi)
Judge

D/-

