

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 549 of 2021

Order Reserved on : 18.06.2021

Order Delivered on : 30.06.2021

1. Mohd. Fahim Shekhani, Aged About 32 Years (wrongly mentioned as 25), S/o Hazi Mohd. Aslam Shekhani.
2. Hazi Mohd. Aslam Shekhani, Aged About 54 Years (wrongly mentioned as 55), S/o Late Ishak Shekhani.
3. Khairun Nisha, Aged About 49 Years, W/o Hazi Mohd. Aslam Shekhani.

All R/o M/s Nurani Steel Kadrapara, Raipur Road, Bemetara and Aslam Hardware Bazarpara, Bemetara, Tahsil and Thana, District- Bemetara (C.G.)

---- Petitioners

Versus

Amrin Bano, Aged About 25 Years, W/o Fahim Shekhani, D/o Late Abdul Jabbar Memon, By Caste- Muslaman, R/o Civil Line, Dharamjaygarh, Tahsil- Dharamjaygarh, District- Raigarh (C.G.)

---- Respondent

For Petitioners : Mr. Parag Kotecha, Advocate.

Hon'ble Shri Justice Narendra Kumar Vyas

CAV Order

1. The petitioners have filed present petition under Section 482 of the Cr.P.C. against order dated 02.02.2021 passed by Judicial Magistrate First Class, Dharamjaigarh, District- Raigarh (C.G.), for quashing of the complaint filed by respondent under Section 12 of Protection of Woman From Domestic Violence Act, 2005 (for short "the Act, 2005") , who is wife of petitioner No. 1.
2. The brief facts as projected by the petitioners are that petitioner No. 1 and the respondent is husband and wife and her marriage was solemnized as per Muslim Law on 22.01.2015. The petitioners have harassed her and committed

cruelty against the respondent, therefore, she has filed a complaint under Section 498A of I.P.C. before learned Judicial Magistrate First Class, Dharamjaigarh, District- Raigarh (C.G.) which is pending consideration, thereafter, she filed application under Section 125 of the Cr.P.C. for grant of maintenance and after that she filed complaint on 27.10.2018 against the petitioners under Section 12 of the Act, 2005. On 27.10.2018, she has filed the complaint stating that she has been suffering of domestic violence by the petitioners and prayed for restraining petitioners from repetition of domestic violence. She has also claimed that she may be allowed to enter into house where she was residing at her matrimonial house as per Section 19 of the Act. The respondent has also filed for monetary relief under Section 20 of the Act, 2005. The respondent has claimed custody of child as per Section 21 of the Act, 2005. She has also claimed compensation under Section 22 of the Act, 2005.

3. The learned Judicial Magistrate First Class taking cognizance on the complaint, has issued notice to the petitioners. The petitioners have filed an application under Section 203 of the Cr.P.C. for dismissal of the complaint as it is barred by limitation mainly contending that the respondent has deserted matrimonial house of the petitioners on 04.04.2017, whereas she has filed present complaint on 27.10.2018 i.e. after lapse of one year and six months, therefore, it is barred by limitation as per Section 468 of the Cr.P.C.
4. It is contended by learned counsel for the petitioners that after expiry of one year, the complaint will be barred by limitation as per Section 31 of the Act, 2005. If an offence under this Act is committed and shall be punishable with imprisonment of either description for a term which may extend to one year, or with fine which may extend to twenty thousand rupees, or with both. The limitation for filing complaint is one year whereas present complaint has been filed after one year, therefore, it is

delayed and the same is liable to be dismissed on this count alone.

5. The respondent replied to the application contending that as per Section 4 of the Act, 2005, it is continued cause of action, therefore, Section 468 of the Cr.P.C. is not applicable and the application has been filed to prolong the matter with ulterior motive and prayed for rejection of the application. The learned Judicial Magistrate First Class, Dharamjaigarh vide its order dated 02.02.2021 dismissed the objection raised by the petitioners observing that it is continued cause of action. Relying on the judgment of various High Court, the trial court recorded finding that it is continued cause of action, therefore, the application is within limitation and the objection raised by the petitioners is decided on merits and is rejected. This order as well as cognizance of the offence were challenged by the petitioners before this Court by filing the present petition.
6. Learned counsel for the petitioners relies upon the judgment of the Supreme Court in **Inderjit Singh Grewal Vs. State of Punjab & another**¹, and submits that as per this judgment, the trial court has committed irregularity and illegality in passing the impugned order, which is liable to be quashed by this Court exercising inherent power under Section 482 of Cr.P.C.
7. Before advertng to the case, it is necessary to examine the various provisions of the Act, 2005, which has been enacted with an object 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.
8. Section 2(a) of the Act, 2005 defines 'aggrieved persons', which 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. Section 3 defines 'domestic violence'. Chapter IV deals with procedure for obtaining orders of reliefs. Section 12

¹ (2011) 12 SCC 588

deals with procedure for filing of application to Magistrate. Section 17 deals with right to reside in a shared household. Section 18 deals with protection orders. Section 19 deals with residence orders. Section 20 deals with monetary reliefs to meet the expenses incurred and losses suffered by the aggrieved persons and any child of the aggrieved person as a result of domestic violence. Section 21 deals with custody orders, which provides notwithstanding anything contained in any other law for the time being in force, the Magistrate may, at any stage of hearing of the application for protection order or for any other relief under this Act grant temporary custody of any child or children to the aggrieved person or the person making an application on her behalf and specify, if necessary, the arrangements for visit of such child or children by the respondent. Section 22 deals with compensation order, in addition to other reliefs as may be granted under this Act, the Magistrate may on an application being made by the aggrieved person, pass an order directing the respondent to pay compensation and damages for the injuries, including mental torture and emotional distress, caused by the acts of domestic violence committed by that respondent. Section 28 of Act deals with the procedure to be followed while hearing complainant, as per this Section, Sections 12, 18, 19, 21, 22, 23 & 31 shall be governed by the procedure of the Code of Criminal Procedure 1973.

9. The Central Government exercising its power conferred, u/s 37 of the Act has framed Rules "the Protection of Women from Domestic Violence Rules, 2006 (for short "the Rules, 2006"). These Rules are effective from 26th October, 2006. The rule 15(6) of the Rules provides that when charges are framed under section 31 or in respect of offences under section 498A of Indian Penal Code, 1860 or any other offence not summarily triable, the court may separate the proceedings from such offences to be tried in the manner prescribed under code of Criminal Procedure, 1973 and proceed to summarily

try the offence of the breach of protection order under section 31, in accordance with the procedure of XXI of the Code of Criminal Procedure, 1973.

10. Learned counsel for the petitioners submits that as per Section 468 of the Cr.P.C., cognizance on the complaint after period of one year cannot be taken by the Judicial Magistrate First Class as punishment has been provided in this Act is less than one year, therefore, the complaint is barred by limitation and the same is liable to be rejected. He would further submit that since the respondent has left the matrimonial house on 04.04.2017 thereafter, she has filed the complaint under Section 12 of the Act, 2005 on 27.10.2018, it is barred by limitation as per Section 468 of the Cr.P.C., which reads as under:-

“468. Bar to taking cognizance after lapse of the period of limitation.- (1) Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation.

(2) The period of limitation shall be-

- (a) six months, if the offence is punishable with fine only;
- (b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;
- (c) three years, if the offence is punishable with imprisonment for term exceeding one year but not exceeding three years.

[(3) For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.]”

11. Learned counsel for the petitioners drew attention towards para 32 of the judgment passed by the Supreme Court in **Inderjit Singh Grewal (Supra)**, which reads as under:-

“32. Submissions made by Shri Ranjit Kumar on the issue of limitation, in view of the provisions of Section 468 Cr.P.C., that the complaint could be

filed only within a period of one year from the date of the incident seem to be preponderous in view of the provisions of Section 28 and 32 of the Act 2005 read with Rule 15(6) of The Protection of Women from Domestic Violence Rules, 2006 which make the provisions of Cr.P.C. applicable and stand fortified by the judgments of this court in *Japani Sahoo v. Chandra Sekhar Mohanty*, AIR 2007 SC 2762; and *Noida Entrepreneurs Association v. Noida & Ors.*, (2011) 6 SCC 508.”

12. Before considering the submission made by learned counsel for the petitioners, it is necessary to examine the concept of continued cause of action. It is pertinent to mention that the word 'continued offence' is not defined in the Act, 2005, but it is a subject matter of interpretation by the Supreme Court in various judgments. The Supreme Court in **Bhagirath Kanoria & others Vs. State of M.P.**², held as under:-

“10. It is impossible to accept Shri Bobde's contention. The expression 'continuing offence' is not defined in the Code but, that is because expressions which do not have a fixed connotation or a static import are difficult to define. How difficult it is to put the concept of a continuing offence in a strait jacket is illustrated by the decision of this Court in *State of Bihar Vs. Deokaran Nenshi and Another*,¹. In that case, respondents who were owners of a stone quarry in Bombay were required to forward certain annual returns in respect of the preceding year, on or before January 21 in each year. Failure to forward the returns as required is punishable with fine u/s 66 of the Mines Act, 1952. The respondents having failed to furnish the returns by the due date, which was January 21, 1960 a complaint was filed against them in a Court at Dhanbad on April 12, 1961. One of the contentions of the respondents was that the complaint was barred by limitation u/s 79 of the Mines Act which provided that no Court shall take cognizance of an offence under that Act unless the complaint was filed within six months of the date of the offence. The Explanation to Section 79 provided that if the offence in question was a continuing offence, the period of limitation shall be computed with reference to every part of the time during which the said offence continued. It was held by this Court that

² (1984) 4 SCC 222

the infringement which occurred on January 21 of the relevant year was complete when the owner failed to furnish the annual returns on that date. Since, the Regulation did not lay down that the owner would be guilty of an offence if he continued to work the mine without furnishing the returns, the offence was non-continuing and, therefore, the complaint was time barred. While discussing the question as to when an offence could be said to be a continuing offence, the Court made the following observations :

A continuing offence is one which is susceptible of continuance and is distinguishable from the one which is committed once and for all. It is one of those offences which arises out of a failure to obey or comply with a rule or its requirement and which involves a penalty, the liability for which continues until the rule or its requirement is obeyed or complied with. On every occasion that such disobedience or non-compliance occurs and recurs, there is the offence committed. The distinction between the two kinds of offences is between an act or omission which constitutes an offence once and for all and an act or omission which continues and therefore, constitutes a fresh offence every time or occasion on which it continues. In the case of a continuing offence, there is thus the ingredient of continuance of the offence which is absent in the case of an offence which takes place when an act or omission is committed once and for all. (p. 1006)

11. This passage shows that apart from saying that a continuing offence is one which continues and a non-continuing offence is one which is committed once and for all, the Court found it difficult to explain as to when an offence can be described as a continuing offence. Seeing that difficulty, the Court observed that a few illustrative cases would help to bring out the distinction between a continuing offence and a non-continuing offence. The illustrative cases referred to by the Court are three from England, two from Bombay and one from Bihar.

19. The question whether a particular offence is a continuing offence must necessarily depend upon the language of the statute which creates that offence, the nature of the offence and, above all, the purpose which is intended to be achieved by constituting the particular act as an offence. Turning to the matters before us, the of-

fence of which the appellants are charged is the failure to pay the employer's contribution before the due date. Considering the object and purpose of this provision, which is to ensure the welfare of workers, we find it impossible to hold that the offence is not of a continuing nature. The appellants were unquestionably liable to pay their contribution to the Provident Fund before the due date and it was within their power to pay it, as soon after the due date had expired as they willed. The late payment could not have absolved them of their original guilt but it would have snapped the recurrence. Each day that they failed to comply with the obligation to pay their contribution to the fund, they committed a fresh offence. It is putting an incredible premium on lack of concern for the welfare of workers to hold that the employer who has not paid contribution or the contribution of the employees to the Provident Fund can successfully evade the penal consequences of his act by pleading the law of limitation. Such offences must be regarded as continuing offences, to which the law of limitation cannot apply."

13. The Supreme Court in **Krishna Bhattacharjee Vs. Sarathi Choudhury & others**³, has examined the scheme of the Act, 2005 and held that the Act, 2005 gives more effective protection of constitutional right to women and to ensure that there is victim of any crime of domestic violence being social legislature and has distinguished the judgment passed by the Supreme Court in **Inderjit Singh Grewal (Supra)**, in para 15. The same is extracted below:-

"15. In the instant case, as has been indicated earlier, the courts below as well as the High Court have referred to the decision in *Inderjit Singh Grewal* (supra). The said case has to be understood regard being had to the factual expose therein. The Court had referred to the decision in *D. Velusamy Vs. D. Patchaiammal*, wherein this Court had considered the expression "domestic relationship" Under Section 2(f) of the Act and judgment in *Savitaben Somabhai Bhatiya Vs. State of Gujarat and Others*, and distinguished the said judgments as those cases related to live-in relationship without marriage. The Court analyzing the earlier judgments opined that the couple must hold themselves out to soci-

³ (2016) 2 SCC 705

ety as being akin to spouses in addition to fulfilling all other requisite conditions for a valid marriage. The said judgments were distinguished on facts as those cases related to live-in relationship without marriage. The Court opined that the parties therein had got married and the decree of the civil court for divorce subsisted and that apart a suit to declare the said judgment and decree as a nullity was still pending consideration before the competent court.

31. Thereafter, the Court referred to the authorities and adverted to *Deokaran Nenshi* (supra) and eventually held:

“19. The question whether a particular offence is a continuing offence must necessarily depend upon the language of the statute which creates that offence, the nature of the offence and, above all, the purpose which is intended to be achieved by constituting the particular act as an offence.”

32. Regard being had to the aforesaid statement of law, we have to see whether retention of stridhan by the husband or any other family members is a continuing offence or not. There can be no dispute that wife can file a suit for realization of the stridhan but it does not debar her to lodge a criminal complaint for criminal breach of trust. We must state that was the situation before the 2005 Act came into force. In the 2005 Act, the definition of "aggrieved person" clearly postulates about the status of any woman who has been subjected to domestic violence as defined Under Section 3 of the said Act. "Economic abuse" as it has been defined in Section 3(iv) of the said Act has a large canvass. Section 12, relevant portion of which have been reproduced hereinbefore, provides for procedure for obtaining orders of reliefs. It has been held in *Inderjit Singh Grewal* (supra) that Section 498 of the Code of Criminal Procedure applies to the said case under the 2005 Act as envisaged Under Sections 28 and 32 of the said Act read with Rule 15(6) of the Protection of Women from Domestic Violence Rules, 2006. We need not advert to the same as we are of the considered opinion that as long as the status of the aggrieved person remains and stridhan remains in the custody of the husband, the wife can always put forth her claim Under Section 12 of the 2005 Act. We are disposed to think so as the status between the parties is not severed because of the decree of dissolution of marriage. The concept of "continuing offence" gets attracted from the date of deprivation of stridhan, for neither the husband nor any other family members can have any right over the stridhan and they remain the custodians. For the purpose of the 2005 Act, she can submit an applica-

tion to the Protection Officer for one or more of the reliefs under the 2005 Act.

33. In the present case, the wife had submitted the application on 22.05.2010 and the said authority had forwarded the same on 01.06.2010. In the application, the wife had mentioned that the husband had stopped payment of monthly maintenance from January 2010 and, therefore, she had been compelled to file the application for stridhan. Regarding the said concept of "continuing offence" and the demands made, we are disposed to think that the application was not barred by limitation and the courts below as well as the High Court had fallen into a grave error by dismissing the application being barred by limitation.

34. Consequently, the appeal is allowed and the orders passed by the High Court and the courts below are set aside. The matter is remitted to the learned Magistrate to proceed with the application Under Section 12 of the 2005 Act on merits.

14. From the above law laid down by the Hon'ble Supreme Court as well as scheme of Act, 2005, it is quite clear that the reliefs sought by the respondent is of continued in nature as she has prayed for restraining petitioners from repetition of domestic violence, her entrance into matrimonial house where she was residing with respondent, monetary relief, custody of child and for grant of Compensation, as such, the learned Judicial Magistrate First Class has not committed any irregularity or illegality in rejecting the objection raised by the petitioners, as well as issuance of process which warrants interference of this Court exercising power under Section 482 of the Cr.P.C.
15. Accordingly, the instant petition being devoid of merits, is liable to be and is hereby dismissed at motion stage itself.

Sd/-
(Narendra Kumar Vyas)
Judge