

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPCR No. 531 of 2019

1. Chandransu Tiwari S/o Fenkulal Tiwari Aged About 36 Years R/o Kailash Nagar Kawardha, District Kabirhdam Chhattisgarh.
2. Fenkulal Tiwari S/o Baldev Tiwari Aged About 63 Years R/o Kailash Nagar Kawardha, District Kabirhdam Chhattisgarh.
3. Rishi Tiwari S/o Fenkuram Tiwari Aged About 28 Years R/o Kailash Nagar Kawardha, District Kabirhdam Chhattisgarh.
4. Pushpanjali Pandey W/o Vivek Pandey, Aged About 34 Years R/o Village Near Kawardha, Petrol Pump, Ward No. 1, Kawardha, District Kabirdham, Chhattisgarh.

---- Petitioners

Versus

1. State Of Chhattisgarh Through Station House Officer, Police Station, Bemetara, District Bemetara Chhattisgarh.
2. Shraddha Tiwari W/o Chandrasu Tiwari, Resident Of Village Ward No. 5 Mohabatta Road Bemetara Thana, Tahsil And District Bemetara Chhattisgarh.

---- Respondents

For Petitioners : None.

For State : Shri Vikash Shrivastava, Panel Lawyer

Hon'ble Shri Justice Narendra Kumar Vyas

Order on Board

16.08.2021

1. The learned Judicial Magistrate First Class, Bemetara in Miscellaneous Case No. 145/2016 (Chandrasu Tiwari and Others vs. Shraddha Tiwari and Anr.) has rejected the preliminary objections raised by the petitioners contending that application filed under Section 12 of the Protection of Women from Domestic Violence Act, 2005 is not maintainable as on complaint made by respondent No. 2 the police of police station, Kawardha has registered offence under Section 498/34 IPC which is pending consideration before the Chief Judicial Magistrate, Kawardha as Criminal Case No. 639/2015, as such, the application filed under Section 12 of the Protection of Women from Domestic Violence Act is not maintainable. It was further

contended that pursuant to order dated 30.04.2016 passed by the Family Court, Kabirdham petitioner No. 1 is already paying maintenance to his daughter Avika Tiwari. Therefore, when case under Section 498/34 IPC is already pending consideration, separate case under Section 12 of the Protection of Women from Domestic Violence Act is not maintainable.

2. Learned Judicial Magistrate First, Bemetara has recorded finding that as per the provisions of Section 26 of the Protection of Women from Domestic Violence Act application filed under Section 12 of the Protection of Women from Domestic Violence Act is maintainable as it cannot be decided without recording of the evidence, therefore, the objections raised by the petitioners were rejected by the Judicial Magistrate First Class on 06.04.2019.
3. Being aggrieved with the order dated 06.04.2019, the petitioners filed revision before the Sessions Judge, Bemetara registered as Criminal Revision No. 13/2019. The learned Sessions Judge vide its order dated 17.06.2019 rejected the said revision petition by recording the findings that there is no illegality or irregularity committed by the Judicial Magistrate First Class.
4. Aggrieved with both the orders, the petitioners have filed the present writ petition under Article 226 of the Constitution of India. It has been well settled by the Hon'ble Supreme Court that for determination of the objections with regard to maintainability of the case, where evidence is required, then it cannot be decided as preliminary issue but it can be decided after recording of the evidence with all the other issues to be determined during the course of trial. Therefore, learned trial Court has rightly rejected the objection raised by the petitioner and it has been rightly affirmed by the Revisional Court.
5. The order passed by the Revisional Court dated 17.06.2019 in Criminal Revision No. 13/2019 and order passed by the Judicial Magistrate First Class dated 06.04.2019 in Miscellaneous Case No. 145/2016 are proper and do not call for interference by this Court. The order passed by the Revisional Court dated 17.06.2019 and order passed by the Judicial Magistrate First

Class dated 06.04.2019 are hereby affirmed.

6. Accordingly, the present writ petition (criminal) is dismissed without commenting anything on the merits of the case.

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

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