

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 647 of 2021

- Pyare Lal Sahu, S/o Domar Singh Sahu, Aged About 62 Years, R/o Village Sankara (K), Police Station Balod, District- Balod, Chhattisgarh. ---- **Applicant**

Versus

- Smt. Droupati Sahu, W/o Pyare Lal Sahu, Aged About 43 Years, R/o Village Pauwara, Police Station Utai, Tahsil and District Durg Chhattisgarh.

---- **Respondent**

For Applicant	: Shri Praveen K. Dhurandhar, Advocate
For Respondent	: Shri Rajbahadur Singh, Advocate

Hon'ble Shri Justice Gautam Chourdiya

Order on Board

15.12.2021

- 1) The matter is listed for hearing on I.A. No.1/2021, application for grant of stay, however, with the consent of the parties the matter is heard finally.
- 2) The applicant has preferred this revision under Section 397 read with Section 401 of CrPC against the order dated 30.06.2021 passed by learned Sessions Judge, Balod, District- Balod (C.G.) in Criminal Appeal No. 18/2020, upholding the order dated 05.02.2020 passed by the Judicial Magistrate First Class Balod, District- Balod (C.G.) in criminal case No. 14/2016 rejecting the application of the applicant for dismissing the complaint case filed by the respondent at the threshold.

- 3) Learned counsel for the applicant submits that limitation to file complaint for domestic violence case is 1 year whereas the respondent left the house of the applicant in the year 2013 and filed the complaint after three years in 2016 and as such the complaint case was barred by limitation. He submits that the Court below has committed illegality by not properly applying the provisions of Section 468 of CrPC. Reliance has been placed on the judgment of the Hon'ble Supreme Court in the matter of ***Inderjit Singh Grewal Vs. State of Punjab and Another reported in (2012) 2 SCC(Cri) 614.***
- 4) On the other hand, learned counsel for the respondent supports the impugned order.
- 5) Heard learned counsel for the parties.
- 6) In the present case, the matrimonial relation between the parties exist till date as no any separation between them has been ordered by the Court. The respondent filed the petition under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (in short "the Act, 2005") for obtaining monetary relief and residential accommodation from the applicant. As per Section 468 of CrPC, no Court shall take cognizance of any offence of the category specified in sub-section (2) after expiry of period of limitation, which is one year as the alleged offence is punishable with imprisonment for a term not exceeding one year.
- 7) In her application under Section 12 of the Protection of

Women from Domestic Violence Act, 2005 along with affidavit, the respondent Droupati Sahu stated that the applicant was ill-treating her from June, 2013; he used to beat her; with intent to kill her he used to lock her a room and did not give her food. She lodged report against the applicant at Police Station – Balod which was later on compromised by the applicant and he agreed to keep the respondent properly with honour. However, the applicant again started ill-treating her and ousted her from his house and therefore, she started living at her parental house at Village-Pauvara. Upon application for maintenance being filed by the respondent, the II Additional Principal Judge, Family Court, Durg in Misc. Criminal Case No.443/2013 granted maintenance of Rs.2000/- per month in her favour vide order dated 19.10.2015.

- 8) It was further stated in the said application that the applicant is not paying the aforesaid maintenance amount, the respondent has no source of income and after the death of her father, she is unable to maintain herself and that she also has no residential accommodation. Hence by filing the above application she prayed for monetary relief of Rs.25,000/- per month for her survival as also a residential accommodation.
- 9) The application filed by the applicant for dismissing the aforesaid application of the respondent under Section 12 of the Protection of Women from Domestic Violence Act, 2005

at the threshold for being barred by limitation was rejected by the JMFC, Balod and subsequently the said order was affirmed by the Sessions Judge, Balod in Cr.A.No.18/2020 filed by the applicant herein.

10) In the present case, as per averments in the application under Section 12 of the Act, the respondent was being ill-treated by the applicant since June, 2013 and therefore, she was living separately from the applicant at her parental house; the order of maintenance on the application under Section 125 of CrPC was passed on 19.10.2015 and after the death of her father in the year 2015, she filed the application under Section 12 of the Act on 14.9.2015 seeking monetary relief as also a residential accommodation.

11) In the case of ***Krishna Bhattacharjee Vs. Sarathi Choudhury and another (2016) 2 SCC 705***, the Hon'ble Supreme Court held that regard being had to concept of "continuing offence" and demands made by wife, the application made by appellant wife under Section 12 of Act of 2005 after about two years of judicial separation not barred by limitation.

12) In the matter of ***Sri Puttaraju Vs. Smt. Shivakumari, Criminal Revision No.730/2019, order dated 1.4.2021***, the High Court of Karnataka held that when application under Section 12 of the Act is not covered under the term 'offence', Section 468 of CrPC is inapplicable. Therefore, the

application of Section 468 of CrPC to an application under Section 12 of the Act is clearly a misconception.

13) However, in the present case, no order has been passed by the trial Court with regard to monetary and residential accommodation relief sought for by the respondent and as such, in view of Section 472 of CrPC and the judgments in the matter of **Krishna Bhattacharjee & Sri Puttaraju** (supra) as also in the matter of **Anthony Jose Vs. State of NCT of Delhi and others** reported in **2019 CriLJ 800**, in the event of a continuing offence, a fresh period of limitation shall begin to run at every moment of the time during which the offence continues.

14) The judgment relied upon by counsel for the applicant in the matter of **Inderjit Singh Grewal** (supra) is not applicable to the facts of the present case as in the cited case, divorce had already taken place between the parties whereas in the instant case, the matrimonial relation of the parties still exists.

15) For the aforesaid reasons, this Court finds no illegality or perversity in the impugned order, calling for any interference by this court. Accordingly, the revision petition being without any substance is hereby dismissed.

**Sd/-
(Gautam Chourdiya)
Judge**