

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 1193 of 2019

- Vinit Minj, S/o Shri Rafael Minj, Aged About 21 Years, By Cast Oranv R/o Village Asta Ambakona (Kumhartoli), Tahsil Manora, District-Jashpur Chhattisgarh.

---- Applicant

Versus

- Neeta Prajapati, D/o Devlal Ram, Aged About 20 Years, R/o Village Asta Ambakona (Kumhartoli), Tahsil Manora, District-Jashpur Chhattisgarh.

---- Respondent

For Applicants	:	Mr. Lav Sharma, Advocate.
For Respondent	:	Mr. S.V. Purohit, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant
Order On Board

02/02/2021

Heard.

1. The criminal revision has been brought being aggrieved by the order dated 23.7.2019 passed in Criminal Appeal No.54/2017 upholding the order dated 11.8.2017 passed by the C.J.M., Jashpur in Misc. Criminal Case No.29/2016 granting protection order, monetary relief, compensation and residence order in favor of the respondent.
2. It is submitted by the counsel for applicant that no inquiry was made by the learned Magistrate on the issue of marriage/live-in relationship of the applicant with the respondent and the parentage of the child born to the respondent, therefore, the order passed is against the procedure and provisions of law, which is not maintainable. Hence, it is prayed that revision petition be allowed and relief be granted to the applicant.
3. Learned counsel for respondent opposed the revision petition and the submissions made by the applicant counsel. It is submitted that no

error has been committed by the learned Magistrate and the learned appellate Court, as such, there is no need of interference in the impugned order. The revision petition be dismissed.

4. I have heard both the parties and perused the documents on record.
5. Respondent filed an application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (for short' the Act, 2005') against this applicant before the Court of C.J.M., Jashpur. It was stated in the application that the applicant used to exploit the minor respondent by putting her under threat, she was abducted and confined in the house of the applicant in June, 2014 and during this confinement the respondent became pregnant and gave birth to a female child. Subsequent to which the respondent lodged FIR against the applicant. The applicant side proposed for compromise and she was taken in the house of the applicant for some time, however, she was tortured and then dragged out from their house. The respondent made a complaint to the Protection Officer of Women & Child Welfare Department and it was through that Welfare Department application under Section 12 of the Act, 2005 was filed.
6. The applicant replied to the application denying relation with the respondent and stating that no marriage has been performed by the applicant with the respondent. Applicant has also denied the parentage of the child born to the respondent. DNA test was proposed for determining the parentage of the child born to the respondent but the respondent refused to submit himself for the test. Denying the other allegations, the prayer was made to reject the application.
7. Respondent made statement in the inquiry before the Magistrate submitting according to the contents of application. In cross-examination she has admitted that marriage has not been performed, but her statement remained unrebutted on the point of her relationship with the applicant and regarding birth of child. Witness No.2 Chandra Prakash Singh supported the version of the respondent and his statement also remained unrebutted in cross-examination. Similar is the statement of witness No.3 Sudha Kumari.
8. Witness from the applicant side namely-Shirai has denied knowledge about the relationship of the applicant with the respondent. He has not made any statement of rebuttal to the statement of witnesses from the

respondent side. Similar is the statement of another witness Subhash Ram. Applicant Vineet Minj examined himself stating that he never abducted the respondent nor had any relationship with her. He had denied the parentage of the child born to the respondent and stated that the respondent had lodged false FIR against him. In cross-examination, he has denied all the suggestions given by the respondent side.

9. The learned Magistrate upon appreciation of the evidence led by the respondent side and the applicant side disbelieved the applicant version and believed the respondent version, without assigning any reason. To hold that there had been relationship between applicant and the respondent in the nature of marriage there should have been presence of evidence. In the evidence of the respondent Neeta Prajapati, she has stated that prior to the year 2014 the applicant used to like her but she did not like him and subsequent to that the applicant threatened her and forcefully raped her. She has stated that the applicant abducted her, confined her in his house and during which child was born. On appreciating this statement it would be seen that according to the statement of the respondent herself there appears to be no development of any relationship between the applicant and the respondent. On the contrary, it shows that the applicant was the captor and the respondent was the captive in his house as she did not like applicant. Hence, liking of the applicant and the respondent was not mutual for each other and this relationship cannot be regarded as a relationship in the nature of marriage.
10. The learned Magistrate and the learned appellate Court both have not appreciated the statement of the witnesses in this aspect. In case of exploitation of a woman by a man, the relationship in the nature of marriage cannot be remotely presumed or assumed, hence, in the absence of such relationship, the entitlement of the respondent for relief under Sections 18, 19, 20 & 22 could not have been considered and granted. Hence, I am of this view that the orders of the Magistrate and the appellate Court both suffer from grave infirmity, which are not at all sustainable. The orders passed have no legality, propriety or correctness, hence, the same are liable to be set aside. Accordingly, the revision is allowed. The impugned order and the order of the Chief

Judicial Magistrate, Jashpur both are set aside.

Sd/-

(Rajendra Chandra Singh Samant)
Judge

Nisha