



2024:CGHC:39625

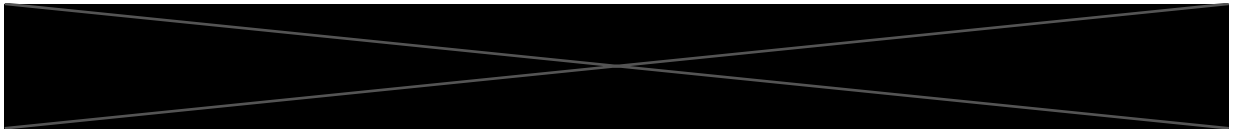
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HIGH COURT OF CHHATTISGARH AT BILASPUR

CRR No. [REDACTED] of 2024

Order reserved on 04.09.2024

Order delivered on 07.10.2024.



... Applicant

versus

1. [REDACTED]
[REDACTED]
[REDACTED]

2. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

... Respondents

For Applicant : Mr. Ramsevak Soni, Advocate
For Respondents : None

Hon'ble Shri Justice Narendra Kumar Vyas

C A V Order

1. Heard on the point of admission.

2. This revision under 438 read with Section 442 of Bharatiya Nagarik Suraksha Sanhita, 2023 has been filed by the applicant against the judgment dated 02.08.2024, passed by Second Additional Sessions Judge, Manendragarh District Korea in Criminal Appeal No. 25/2023 by which the learned Second Sessions Judge dismissed the criminal appeal filed by the applicant under Section 29 of the Protection of Women from Domestic Violence Act, 2005, arising out of order dated 27.02.2023 passed by Judicial Magistrate First Class, Janakpur District Korea in Misc. Criminal Case No. 14 of 2021, allowing the application filed by the respondent, directed the applicant to pay Rs. 4000/- per month to the respondent No.1 and Rs. 2000/- per month to his respondent No.2 towards maintenance and also compensation of Rs. 50,000/- in five installments.
3. Facts of the case are that the marriage between applicant and respondent No. 1 was solemnized in the year 2016 and from their wedlock respondent No. 2 was born. The respondent No.1 filed an application under 12 of the Protection of Women from Domestic Violence Act, 2005 before Judicial Magistrate First Class Janakpur for grant of maintenance contending that the applicant has tortured her by consuming liquor and used filthy language which has compelled her to file a complaint before Police against the applicant thereafter respondent No.1 filed a complaint under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (in short as D.V. Act, 2005) claiming relief for maintenance.

4. The applicant filed reply to the application mainly contending that he is already married and he has three children. It has also been contended that no marriage between the applicant and the respondent No. 1 was solemnized, as such there is no question of birth of respondent No.2 from their wedlock. The documents submitted by the respondent No.1 are forged and fabricated. It has also been contended that she was working as Anganbadi worker therefore, she has prepared forged and fabricated record and would submit that the complaint under Section 12 of the Act is not maintainable.
5. This Court while admission stage itself has called for the records of the Courts below and following facts were revealed from the evidence and material placed before it.
6. The respondent No.1 examined herself as PW-1 and Kaushaliya Bai as PW-2 whereas the applicant has examined himself as DW-1 and Chhirsai as DW-2. The applicant in his evidence has stated that her marriage was solemnized with present applicant in the 2015 at the time of Diwali and he is her husband. She has also stated that soon after birth of respondent No.2 the applicant has left her on 15.08.2017. She lodged the complaint before Police Station and an agreement was arrived at between them. In the evidence she was asked specifically whether the applicant is a married person and facts of three children is of known to her or not which has been denied by the applicant. The applicant is getting salary of Rs. 32,000/- as he has posted as forest guard in the forest department whereas the respondent No.1 is working as Aganbadi

worker and she is getting salary of Rs. 4,000/- which is not sufficient for her and for her daughter also. The other witness namely Smt. Kaushaliya Bai had supported her case.

7. The applicant in his evidence has denied the factum of marriage as well as birth of girl child from their relationship and rest of the averments made in the pleading as well as evidence adduced by respondent No. 1 were also denied by him. The applicant in the cross examination was asked about raising of objection regarding mentioning of his name in place of father's name, he has denied the same and stated that since he was not aware, therefore, there is not required for him to raise objection. The applicant was also confronted with the agreement wherein he has admitted that he will keep respondent No.1 as his wife but in the cross-examination has denied the signature by saying that it seems to be his signature. The witness in the entire evidence has nowhere stated that respondent No.1 knowing the fact that the applicant was married with her still she resides with her and from their relationship, a girl child was born.
8. Learned Judicial Magistrate First Class, Janakpur, after appreciating the evidence, material on record by recording its finding in paragraph-11 that with regard to raising of objection about matching of signature in the agreement he has not taken sufficient defence by examining the signature through hand writing expert, therefore, it cannot be said that the averments made in the agreement or the agreement is false and fabricated. Learned trial Court has recorded its finding that as per Section 2 (f) of the Act, they were living together and from their

relationship the respondent No.2 was born, therefore, the application is maintainable under the Act. The learned Magistrate has further recorded its finding that that the act committed by the applicant falls within the ambit of domestic violence as defined in Section 3 of the Act and accordingly allowed the application and awarded maintenance as stated above. Being aggrieved with the order passed by the Judicial Magistrate First Class, the applicant filed an appeal under Section 29 of the Domestic Violence Act which was also dismissed, by the impugned order dated 02.08.2024. Hence the revision filed by the applicant.

9. Learned counsel for the applicant would submit that the order passed by both the Courts are completely illegal and contrary to the evidence, material placed by the applicant. He would further submit that the finding recorded by the both the courts below that the relation between the applicant and the respondent No.1 falls within the ambit of domestic relationship which is incorrect and contrary to the provisions of the Act, as such treating the alleged act to be domestic violence (presuming but not admitting) is incorrect and against the provisions of Section 3 of the Act, therefore, the impugned order passed by both the Courts below deserves to be quashed by this Court. To substantiate his submission, he has referred to the judgment of Hon'ble Supreme court in the case of **Indra Sarma vs. V.K.V. Sarma reported in 2013(15) SCC 755** and would refer paragraph 68 which reads as under:-

68. We are, therefore, of the view that the appellant, having been fully aware of the fact that the respondent was a married person, could not have entered into a live-in relationship in the

nature of marriage. All live-in- relationships are not relationships in the nature of marriage. Appellant's and the respondent's relationship is, therefore, not a "relationship in the nature of marriage" because it has no inherent or essential characteristic of a marriage, but a relationship other than "in the nature of marriage" and the appellant's status is lower than the status of a wife and that relationship would not fall within the definition of "domestic relationship" under Section 2(f) of the DV Act. If we hold that the relationship between the appellant and the respondent is a relationship in the nature of a marriage, we will be doing an injustice to the legally wedded wife and children who opposed that relationship. Consequently, any act, omission or commission or conduct of the respondent in connection with that type of relationship, would not amount to "domestic violence" under Section 3 of the DV Act.

69. We have, on facts, found that the appellant's status was that of a mistress, who is in distress, a survivor of a live-in relationship which is of serious concern, especially when such persons are poor and illiterate, in the event of which vulnerability is more pronounced, which is a societal reality. Children born out of such relationship also suffer most which calls for bringing in remedial measures by the Parliament, through proper legislation.

10. I have heard counsel for the applicant and perused the records.

11. From the above stated submission made by counsel for the applicant the point to be determined by this Court is whether woman live in relationship is entitled to get maintenance under the Protection of Women from Domestic Violence Act, 2005 or not.

12. To appreciate this point this Court has to see the aims and object of the Act 2005. From perusal of aims and objects, it is quite vivid that this Act has been enacted with an object of ensuring woman's right to reside in her matrimonial home. This act has special feature with special provisions under law which provides protection to a woman live in

violence free home. Section 2(f) of the Act defines domestic relationship which is as under:-

Section 2(f)- Domestic relationship “means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family;

13. Section 3 (a) of the D.V. Act defines domestic violence and section 3 (iv) defines economic abuse which are as under:-

Section 3(a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or

section 3 (iv) of economic abuse:-

3 (iv) economic abuse includes (a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a Court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities ...

14. in the above back ground of the legal position as well as considering the evidence, material placed on record submission made by learned counsel for the applicant that the applicant is already a married person, therefore, the respondent No.1 cannot grant benefit of D.V. Act, as she cannot fall within the ambit of live-in-relationship also is being considered. The submission deserves to be rejected by this Court as the applicant has not produced any evidence on record to establish that the factum of his marriage and his children were known to respondent No.1 and despite this fact she made relationship with the applicant and from

their relationship respondent No.2 was born. In fact, the respondent No.1 in her evidence in paragraph-12 has clearly stated that she was not aware about the factum of marriage of applicant and about his children. Learned Trial Court as well as Appellate Court have recorded its finding that respondent No.2 was born on 15.08.2017 and in the birth record in the place of father's name, name of the applicant has been mentioned which was not disputed or dislodged by the applicant. Similarly, PW-2 Kaushaliya Bai owner of the house where the applicant and respondent No. 1 were living together. Thus the courts below have recorded its finding that the relationship of the applicant and the respondent No.1 falls within the ambit of Domestic relationship. Thus the findings recorded by the learned trial Court and affirmed by the Appellate Court cannot be said that it suffers from perversity or illegality which warrants interference by this Court.

15. The Hon'ble Supreme Court in the case of **Lalita Toppo vs The State of Jharkhand 2019 (13) SCC 796** has considered the provisions of D.V. Act and has held as under:-

3. In fact, under the provisions of the DVC Act, 2005 the victim i.e. estranged wife or live-in-partner would be entitled to more relief than what is contemplated under Section 125 of the Code of Criminal Procedure, 1973, namely, to a shared household also.

16. So far as judgment referred to by learned counsel for the applicant in case of Indra Sarma (supra) the same is distinguishable on the facts as the Hon'ble Supreme Court has considered the fact that the appellant in that case was fully aware of the fact that the respondent was a married

person, as such she could not have entered into live-in-relationship in the nature of marriage. It has also been held that all the live-in-relationships are not relationship in nature of marriage whereas in the present case the respondent No.1 has clearly stated that she was not aware about the family of applicant and the applicant has also not placed any evidence on record to suggest that the respondent No.1 was aware about the marriage and his children, therefore, relationship between the applicant and the respondent is in nature of marriage.

17. Now so far as quantum of maintenance awarded by the learned trial Court to the respondent No.1 Rs. 4,000/- per month and Rs. 2,000/- to respondent No.2 cannot be said to be bonanza or on a higher pedestal, looking to the earning of the applicant who is working as forest guard and getting good amount of salary from the State Government. Thus, on this count also the finding recorded by the trial Court as well as affirmed by the Appellate Court cannot be said that it suffers from perversity or illegality which warrants interference by this Court.
18. Consequently, the instant revision stands dismissed and is liable to be dismissed. Accordingly, it is dismissed.

Sd/-

(Narendra Kumar Vyas)
Judge