

IN THE HIGH COURT OF ORISSA, CUTTACK

CRLREV NO. 608 of 2016

From the order dated 04.04.2016 passed by the S.D.J.M., Bhubaneswar in C.M.C. No.54 of 2016 and order dated 23.07.2016 passed by the Sessions Judge, Khurda at Bhubaneswar in Criminal Appeal No.60 of 2016.

Giridhari Nath Petitioner

-Versus-

Mamitarani Sutar Opp. party

For Petitioner: - Smt. Umarani Panda
Ramakanta Pradhan

For Opp. party: - M/s. Susanta Kumar Dash
Ananga Kumar Otta
Arunima Dhalsamanta
Biswa Prakash Dhal
Swetlana Das

P R E S E N T:

THE HONOURABLE MR. JUSTICE S.K. SAHOO

Date of Hearing- 28.09.2016 Date of Judgment- 15.11.2016

S. K. Sahoo, J. Being dissatisfied by the order dated 04.04.2016 passed by the learned S.D.J.M., Bhubaneswar in C.M.C. No. 54 of 2016 in rejecting the petition dated 19.03.2016 challenging maintainability of the proceeding under the Protection of Women

from Domestic Violence Act, 2005 (hereafter "P.W.D.V. Act") instituted by the opposite party Mamitarani Sutar which was confirmed by the learned Sessions Judge, Khurda at Bhubaneswar in Criminal Appeal No. 60 of 2016 vide order dated 23.07.2016, the petitioner Giridhari Nath has preferred this revision petition.

2. The opposite party filed an application under section 12 of the P.W.D.V. Act against the petitioner in the Court of learned S.D.J.M., Bhubaneswar which was registered as C.M.C. No. 54 of 2016 praying for a direction to the petitioner to pay compensation of Rs.50,00,000/- (rupees fifty lakhs) to her for the act of domestic violence and further to pay monthly maintenance of Rs.25,000/- (rupees twenty five thousand).

It is the case of the opposite party that she is the married wife of the petitioner and their marriage was solemnized at Laxminarayan Temple, Bahanaga, Balasore on 02.12.2002 in accordance with Hindu rites and customs. After marriage, the petitioner tortured the opposite party and demanded Rs.5,00,000/- (rupees five lakhs) to be brought from her father. Subsequently, the opposite party came to know that she is the third wife of the petitioner which shocked her. The opposite party tolerated all the immoral activities of the petitioner for the sake

of their girl child and to avoid social stigma. The petitioner threatened the opposite party to obtain a decree of divorce as he was a seasoned lawyer. The opposite party also got herself enrolled as an Advocate but could not actively pursue her legal profession due to unruly attitude of the petitioner. The opposite party lodged an F.I.R. against the petitioner but subsequently withdrew the F.I.R. in order to lead a life of dignity. The opposite party in order to prepare herself for judicial service took a house on rent in the KIIT area, Bhubaneswar in 2013 to attend coaching institutions and concentrate on study. The petitioner did not allow the opposite party to enter into the matrimonial home and to see her daughter. When the petitioner persuaded the opposite party to part with all her jewellery worth of about Rs.3,00,000/- (rupees three lakhs), the opposite party bluntly refused to oblige the same. The petitioner instituted a divorce proceeding against the opposite party alleging that she had illicit relationship with several persons including one Law Officer of the Oriental Bank of Commerce. Even after coming to Bhubaneswar, the opposite party was subjected to physical and mental cruelty by the petitioner who was frequently visiting the rented house of the opposite party and on 16.07.2015 the petitioner came to the rented house of the opposite party and asked her to sign on

some papers but when the opposite party did not agree, the petitioner assaulted her and threatened her with dire consequence. The opposite party lodged an F.I.R. before Mahila Police Station, Bhubaneswar on 15.08.2015 for which Bhubaneswar Mahila P.S. Case No. 231 of 2015 was instituted under sections 498-A, 323, 294, 417, 506 of the Indian Penal Code and section 4 of Dowry Prohibition Act. It is further stated that the petitioner is having 22 years of active practice at Bhadrak and other places and he earns around Rs.50,000/- (rupees fifty thousand) per month.

3. The petitioner entered his appearance in the P.W.D.V. Act proceeding and filed a petition on dated 19.03.2016 to dismiss the application filed by the opposite party under section 12 of the P.W.D.V. Act as not maintainable. It is the case of the petitioner that after solemnization of marriage in the year 2002, the petitioner and the opposite party resided at Bhadrak and on 04.03.2012 the opposite party left the house of the petitioner after taking away all her jewellery and other valuables worth of Rs.12,00,000/- (rupees twelve lakhs) and the opposite party was living in adultery with a Senior Bank Officer and others for which at the instance of the petitioner, one station diary entry was made at Bhadrak Town Police Station and one F.I.R.

was also lodged against one Amiya Kumar Sahoo vide Bhadrak Town P.S. Case No. 233 of 2015 dated 10.07.2015 under sections 506, 497, 406, 379 read with section 34 of the Indian Penal Code. It is further stated that the petitioner filed M.A.T. Case No. 492 of 2015 under section 13 of the Hindu Marriage Act in the Court of learned Civil Judge (Senior Division), Bhadrak. It is the further case of the petitioner that their minor daughter is prosecuting her studies in Class-VII at Bhadrak and staying with the petitioner and that the opposite party has brought all sorts of false allegations in the application under P.W.D.V. Act. It is further case of the petitioner that the opposite party left Bhadrak in the year 2012 and thereafter, there was no domestic relationship between the parties and since the application under P.W.D.V. Act was instituted in January 2016, therefore, it is not maintainable.

The opposite party filed her objection to the petition dated 19.03.2016 filed by the petitioner wherein it is stated that such a petition is thoroughly misconceived and apparently a calculated move to delay the disposal of the application under section 12 of the P.W.D.V. Act. It is further stated in the objection that the opposite party is an aggrieved person and residing within the local limits of the jurisdiction of S.D.J.M.,

Bhubaneswar and therefore, in view of section 27 of the P.W.D.V. Act, the said Court has jurisdiction to adjudicate the matter.

4. The learned S.D.J.M., Bhubaneswar vide impugned order dated 04.04.2016 has been pleased to held that on going through the application under section 12 of the P.W.D.V. Act filed by the opposite party, report of the Protection Officer, petition filed by the petitioner on dated 19.03.2016 and the objection filed by the opposite party on dated 21.03.2016 and keeping in view the provision under section 27(1) of the P.W.D.V. Act, it appears that domestic violence had been caused upon the opposite party also at Bhubaneswar which comes within the local limits of the Court and therefore, it was held that the Court of S.D.J.M., Bhubaneswar has got ample jurisdiction to adjudicate the matter and accordingly, rejected the petition dated 19.03.2016 filed by the petitioner being devoid of merits.

The petitioner challenged the aforesaid order dated 04.04.2016 of the learned S.D.J.M., Bhubaneswar passed in C.M.C. No. 54 of 2016 before the learned Sessions Judge, Khurda at Bhubaneswar in Criminal Appeal No. 60 of 2016. The learned Appellate Court has been pleased to observe that specific allegation has been made in the original application by the

opposite party that the petitioner was frequently visiting her in the rented accommodation at Bhubaneswar and used to subject her to cruelty, both mentally and physically for which she was in a state of panic. The learned Appellate Court further held that institution of case relating to torture on the opposite party in Mahila Police Station, Bhubaneswar finds place in the original application. The learned Appellate Court considered the provision under section 27(1) of the P.W.D.V. Act and upheld the order passed by the learned S.D.J.M., Bhubaneswar.

5. Smt. Umarani Panda, learned counsel appearing for the petitioner contended that when the opposite party had left Bhadrak in the year 2012 and staying at Bhubaneswar and the domestic relationship between the petitioner and the opposite party had ceased since then, therefore, without existence and continuance of domestic relationship between the parties, taking recourse to the provisions of the P.W.D.V. Act by the opposite party against the petitioner is not maintainable in the eye of law. The learned counsel for the petitioner relied upon the decision of the Hon'ble Supreme Court in case of **Inderjit Singh Grewal - Vrs.- State of Punjab reported in (2011) 50 Orissa Criminal Reports (SC) 430**, wherein it was held that in view of the provisions under sections 28 and 32 of the P.W.D.V. Act and

Rule 15(6) of the Protection of Women from Domestic Violence Rules, 2006 (hereafter "P.W.D.V. Rules") which make the provisions of Cr.P.C. applicable, the complaint has to be filed only within a period of one year from the date of the incident in view of the provisions under section 468 of Cr.P.C. The learned counsel further relied upon a decision of Delhi High Court in case of **Hima Chugh -Vrs.- Pritam Ashok Sadaphule reported in 2013 (4) Crimes 15**, wherein it is held that a protection order can be obtained only against a person who is in the domestic relationship with the aggrieved person and since the respondents no. 2 to 6 who are the father-in-law, brother-in-law and other near relations of the respondent no.1 (husband) were not in domestic relationship with the petitioner, no protection order can be passed against them. The application filed by the petitioner against her husband (respondent no.1) with whom she was in domestic relationship was held to be maintainable. The learned counsel further placed reliance in case of **Amit Agarwal -Vrs.- Sanjay Aggarwal reported in 2016 (2) Crimes 783**, wherein it is held that the definition "domestic relationship" as per section 2(f) of P.W.D.V. Act speaks about the existence of a relationship by marriage or a relationship in the nature of marriage at the time. The expression used is 'are related' by marriage. The

expression by the legislature is not 'were related'. From the bare reading of the provisions, it is apparent that the intention of the legislature is to protect those women who are living in a domestic relationship. It is further held that if the domestic relationship continued and if the parties have lived together at any point of time in a shared household, the person can be a respondent but if the relationship does not continue and the relationship had been in the past and is not in the present, a person cannot be made respondent on the ground of a past relationship. The domestic relationship between the aggrieved person and the respondent must be present and alive at the time when the complaint under Domestic Violence Act is filed.

6. Mr. Susanta Kumar Dash, learned counsel for the opposite party on the other hand while countering the arguments advanced by the learned counsel for the petitioner contended that in M.A.T. Case No. 492 of 2015 instituted by the petitioner in the Court of learned Civil Judge, Senior Division, Bhadrak which was transferred and subjudiced in the Court of Judge, Family Court, Bhubaneswar in C.P. No. 588 of 2015, the address of the opposite party has been indicated at Bhubaneswar. The institution of the F.I.R. by the opposite party against the petitioner on 15.08.2015 at Mahila Police Station, Bhubaneswar

and the narration made therein clearly reveals that the cause of action arises within the jurisdiction of learned S.D.J.M., Bhubaneswar. The learned counsel further urged that both the Courts below have rightly turned down the prayer made by the petitioner challenging the maintainability of the application filed by the opposite party under the P.W.D.V. Act as in terms of section 27 of the P.W.D.V. Act, the opposite party has got temporary residence at Bhubaneswar. The learned counsel further submitted that in view of the decision of this Court in case of **Sunil Kumar -Vrs.- Sumitra Panda reported in 2014 (1) Orissa Law Reviews 532** which accepted the view taken by the Division Bench of the Rajasthan High Court in case of **Smt. Sabana @ Chand Bai -Vrs.- Mohd. Talib Ali reported in 2014 (3) Crimes 44** holding that it is not necessary that an applicant-woman should have a marriage or relationship in the nature of marriage existing and subsisting with the respondent as on the date of coming into force of the Act or at the time of filing of the application under section 12 of the Act before the Magistrate seeking for one or more reliefs as provided for under the Act. In other words, the aggrieved person who had been in domestic relationship with the respondent at any point of time even prior to coming into force of the Act and one subjected to

domestic violence, is entitled to invoke the remedial measures provided for under the Act. The expression, "who live or have, at any point of time, lived together in a shared household" as per section 2(f) of P.W.D.V. Act shows that subsisting relationship between the parties i.e., the aggrieved person and a respondent is not a sine qua non for filing an application for seeking relief under section 12 of the Act. It is urged by the learned counsel that in the present case when the suit seeking for dissolution of marriage instituted by the petitioner is subjudiced, it cannot be said that the application is not maintainable even though the parties had lived together for the last time in the year 2012. The learned counsel for the opposite party further placed reliance in the case of **V.D. Bhanot -Vrs.- Savita Bhanot reported in AIR 2012 SC 965**, wherein it was held that the conduct of the parties even prior to the coming into force of the P.W.D.V. Act, could be taken into consideration while passing an order under sections 18, 19 and 20 thereof. It was further held that even if a wife, who had shared a household in the past, but was no longer doing so when the P.W.D.V. Act came into force, would still be entitled to the protection under the P.W.D.V. Act. The learned counsel while concluding his arguments contended that when both the Courts below have given concurrent findings that the

application filed by the opposite party under section 12 of the P.W.D.V. Act is maintainable and there is no illegality or infirmity in the findings, it would not be proper to interfere with the same invoking the revisional jurisdiction.

7. Before adverting the contentions raised by the learned counsels for the respective sides, certain facts are borne out of records which are as follows:-

(i) The opposite party is the wife of the petitioner and their marriage was solemnized in the year 2002.

Though in the written notes of arguments filed by the petitioner on 12.09.2016, it is mentioned in paragraph-1 that "admittedly the opposite party is not the legally married wife of the petitioner", "since the year 2002 she had been staying with the petitioner up to 03.03.2012 and in the year 2003, a girl child namely Smaranika was born" and in the list of dates and events submitted by the petitioner before this Court on 28.09.2016, it is mentioned that in 2002 "started living together in live in relationship" but such averments appear to be an afterthought one and inconsistent to the stand already taken by the petitioner.

In M.A.T Suit No. 492 of 2015 which was filed by the petitioner in the Court of Civil Judge, Senior Division, Bhadrak

against the opposite party under section 13 of the Hindu Marriage Act seeking for a decree of divorce, the petitioner has made verification and sworn affidavit, it is mentioned in paragraph-5 as follows:-

“5..... The marriage of the petitioner with the respondent was solemnized on 13.07.2002 at Laxmi Narayan temple complex at Bahanaga in the district of Balasore according to Hindu tradition and custom and after marriage, they led conjugal life in the rented house of the petitioner at Kuansh in Bhadrak Town within territorial jurisdiction of this Court and out of this wedlock, one female child was born on 07.09.2003 namely Smaranika Priyadarshini.”

In the non-maintainability petition filed by the petitioner before the learned S.D.J.M., Bhubaneswar, it is mentioned in different paragraphs as follows:-

“3. That the marriage was solemnized in 2002 in the district of Balasore and subsequently both resided at Bhadrak....”

“4. That all along the petitioner and respondent after marriage stayed together under one roof at Bhadrak.....”

“5. That the petitioner married in 2002. She lived with her husband at Bhadrak....”

Even in this revision petition in ground 'B', it is mentioned by the petitioner on affidavit as follows:-

"**B.** For that it is humbly submitted that the marriage of the present petitioner (husband) with the opposite party (wife) took place on dated 02.12.2002 at Bahanaga, Balasore and out of their wedlock, a female child was born on 17.09.2003 at Bhadrak as because the couple were residing there after their marriage."

In view of the inconsistent stand taken by the petitioner, it is clear that the petitioner has not come to this Court with clean hands and deliberately making misrepresentation to get the relief. An act of suppression of certain facts or misrepresentation of facts or fraud on Court to get the reliefs is always viewed seriously. In case of **Ramjas Foundation –Vrs.- Union of India reported in (2010) 14 Supreme Court Cases 38**, it is held as follows:-

"14. The principle that a person who does not come to the Court with clean hands is not entitled to be heard on the merits of his grievance and, in any case, such person is not entitled to any relief is applicable not only to the petitions filed under Articles 32, 226 and 136 of the Constitution but also to the cases instituted in other courts and judicial forums. The object

underlying the principle is that every Court is not only entitled but is duty bound to protect itself from unscrupulous litigants who do not have any respect for truth and who try to pollute the stream of justice by resorting to falsehood or by making misstatement or by suppressing facts which have bearing on adjudication of the issue(s) arising in the case.”

Therefore, in view of the materials on record, it is apparent that the opposite party is the wife of the petitioner and their marriage was solemnized in the year 2002 and they were blessed with a daughter in the year 2003.

(ii) The opposite party was residing at Bhubaneswar at the time of initiation of the P.W.D.V. Act proceeding. The specific averment made in the application filed by the opposite party under Section 12 of the P.W.D.V. Act, the address of the opposite party given in the divorce petition filed by the petitioner and the contents of the First Information Report submitted by the opposite party before the Mahila Police Station, Bhubaneswar on 15.08.2015 clearly substantiate such aspect.

8. The pivotal contention advanced by the learned counsel for the petitioner is that since the ‘domestic relationship’ between the petitioner and the opposite party ceased since 2012, therefore, the application under section 12 of the P.W.D.V.

Act presented by the opposite party against the petitioner in the year 2016 seeking remedial measures is not maintainable in the eye of law.

Under section 12 of the P.W.D.V. Act, an aggrieved person can file an application before the Magistrate seeking one or more reliefs under the Act. As per section 2(a) of the P.W.D.V. Act, an 'aggrieved person' 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. 'Domestic relationship' as per section 2(f) of the P.W.D.V. Act 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. Therefore, if two persons lived together in a shared household as defined under section 2(s) of the P.W.D.V. Act at any point of time and during the subsistence of such relationship, the woman is subjected to any act of 'domestic violence' as defined under section 3 of the P.W.D.V. Act, she can maintain an application before the Magistrate under section 12 the Act.

In case of **Krishna Bhattacharjee -Vrs.- Sarathi Choudhury reported in (2016) 63 Orissa Criminal Reports (SC) 1**, Hon'ble Justice Dipak Mishra speaking for the Bench observed as follows:-

"22. In view of the aforesaid pronouncement, it is quite clear that there is a distinction between a decree for divorce and decree of judicial separation; in the former, there is a severance of status and the parties do not remain as husband and wife, whereas in the latter, the relationship between husband and wife continues and the legal relationship continues as it has not been snapped. Thus understood, the finding recorded by the courts below which have been concurred by the High Court that the parties having been judicial separated, the Appellant wife has ceased to be an "aggrieved person" is wholly unsustainable."

When the divorce proceeding is subjudiced between the parties and there is no severance of status between them, merely because they are living at separate places since 2012, since it is the case of the opposite party that the petitioner was regularly coming to the rented house of the opposite party at Bhubaneswar and subjecting her to physical and mental torture, it can very well be said that the legal relationship between husband and wife continues and it has not been snapped and it

is very much present and alive. For subjecting a woman to any act of domestic violence as defined under section 3 of the P.W.D.V. Act and maintaining an application under section 12 of the P.W.D.V. Act, it is not necessary that the woman concerned must be living with the respondent under one roof or in a shared household at the time of presenting the application to the Magistrate. The alleged overt acts committed by the petitioner on the opposite party as mentioned in the application prima facie makes out a case of domestic violence. The truthfulness or otherwise of such averments relating to domestic violence shall be gone into during hearing of the application or at the time of disposing of the application. Specific finding on this vital aspect has to be given. Therefore, I am of the view that the opposite party is an 'aggrieved person' as defined under section 2(a) of the P.W.D.V. Act. The reliefs sought for by the opposite party against the petitioner i.e. compensation order and maintenance order come under sections 22 and 20 of the P.W.D.V. Act respectively. I am further of the view that the S.D.J.M., Bhubaneswar under whose local limits the opposite party is residing has jurisdiction to grant such reliefs.

9. Section 31 of the P.W.D.V. Act prescribes penalty for breach of protection order by the respondent which 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. There must be an issuance of protection order or an interim protection order by the competent Court and there must be a case of breach such order by the respondent which would amount to an offence under the P.W.D.V. Act. In such cases, the complaint has to be filed only within a period of one year from the date of the incident as held in the case of **Inderjit Singh Grewal** (supra).

In the present case, no protection order or interim protection order has been passed nor has any complaint been filed to punish the petitioner in terms of section 31 of the P.W.D.V. Act. There is nothing in the P.W.D.V. Act that an application under section 12 has to be filed within one year from the date of alleged cessation of domestic relationship between the aggrieved person and the respondent. The application under section 12 of the P.W.D.V. Act is of different in nature than the complaint under section 31 of the P.W.D.V. Act. While in an application under section 12 of the P.W.D.V. Act, the Magistrate is competent to pass different orders as mentioned under sections 18, 19, 20, 21 and 22 of the said Act and can also pass interim and ex parte orders whereas in a complaint under section

31 of the Act, a Magistrate can pass order for punishment as provided under the said section on the respondent. Therefore, the contention raised by the learned counsel for the petitioner that the P.W.D.V. Act proceeding is not maintainable as it was presented more than a year after the parties lived separately, is not acceptable.

Therefore, I am of the view that no justifiable grounds have been put forward by the learned counsel for the petitioner to interfere with the concurrent findings recorded by the Courts below exercising revisional jurisdiction. The learned Magistrate rightly rejected the petition filed by the petitioner challenging maintainability of the proceeding under the P.W.D.V. Act.

In the result, the Criminal Revision petition being devoid of merit, stands dismissed. The learned S.D.J.M., Bhubaneswar on receipt of the judgment shall fix the date of hearing at an earliest and shall endeavour to dispose the application under section 12 of the P.W.D.V. Act within a period of sixty days from that date.

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S.K. Sahoo, J.