
(2015) 02 JH CK 0010
In the Jharkhand High Court
Case No : W.P. (Cr) No. 236 of 2012

Shanti Singh

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 18-02-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125
Dowry Prohibition Act, 1961 — Section 3, 4
Hindu Marriage Act, 1955 — Section 9
Penal Code, 1860 (IPC) — Section 498A
Protection of Women From Domestic Violence Act, 2005 — Section 12, 18, 19, 19(2), 2(s)

Citation : (2015) 3 DMC 713

Hon'ble Judges : Harish Chandra Mishra, J.

Bench : Single Bench

Advocate : Inderjeet Sinha, Bibhash Sinha and Ajay Kr. Sah., Advocates, for the Appellant

Final Decision : Dismissed

Judgement

Harish Chandra Mishra, J.—Heard learned Counsel for the petitioner and learned Counsel for the State as also learned Counsel for the respondent No. 2. This writ application has been filed with a prayer for quashing the judgment dated 15th September, 2011, passed by Sri Sanjay Kumar Singh No. 1, learned Judicial Magistrate, 1st Class, Bokaro, in C.P. Case No. 473 of 2010/T.R. No. 42 of 2011, whereby on the complaint filed under the Protection of Women from Domestic Violence Act, 2005. (hereinafter referred to as "Act"), by the respondent No. 2, who is the wife of the petitioner, in exercise of the power under Section 18 of the Act, the petitioner has been prohibited from committing any act of domestic violence upon his wife. The order of residence has also been passed by the learned Trial Court below under Section 19 of the Act, entitling the wife of the petitioner to reside in the shared household of the petitioner where she was earlier residing alter her marriage at village Kalapathar, P.S. Chas (M), District

Bokaro and the petitioner has been prohibited from disturbing her in her peaceful living. The monetary relief under Section 20 of the Act has also been granted to the wife, asking the petitioner to make the payment of Rs. 2,000 per month from the date of the order in lieu of the maintenance of the complainant and her female child.

2. The petitioner has also prayed for quashing the judgment dated 26.6.2012 passed by the learned Additional Sessions Judge-II, Bokaro, in Criminal Appeal No. 92 of 2011, whereby the appeal filed against the aforesaid judgment, has been dismissed by the learned appellate Court below.

3. The facts of the case lie in a short compass. The complainant, claiming herself to be the legally married wife of the petitioner, and also alleging that she was being subjected to cruelty and torture for demand of dowry in which she was also subjected to domestic violence by the petitioner, filed the complaint for protection under the Act in the Court below. It may be stated that the other criminal case was also filed by the complainant against the petitioner for the offence under Section 498A of the Indian Penal Code and Sections 3 and 4 of the Dowry Prohibition Act and she had also filed a matrimonial case under Section 9 of the Hindu Marriage Act, for restitution of her conjugal rights, claiming that she was deserted by her husband. It also appears from the record that the petitioner had also filed a suit for dissolution of the marriage by a decree of divorce in the competent Court. An application under Section 125 of the Cr.P.C., claiming maintenance from the petitioner was also filed before the Principal Judge, Family Court, Bokaro. Thus, there were several litigations between the parties, and at one point of time, the matter was sent for conciliation between the parties, before the Conciliator at JHALSA, Ranchi. There was some settlement between the parties, on the basis of which, the petitioner was granted bail in the criminal case by the High Court, but it is alleged that the petitioner again started abusing and humiliating the complainant and she was forced to leave the matrimonial home. It is also alleged that the petitioner also tried to perform second marriage with another lady at Rajrappa Temple, and upon getting the information the complainant reached there and also took help of the local police, due to which the marriage could not be performed by the petitioner and it is alleged that while returning back she was again assaulted by the petitioner. With these allegations the complaint was filed in the Court below and the petitioner was noticed by the Court below. Upon notice, the petitioner filed his show-cause in which the marriage and the birth of the female child out of the wedlock were admitted, but the allegations of subjecting the complainant to domestic violence were denied.

4. The impugned judgments show that evidences were adduced by both the sides, both oral and documentary, which have been discussed in detail in the respective judgments by both the Courts below. Finding that the complainant wife was subjected to domestic violence, the protection was granted to the complainant under Section 18 of the Act, prohibiting the petitioner from committing any act of domestic violence. The Court below came to the finding

that the complainant was ousted from the matrimonial home which was the joint family residential home of the complainant, and the order of residence was passed by the Court below in favour of the complainant, entitling her to reside in the said shared household of the petitioner where she was earlier residing after the marriage, at village Kalapathar, P.S. Chas (M), District Bokaro, and the petitioner was restrained from disturbing in her peaceful living. Taking into consideration the income of the petitioner from his jewellery shop and his family income, and finding that the petitioner had sufficient means to maintain his wife and the minor daughter, as also taking into consideration the fact that the complainant had no source of income and was unable to maintain herself and her female child, the petitioner was directed to make the payment of Rs. 2,000 per month from the date of the order in lieu of the maintenance of the complainant and her female child.

5. Learned Counsel for the petitioner has made two-fold submissions challenging the impugned judgments passed by the Courts below. Firstly, it is submitted by the learned Counsel that under Section 19 of the Act, there is no provision for restoration of the possession in the residential house. It is submitted by learned Counsel that admittedly the complainant was not living in the matrimonial house, but the Court below has passed the order entitling the complainant to reside in the shared household of the petitioner where she was earlier residing after marriage. Learned Counsel has submitted that though under Section 19 of the Act there is provision for restraining the respondent from dispossessing or in any manner disturbing the possession of the aggrieved person from the shared household, but there is no provision for restoration of the possession, once it was found that she was already dispossessed from the shared household, and in that case the only relief that could be given was to direct the respondent to secure same level of alternative accommodation to the aggrieved person, including the payment of rent for the same, if the circumstances so required. Learned Counsel, accordingly, submitted that the protection given to the opposite party No. 2 under Section 19 of the Act restoring her possession in the shared household is absolutely illegal and beyond the scope of Act and the same cannot be sustained in the eyes of law.

6. Secondly, learned Counsel submitted that admittedly, at the time of pendency of the complaint in the Court below, an application under Section 125 of the Cr.P.C., was also pending in the competent Court in which the prayer for maintenance was already made and, as such, there was no occasion for the Court below to pass the order of monetary relief to the complainant under Section 20 of the Act, and the same cannot be sustained in the eyes of law. Making these two submissions, learned Counsel submitted that the impugned judgments passed by both the Courts below are fit to be quashed.

7. Learned Counsel for the State as also learned Counsel for the respondent No. 2 on the other hand have opposed the prayer. It is submitted by learned Counsel for the respondent wife that the protection under Section 19 of the Act also

includes the restoration of the possession of the victim in the shared household, and there is no illegality in the same. Learned Counsel also submitted as regards the monetary relief under Section 20 of the Act that the Act itself provides for the monetary relief in addition to the maintenance under Section 125 of the Cr.P.C., or any other law for the time being in force, learned Counsel accordingly, submitted that there is no illegality in the impugned judgments passed by the Courts below and this writ application is fit to be dismissed.

8. The relevant portion of Section 19 of the Protection of Women from Domestic Violence Act reads as follows:

"19. Residence orders-(1) While disposing of an application under Sub-section (1) of Section 12, the Magistrate may, on being satisfied that domestic violence has taken place, pass a residence order-

(a) restraining the respondent from dispossessing or in any other manner disturbing the possession of the aggrieved person from the shared household, whether or not the respondent has a legal or equitable interest, in the shared household;

(b)

(c)

(d)

(e)

(f) directing the respondent to secure same level of alternate accommodation for the aggrieved person as enjoyed by her in the shared household or to pay rent for the same, if the circumstances so require:

(2) The Magistrate may impose any additional conditions or pass any other direction which he may deem reasonably necessary to protect or to provide for the safety of the aggrieved person or any child of such aggrieved person.

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9. The term-"shared household" has been defined under Section 2(s) of the Act, which reads as follows:

"(s) "shared household" means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and-includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household."

10. Thus, a plain reading of the Section 2(s) of the Act clearly shows that the "shared household" means a household in which the aggrieved person has lived at any stage, which clearly includes a household in which she had lived earlier and from which she had been dispossessed. A conjoint reading of Section 2(s)

with Section 19 of the Act clearly shows that the Magistrate is fully empowered to pass the residence order, even restoring the possession of the complainant, in case it is found that she is dispossessed or ousted from the shared household. It appears from the provisions of Section 19 of the Act that even for securing alternative accommodation to the complainant, it is nowhere necessary that the victim must have been dispossessed from the shared household earlier. The alternative accommodation may be directed by the Court for proper protection of the victim even if she had not been dispossessed from the shared household earlier. Section 19(2) of the Act clearly shows that the Magistrate may pass any other direction which he may deem reasonably necessary to protect or to provide for the safety of the aggrieved person or any child of such aggrieved person, which also, in my considered view, includes even the direction to allow the complainant to reside in the shared household of the respondent where she was earlier residing after the marriage, from which she might have been dispossessed.

11. Thus taking into consideration these provisions of the Act, I am of the considered view that there is no illegality in the impugned judgments entitling the complainant to reside in the shared household of the petitioner where she was earlier residing after her marriage.

12. Similarly. Section 20 of the Protection of Women from Domestic Violence Act reads as follows:

"20. Monetary Reliefs-(I) While disposing of an application under Sub-section (1) of Section 12, the Magistrate may direct the respondent to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of the domestic violence and such relief may include, but is not limited to.-

(a)

(b)

(c)

(d) the maintenance for the aggrieved person as well as her children, if any, including an order under or in addition to an order of maintenance under Section 125 of the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force.

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13. Section 20(1)(d) of the Act clearly shows that the monetary relief granted under the Act may be in addition to an order of maintenance under Section 125 of the Code of Criminal Procedure or any other law for the time being in force. Thus, there is no merit even in the second submission of the learned Counsel for the petitioner that due to the pendency of the application under Section 125 of the Cr.P.C., before the Court of the Principal Judge, Family Court, Bokaro, the Magistrate was not entitled to provide any monetary relief to the respondent wife

under Section 20 of the Act. In view of the aforementioned discussions, I do not find any illegality and/or irregularity in the impugned judgment dated 15th September, 2011, passed by Mr. Sanjay Kumar Singh No. 1, learned Judicial Magistrate Bokaro, in C.P. Case No. 473 of 2010/T.R. No. 42 of 2011, as also in the judgment dated 26.6.2012 passed by the learned Additional Sessions Judge-II, Bokaro, in Criminal Appeal No. 92 of 2011. There is no merit in this application, and the same is accordingly, dismissed.