
(2018) 09 CHH CK 0023

In the Chhattisgarh High Court

Case No : Criminal Miscellaneous Petition No. 717 of 2017

Smt. Nafisa Anjum

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision : 26-09-2018

Acts Referred:

Protection of Women From Domestic Violence Act, 2005 — Section 12, 17(1)
Indian Penal Code, 1860 — Section 34, 498A
Chhattisgarh Tonahi Pratadna Nivaran Act, 2005 — Section 2 (f), 2(s), 4, 5

Citation : (2018) 09 CHH CK 0023

Hon'ble Judges : Goutam Bhaduri, J

Bench : Single Bench

Advocate : Rahul Tamaskar, Sangharsh Pandey, Fouzia Mirza

Final Decision : Allowed

Judgement

1. The instant petition is for quashment of proceedings instituted by respondent No.2 Smt. Deebea Farhin against petitioners. Smt. Nafisa Anjum the

petitioner No.1 herein claims to be the sister of husband of respondent No.2 Abdul Razique S/o Abdul Samad. The petitioner No.2 Smt.Taherun Nisha

claims to be the aunt of respondent No.2 and petitioner No.3 Abdul Qadir stated that he is not at all related to respondent No.2.

2. Facts of this case are that a petition under Section 12 of the Protection of Women From Domestic Violence Act, 2005 (for short 'the Act, 2005')

was preferred by respondent No.2 Deebea Farheen, wherein 7 persons were arrayed as accused/non-applicants namely Abdul Razique, Abdul Sajid,

Smt. Kamrunnisha, Smt. Gazala Anjum along with these three petitioners. The petitioner No.1 Smt. Nafisa Anjum claims to be the sister of Abdul

Rajik the non-applicant no. 1 in the original application of complaint and stated that respondent No.2 and Abdul Razique was married on 08.01.2015 as

per the Islamic law and it was stated that after that a report was made by the wife that she was subjected to cruelty for demand of dowry by the

husband. Subsequently, some counseling took place, but the husband and wife could not go along. Subsequently, on a report made by wife the offence

under Section 498-A read with Section 34 IPC and read with Sections 4 & 5 of the Chhattisgarh Tonahi Pratadna Nivaran Act, 2005 was registered

against the husband and other relatives including the petitioners. The criminal prosecution started and the petitioners were enlarged on bail.

Subsequently, respondent No.2 the wife had filed another application under Section 12 of the Act, 2005 before the JMFC, Bhatapara, which was

registered as MJC No.33/17 and the summons for appearance was issued to the petitioners herein along with others.

3. It was further stated that petitioner No.1 appeared through the counsel and moved an application for exemption from appearance, but the same was

dismissed and bailable warrant was issued against her for personal appearance on 29.05.2017, therefore, the petitioners are aggrieved by registration

of the case, impleadment and issuance of the summons in the MJC No.33/17 wherein a case under Section 12 of the Act, 2005 has been registered

against the petitioners.

4. Learned counsel for the petitioners submits that the petitioners herein have never shared common household with respondent No.2, therefore, there

has been a manifest mistake of law committed by the Court below as the Court below has failed to take into account the position and the residence of

the petitioners. It is stated that petitioner No.1 Smt. Nafisa Anjum resides at Bilaspur, who is the sister of husband of respondent No.2. Petitioner

No.2 Smt. Taherun Nisha is resident of Durg and she resides separately and she never resided with the respondent and petitioner No.3 Abdul is

resident of Durg and has no relation with the complainant.

5. Learned counsel for the respondent opposes the arguments and submits that the submission made by the petitioners cannot be accepted at this

stage, which only relates to the averments. It is stated that the petition is premature and not tenable unless & until the finding is arrived at, the

submission made by the petitioners cannot be considered at this stage.

6. Perused the petition and the documents connected with it. The copy of the complaint filed under Section 12 of the Act, 2005 is also perused. The

petitioners No.1 to 3 are arrayed as respondents No.5, 6 & 7 in that petition. In para 2 of the petition, the pleading is made about the relation and the reasons have been assigned that all the petitioners herein have been inculpated for the reason that they are involved in causing cruelty and torture to the wife/respondent. Further reading of the petition would show that omnibus allegations have been attributed that all the non-applicants including the petitioners have cut the hairs of the wife and further assaulted and stated that she is a Tonhi and after her entry to house all the blessings of the house has ended. The various allegations have been made against all the 7 respondents arrayed in the complaint.

7. Further in the petition under Section 12 of the Act, 2005 it is stated that the wife started living with the husband at Sector 7 Bhilai along with other non-applicants. The addresses shown in the complaint shows that Smt. Nafisa Anjum has been stated to be resident of Bilaspur. Smt. Taherun Nisha the petitioner No.2 is shown to be resident of village Rasamda Damadpara, District Durg and Abdul Qadir has been shown to be the resident of Supela Bhilai, District Durg. It was further stated that when the wife was subjected to cruelty for demand of dowry, the husband Abdul Razique went to join his duties at Hyderabad and thereafter she was subjected to cruelty for demand of dowry by all. Only omnibus allegations have been made about the residence of the petitioners, whereas the petition itself describes different addresses.

8. Section 2 (f) of the Act, 2005 defines the domestic relationship and Section 2 (s) describes the shared household, these are reproduced hereunder:-

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;

Section 2(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 whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any

right, title, interest or equity 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.

9. The Supreme Court in the case of S.R. Batra & anr. Vs. Smt. Taruna Batra {2006 (13)SCALE652} has interpreted the definition of shared

household for the purpose of Section 17 (1) of the Act, 2005, wherein it is stated that as per Section 17 (1) of the Act, 2005 wife is only entitled to

claim a right to residence in a shared household, and a shared household would only mean the house belonging to or taken on rent by the husband, or

the house which belongs to the joint family of which the husband is a member.

10. In the instant petition there is no averments have been made that the petitioners herein were the part of the shared household. Bare reading of the

petition shows that petitioners were shown to be residing separately from Deeba Farhin, the wife, as the petitioner No.1 Smt. Nafisa Anjum is shown

to be resident of Bilaspur. Petitioner No.2 Smt. Taherun Nisha & petitioner No.3 Abdul Qadir though have been shown to be in the same Tahsil &

District but are shown to be resident of different place. In the complaint apart from impleading Abdul Razique, the husband, Abdul Sajid, brother-in-

law, Smt. Kamrunnisha, mother-in-law, Smt. Gazala Anjum, sister-in-law, the petitioners have also been arrayed. In relation as described Smt. Nafisa

Anjum, petitioner no. 1 is the sister-in-law, Smt. Taherun Nisha, petitioner No.2 is the Mousi Saas i.e. maternal aunt-in-law and Abdul Qadir, the

petitioner No.3 uncle-in-law (Mousa Sasur).

There is no categorical averments in the complaint from which it can be inferred that the petitioners are residing with the husband of the

complainant/respondent and they are in any part of the shared household. Only the omnibus allegations have been made. The perusal of the provisions

make it clear that the domestic relationship in respect of an aggrieved person means if the aggrieved person had lived together with the respondent in

a shared household. This living together can either be before the petition is filed or any subsequent time. There is no averments of the fact that it is a

joint family also and the perusal of the complaint itself shows that the petitioners are resident of different place and were not living in joint household.

Consequently, the general presumption cannot be applied while summons are

issued to a person to appear before the Court as an accused. The entire allegations of the complaint are vague as against these petitioners and do not make out any case prima facie to take cognizance under the Protection of Women From Domestic Violence Act, 2005.

11. Under the facts, I am inclined to allow this petition accordingly the proceedings against the petitioners pending in MJC No.33/2017 before the JMFC, Bhatapara, District Balodabazar are hereby quashed.