

HIGH COURT OF MADHYA PRADESH : JABALPUR

S.B : HON.SHRIJUSTICE VISHNU PRATAP SINGH CHAUHAN

M.Cr.C. NO.32477/2018

Vivek Sharma and others

Vs.

State of M.P. and others

Shri Anurag Gohil, learned counsel for the applicants.

Shri Alok Gupta, learned Panel Lawyer for the respondents No.1 and 2.

Shri Baboo Ji Chourasia, learned counsel for respondent No.3.

ORDER
(01/11/2019)

The applicants have filed this petition under Section 482 of the Code of Criminal Procedure for quashing of proceeding registered as MJCR No.02/2018 in the Court of JMFC, Nowgaon, Distt. Chhatarpur under Section 12 of the Protection of Women from Domestic Violence Act, 2005.

2. The facts giving rise to this petition, in short, are that respondent No.3 got married with applicant No.1 on 16/02/2015 as per Hindu rites and rituals at Radhika Mandapam, Gwalior Road, Jhansi (UP). After marriage, respondent No.3 lived with her husband (applicant No.1)

at Delhi because applicant No.1 was working at Delhi. Applicant No.2-Jagdish Prasad Sharma is father of applicant No.1 and father-in-law of respondent No.3, applicant No.3-Nitin Sharma is the brother of the applicant No.1 and brother-in-law of respondent No.3, applicant No.4-Smt. Manoj Kumari Sharma is the mother of the applicant No.1 and mother-in-law of respondent No.3, applicant No.5-Smt. Devshri Dwivedi is the sister of applicant No.1 and sister-in-law of respondent No.3. All are resident of District Jhansi. Respondent No.3 legally wedded wife of applicant No.1 filed a written report alleging therein that her marriage was solemnized on 16/2/2015. Thereafter from 2nd March, 2015 she lived in Delhi along with her husband i.e. applicant No.1-Vivek Sharma. He misbehaved with her, using filthy languages and demanded car and dowry. He also asked for login and password of the bank account. When she denied, she was beaten and ultimately her husband expelled her from the house. She went to her brother's house at Delhi because she was working at Delhi. She never informed

her mother-in-law and father-in-law to resolve the matter. When harassment of applicant No.1 reached on higher side, then she complained the matter to her mother, father who lived at Nowgaon, Chhatarpur, then they made a complaint to Protection Officer and Woman Empowerment Officer, Nowgaon, Chhatarpur and filed a complaint before the JMFC, Nowgaon, Distt. Chhatarpur under Section 12 of Protection of Women from Domestic Violence Act (hereinafter referred to as 'the Domestic Violence Act') and prays to pass an order under Sections 18, 19, 20, 21, 22 of the Domestic Violence Act.

3. The applicants have filed this petition on the ground that applicant No.1 never harassed respondent No.3 nor demanded any type of dowry. Applicant No.1 has provided higher matrimonial facilities when respondent No.3 resided with applicant No.1. Respondent No.3 before marriage having severe hormonal imbalance problem and some venereal diseases, therefore, after marriage no cohabitation could be performed between applicant No.1 and respondent No.3. However, applicant

No.1, being a husband, facilitated treatment of respondent No.3, never demanded any dowry or raised any type of demand. Respondent No.3 deserted applicant No.1 on 1st May, 2016 and left the house of applicant No.1 and went with her brother, since then she lived at Gurgaon where she was doing job. Applicant No.1 again requested respondent No.3 and her father to send back respondent No.3 to live with him as a wife, but, she did not return and left the company of the applicant No.1 and since then respondent No.3 lived separately, then applicant No.1 filed an application under Section 9 of Hindu Marriage Act for restoration of conjugal rights against respondent No.3.

4. Respondent No.3 after receiving the notice filed an application under Section 12 of the Protection of Women from Domestic Violence Act in the Court of JMFC, Nowgaon, Distt. Chhatarpur for harassing all the applicants. Applicants No.2 to 5 are doing their separate job work. They never confronted respondent No.3, however, respondent No.3 has falsely arraigned them as a

party in the case filed under the Domestic Violence Act. The applicants never demanded any type of dowry nor harassed respondent No.3. When respondent No.3 lived with applicant No.1, he was taking all care of her, providing the medical facilities and never said anything about the character and passed any derogatory comments nor tried to degrade the status of respondent No.3. There was no restriction on respondent No.3 for going anywhere. She has filed frivolous complaint on the false grounds with mala fide intention. Nothing available on record to join the applicants for commission of alleged act. Criminal proceeding initiated against all the applicants is manifestly tainted with mala fide intention and proceeding is maliciously instituted with mens rea. All the applicants prayed for to quash the criminal proceeding registered against the applicants in MJCR No.02/2018 in the Court of JMFC, Nowgaon, Distt. Chhatarpur under Section 12 of the Protection of Women from Domestic Violence Act.

5. Having heard learned counsel for the parties and perused the documents filed along with this petition.

6. After perusal of the statement of respondent No.3 and complaint made by Omprakash Awashty, father of respondent No.3, before the Town Inspector, Police Station, Nowgaon, Distt. Chhatarpur, the facts emerges out that respondent No.3 got married with applicant No.1 on 16/2/2015. The marriage was solemnized Radhika Mandapam, Gwalior Road, Jhansi. Thereafter respondent No.3 and applicant No.1 were living together at Delhi. Applicant No.1 was working in Noida and respondent No.3 was working at Gurgaon. In marriage parents of respondent No.3 provided all articles to applicant No.1. Her in-laws kept all articles and jewellery with them and started demanding of Rs.five lakh and other articles. Applicant No.1 expelled respondent No.1 from his house and thereafter she lived with her brother at Gurgaon, but, while perusing the statement of respondent No.3 who is sufferer of domestic violence. In her statement respondent No.3 categorically stated that after marriage

she lived with applicant No.1 in Delhi since 2nd March, 2015, however, this witness nowhere stated that she lived with applicants No.2 to 5. She only stated that when applicant No.1 started harassing her, beating her and demanded car and dowry, she objected for that and ultimately applicant No.1 expelled her from the house in Delhi thereafter she lived with her brother. When she informed this fact to remaining applicants No.2 to 5, they did not pay any heed and told do not tell things to her mother and father.

7. Now considering the statement of respondent No.3- Anupama Awasthy, this Court is of the view that respondent No.3 never shared the house with applicants No.2 to 5 at Jhansi and not lived with them. No doubt, respondent No.3 is aggrieved person. Definition of aggrieved person is contemplated under Section 2(a) of the Domestic Violence Act which reads as under :

“2(a) “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.

8. Whether respondent No.3 is having a domestic relationship with all the applicants, definition of domestic relationship is contemplated under Section 2(f) of the Domestic Violence Act which reads as under :

“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.”

Definition of shared household is contemplated under Section 2(s) of the Domestic Violence Act which reads as under :

“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. When we read out all the provisions, it is, prima facie, reflected that respondent No.3 is aggrieved person who lived with applicant No.1 in domestic relationship in a shared household in Delhi because both were living at Delhi, husband was working in Noida and wife was working in Gurgaon. As per the statement of respondent No.3, she never lived with applicants No.2 to 5. Meaning thereby she was not in domestic relationship with applicants No.2 to 5.

10. When respondent No.3 lived with applicant no.1 in domestic relationship and shared household, applicant No.1 can be arraigned as a non applicant under Section 12

of the Domestic Violence Act. However, so far as applicants No.2 to 5 are concerned, respondent No.3 never having a domestic relationship with those applicants and not lived with them in a shared household. In these situations, continuation of criminal proceeding under Section 12 of the Domestic Violence Act against applicants No.2 to 5 would be nothing but an abuse of process of law and if prima facie seen that since respondent no.3 and her mother, father are aggrieved with the act of applicant No.1, they unnecessarily arrayed relatives of applicant No.1 for taking revenge. When no case is made out against applicants No.2 to 5, criminal proceeding under Section 12 of the Domestic Violence Act should not be permitted to continue against these persons. So far as applicant No.1 is concerned, there is, prima facie, act of domestic violence appeared against him.

11. In view of aforesaid discussions, this petition filed under Section 482 of Cr.P.C. is partly allowed. Criminal proceeding registered as MJCRNo.No.02/2018 under

Section 12 of the Domestic Violence Act against applicants No.2 to 5 i.e. Jagdish Prasad Sharma, Nitin Sharma, Smt. Manoj Kumari Sharma and Smt. Devshri Dwivedi is hereby quashed. However, so far as criminal proceeding against applicant No.1-Vivek Sharma is concerned, the same shall be continued.

12. With the above observations, this petition stands disposed of with no order as to cost.

(Vishnu Pratap Singh Chauhan)
Judge

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