

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 717 of 2017**

1. Smt. Nafisa Anjum W/o Shri Irshaad Ahmed Aged About 37 Years R/o C/o Khan Floor Mill, Ward No. 10, Rajendra Nagar, Bilaspur, Tahsil And District Bilaspur, Chhattisgarh
2. Smt. Taherun Nisha W/o Late Shri Sheikh Hanif, Aged About 49 Years Employed With C S E B Posted At Somni Tahsil And District Rajnandgaon, Chhattisgarh, R/o Village Rasmara, Tahsil And District Durg, Chhattisgarh
3. Abdul Qadir S/o Late Shri Haji Subrati Aged About 50 Years R/o Abdul Auto Center, Near Ghadi Chowk, Supela, Bhilai, Tahsil And District Durg, Chhattisgarh

---- Petitioners**Versus**

1. State of Chhattisgarh Through Officer- In- Charge Police Station, Bhatapara, Tahsil And District Balodabazar, Chhattisgarh
2. Smt. Deeba Farhin W/o Abdul Razique Aged About 26 Years D/o Shri Dr. Mohammad Kasam Quraishi, R/o Sant Ravi Das Ward House No. 3, Ward No. 2 Bhatapara, District Balodabazaar, Chhattisgarh

---- Respondents

For Petitioners	:	Shri Rahul Tamaskar, Advocate
For Respondent/State	:	Shri Sangharsh Pandey, Dy. GA for the State
For Respondent No.2	:	Ms. Fouzia Mirza, Advocate

Hon'ble Shri Justice Goutam Bhaduri**C A V Order****(Reserved on 17.07.2018)****(Delivered on 26.09.2018)**

1. The instant petition is for quashment of proceedings instituted by respondent No.2 Smt. Deeba 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 Deeba 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.

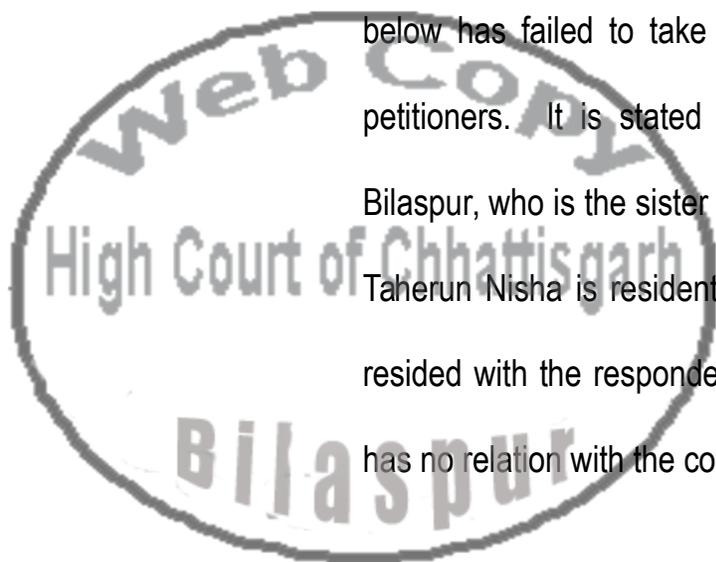
3. It was further stated that petitioner No.1 appeared through the counsel and

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.

Sd/-

Goutam Bhaduri
Judge

Ashu