

Chattisgarh High Court

Smt. Neetu Singh vs Sunil Singh on 28 September, 2007

Equivalent citations: AIR 2008 Chh 1

Bench: L Bhadoo, S K Sinha

JUDGMENT L.C. Bhadoo, J.

1. By this appeal under Section 19(1) of the Family Courts Act, 1984, appellant Smt. Neetu Singh has questioned legality and correctness of the order dated 15-6-2006 passed by the Judge, Family Court, Bilaspur on an application filed by the appellant under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as 'the Act, 2005') whereby learned Judge, Family Court held that since application has been filed under Section 12 of the Act, 2005, which ought to have been filed before the Magistrate and the relief sought for falls under the jurisdiction of the Civil Court, therefore, it be returned to the appellant for filing the same before the competent Court having jurisdiction.

2. Brief facts necessary for the disposal of this appeal are that the appellant herein filed an application under Section 12 of the Act, 2005 read with Section 7 of the Family Courts Act, 1984, in the Court of Judge, Family Court, Bilaspur on 13-6-2006 with the averments that the appellant was married to respondent on 28-4-2003 as per the Hindu custom. Just after the marriage, her in-laws started treating her with inhuman, cruel and neglect behaviour. In connection with demand of money in-laws started beating the appellant and she was thrown out of the matrimonial house, against which reports were lodged in the Police Station on 7-8-2003 and 16-9-2004. On 9-11-2004, the appellant sent a notice to the respondent reminding him about his matrimonial duties, thereafter the appellant filed an application under Section 125 of the Cr. P.C. in

the Court of Chief Judicial Magistrate, Bilaspur, from where same has been transferred to the Family Court, Bilaspur. The Family Court vide its order dated 20th April, 2005 passed an order for interim maintenance to the tune of Rs. 1500/- per month. Her husband is earning about Rs. 20,000/-per month. The in-laws have refused to return her articles which were given to her by her parents in her marriage. On the contrary, they have levelled false allegation of character assassination against the appellant, complaint of which was made by her in the Police Station. Ultimately, the appellant demanded Rs. 2 lakhs which were spent by her parents on arrangement of the marriage i.e. on tent, shamiyana & food, an amount of Rs. 1,56,792, value of articles, which were given to her in the dowry and Rs. 1 lakh for subjecting her to cruelty and character assassination. On 15-6-2006, the learned Judge, Family Court, in the presence of the appellant, passed the impugned order.

3. We have heard Shri Rahul Birtharey and Shri Sachin Singh Rajput, counsel for the appellant and Shri Anurag Dayal Shrivastava, counsel for the respondent.

Learned Counsel for the appellant in-viting attention of the Court towards the provisions of Section 26 of the Act, 2005, argued that the Family Court is competent to entertain the said application as per the provisions of Section 26 of the Act, 2005, there-fore order impugned suffers from illegality.

4. In order to appreciate the controversy, in our opinion, it would be beneficial to have a glance on the relevant provisions of the Act, 2005. Section 12 of the Act, 2005, envisages that:

12. Application to Magistrate.- (1) An aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person may present an application to the Magistrate seeking one or more reliefs under this Act:

Provided that before passing any order on such application, the Magistrate shall take into consideration any domestic incident report received by him from the Protection Officer or the service provider.

(2) The relief sought for under Sub-section (1) may include a relief for issuance of an order for payment of compensation or damages without prejudice to the right of such person to institute a suit for compensation or damages for the injuries caused by the acts of domestic violence committed by the respondent:

Provided that where a decree for any amount as compensation or damages has been passed by any Court in favour of the aggrieved person, the amount, if any, paid or payable in pursuance of the order made by the Magistrate under this Act shall be set off against the amount payable under such decree and the decree shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), or any other law for the time being in force, be executable for the balance amount, if any, left after such set off.

(3) Every application under Sub-section (1) shall be in such form and contain such particulars as may be prescribed or as nearly as possible thereto.

(4) The Magistrate shall fix the first date of hearing, which shall not ordinarily be beyond three days from the date of receipt of the application by the Court.

(5) The Magistrate shall endeavour to dispose of every application made under Sub-section (1) within a period of sixty days from the date of its first hearing.

26. Relief in other suits and legal proceedings.- (1) Any relief available under Sections 18, 19, 20, 21 and 22 may also be sought in any legal proceeding, before a civil Court, family Court or a criminal Court, affecting the aggrieved person and the respondent whether such proceeding was initiated before or after the commencement of this Act.

(2) Any relief referred to in Sub-section (1) may be sought for in addition to and along with any other relief that the aggrieved person may seek in such suit or legal proceeding before a civil or criminal Court.

(3) In case any relief has been obtained by the aggrieved person in any proceedings other than a proceeding under this Act, she shall be bound to inform the Magistrate of the grant of such relief.

5. In order to appreciate issue involved in this matter, it will be profitable to have a glance on the scheme of the Act, 2005. The Act, 2005 has been enacted, as the United Nations Committee on Convention on Elimination of All Forms of Discrimination Against Women in its General Recommendations recommended that State parties should act to protect women against violence of any kind, especially that occurring within the family. The civil law does not address this problem in its entirety. Even though where a woman is subjected to cruelty by her husband or his relatives, it is an offence under Section 498A of the IPC. Therefore, in order to provide a remedy in the civil law for the protection of women from being victim of domestic violence and to prevent the occurrence of domestic violence in the society for the protection of women from domestic violence, the Act, 2005 has been enacted by the Parliament. Considering the fact that domestic violence is undoubtedly a human right issue and serious deterrent to development, this law has been enacted keeping in view the rights guaranteed under Articles 14, 15 and 21 of the Constitution to provide for a remedy under the civil law which is intended to protect the woman from being victims of domestic violence and to prevent the occurrence of domestic violence in the society. Therefore, in order to grant minimum relief to the aggrieved person who is subjected to domestic violence, the above Act, 2005 has been enacted. Aggrieved person as defined in Section 2(a) of the Act, 2005 is subject of domestic violence as defined in Section 3 of the Act, 2005, she is entitled to move an

application before a Magistrate under Section 12 of the Act, 2005 for seeking relief for issuance of the order for payment of compensation or damages without prejudice to right of such person to institute a suit for compensation or damages for the injuries caused by the acts of domestic violence committed by the respondent.

6. Sub-section (4) of Section 12 contemplates that 'the Magistrate shall fix the first date of hearing, which shall not ordinarily be beyond 3 days from the date of receipt of the application by the Court. Sub-section (5) further cast duty on the Magistrate to dispose of every application made under Sub-section (1) within a period of 60 days from the date of its first hearing. Section 17 envisages that every woman in a domestic relationship shall have the right to reside in the shared household, whether or not she has any right, title or beneficial interest in the same. It further envisages that the aggrieved person shall not be evicted or excluded from the shared household or any part of it by the respondent. Section 18 contemplates that after hearing aggrieved person and the respondent, on being satisfied that domestic violence has taken place or is likely to take place, the Magistrate has to pass a protection order in favour of the aggrieved person and prohibit the respondent under situations enumerated in Clauses (a)

7. Section 19 envisages that the Magistrate on being satisfied that domestic violence has taken place, pass order in respect of residence of aggrieved person in the situations mentioned in Clauses (a) to (f) of Sub-Section (1) of Section 19 and also pass order as contemplated in Sub-section (2) to (8) of Section 19. As per Section 20, the Magistrate can grant monetary reliefs in respect of and in situations enumerated in Section 20. Section 21 authorizes the Magistrate to pass orders in respect of the custody of the child or children to the aggrieved person. Section 22 authorizes the Magistrate to pass compensation orders on an application being made by the aggrieved person directing the respondent to pay compensation or damages for

the injuries, including mental torture and emotional distress, caused by the acts of domestic violence committed by the respondent.

8. Section 26 of the Act has been inserted with an objective that in addition to the provisions of Section 12 the aggrieved person is entitled to any relief available under Sections 18, 19, 20, 21 and 22 in any legal proceeding, before a civil Court, family Court or a criminal Court, affecting the aggrieved person and the respondent whether such proceeding was initiated before or after the commencement of the Act. Sub-section (2) of Section 26 further envisages that any relief referred to in Sub-section (1) may be sought for in addition to and along with any other relief that the aggrieved person may seek in such suit or legal proceeding before a civil or criminal Court. Sub-section (3) cast duty on the aggrieved person that in case any relief has been obtained by the aggrieved person in any proceedings other than a proceeding under Section 12 of this Act, she shall be bound to inform the Magistrate of the grant of such relief. Therefore, as per Section 26 of the Act, the aggrieved person is also entitled to seek relief as provided under Sections 18, 19, 20, 21 and 22 in any legal proceeding, before a civil Court, family Court, or a criminal Court in which the aggrieved person and respondent are party & that relief is in addition to and along with any other relief that the aggrieved person may seek in such suit or legal proceeding. Therefore, an option has been given to the aggrieved person to avail reliefs available to her under Sections 18, 19, 20, 21 and 22 in a legal proceeding pending in a civil Court, criminal Court or family Court in addition to filing of the application under Section 12.

9. In view of the above scheme of the Act, specially as per the provisions of Section 26 of the Act, the appellant herein is entitled to seek relief available to her under Sections 18, 19, 20, 21 and 22 of the Act, 2005 in the maintenance proceeding pending in the Family Court, Bilaspur. But the appellant is required to move an application

under Section 26 read with Section in which she is seeking relief. However, instead of doing that, the appellant moved an independent fresh application under Section 12 of the Act, 2005 which can be entertained only by the Magistrate having jurisdiction. An application under Section 12 cannot be filed before Family Court because proceeding under Section 12 of the Act, 2005, as per the scheme of the Act, has to be filed before the Magistrate competent to entertain the application.

10. In the circumstances, we do not find any illegality or infirmity in the order impugned passed by the learned Judge, Family Court. The appeal is, therefore, liable to be dismissed and it is hereby dismissed. Still the appellant is entitled to move an application under Section 12 of the Act, 2005 before the Family Court in the maintenance proceeding said to be pending before that Court.