

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLREV No. 266 of 2020

From judgment dated 24.12.2019 passed by the learned Sessions Judge, Ganjam, Berhampur in Criminal Appeal No. 39 of 2017 in confirming the order dated 18.08.2017 passed by the learned S.D.J.M., Berhampur in M.C. No. 75 of 2017.

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Girish Prasad Mishra & Another

Petitioners

-Versus-

Smt. Lopamudra Kar

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Opp. Party

Advocate(s) appeared in this case:-

For Petitioners

: M/s. S.P. Mishra, Sr. Advocate
Mr. S. Mishra, A. Mohanta
Mr. M. Mohanty &
Mr. B. Jena
Advocates.

For Opp. Party

: Mr. S. K. Pradhan,
Advocate.

CORAM:

JUSTICE SASHIKANTA MISHRA

J U D G M E N T
5th January, 2023

SASHIKANTA MISHRA, J.

The petitioners have challenged the order dated 24.12.2019 passed by learned Sessions Judge, Ganjam,

Berhampur in Criminal Appeal No.39 of 2017 whereby the said appeal, preferred by them was dismissed and the order dated 18.08.2017 passed by learned S.D.J.M, Berhampur in M.C. No.75 of 2017 was confirmed.

2. Petitioner Nos.1 and 2 are the father-in-law and mother-in-law respectively of the opposite party, who married their son on 13.12.2015. It is alleged that she was subjected to domestic violence by her husband in-laws on different grounds and also in connection with demand for more dowry. The opposite party therefore, filed a complaint under Section 12 of the PWDV Act being Misc. Case No.75 of 2017 in the court of learned S.D.J.M., Berhampur. In the said complaint she prayed for passing of orders under Sections 18, 20, 22 and 23 of the Act besides direction to respondents to re-deposit Rs.5,80,004/- in her name and to pay monthly maintenance and compensation etc. After receipt of notice the present petitioners appeared and filed an application on 18.08.2017 to drop the proceeding against them as there was no material to proceed against them. It was stated that the allegations made in the complaint do not

make out any case of domestic violence. Learned S.D.J.M. heard and rejected the petition on the same day holding that the application under Section 12 clearly makes out a case against both the respondents (parents-in-law). The petitioners carried the matter in appeal to the Court of Sessions, being Criminal Appeal No. 39 of 2017. Learned Appellate Court considered the rival submissions, the settled position of law and in particular, the averments made in paragraphs-4, 11 and 17 of the complaint petition to hold that the same, prima facie, reveal a case of domestic violence. Thus, the appeal was dismissed. Being further aggrieved, the petitioners have approached this Court in the present revision.

3. Heard Mr. S.P. Mishra, learned Senior Counsel with Mr. Soumya Mishra, learned counsel for the petitioners and Mr.S.K Pradhan, learned counsel appearing for the opposite party-wife.

4. Learned Senior Counsel, Mr. Mishra would contend that if the averments made in the complaint petition are viewed objectively, it would reveal that the allegations are directed mainly against the husband. In so far as the

petitioners are concerned, firstly, there are no allegations as such to show commission of domestic violence and secondly, the same are too general in nature to be taken note of judicially. It is further argued by Mr. Mishra that there is a tendency to implicate all the in-laws and other family members only to subject them to harassment and therefore, it is for the Court to judiciously separate the grain from the chaff. Mr. Mishra has relied upon a decision of the Apex Court in the case of **Shyam Lal Devda and others v. Parimala**, reported in (2020) 3 SCC 14 in this regard.

5. Per contra, Sri S.K.Pradhan argues that strict rules of pleading are not applicable to a complaint filed under PWDV Act and that having regard to the statutory intent of protecting women from domestic violence, it would suffice if, prima facie, the complaint contains allegations which can be subsequently proved by adducing evidence. In the instant case, according to Mr. Pradhan, there are enough materials to show that the opposite party-wife was subjected to physical, mental, verbal and emotional abuse by the petitioners at different points of time and therefore,

both the courts below have rightly rejected the contentions advanced by them.

6. From the rival contentions noted above, it is evident that the revision can be decided by referring to the averments made in complaint petition. Regardless of the findings of the courts below, this Court deems its proper to go through the averments of the complaint petition to see if any case of domestic violence is made out against the petitioners. Six (6) paragraphs of the complaint petition are stated to contain allegations against the petitioners. In paragraph-4, it is inter alia, stated:-

“4. xxx xxx xxx However, the mother in law of the Complainant was not happy with the jewelry, household items, and other items and would household, and items as per their standards and norms of the society. As such, because of the demand made by the respondents, the complainant’s father gave an amount of Rs.40,000/- (Forty thousand rupees only) for the family need of the newly wedded couple.”

In paragraph-6 it is stated:-

“6. During the first month of marriage itself, the Respondents no.2, mother-in-law forced the Complainant to do all the household work without any support from her mother-in-law while at Berhampur.xxx xxx xxx”

In paragraph -11 it is stated:-

“11. xxx xxx xxx The Complainant got no help or support from her parents in law i.e. Respondent no.2 & 3 on the contrary, they encouraged and sided with the Respondent No.1 and wanted the Complainant to cooperate with this wild behavior and live with it without complaining or talking about it to her family. The Respondents no.1’s parents discouraged her from telling her parents about these incidents by saying that this would further annoy the Respondent No.1 and disturb the peace of the family. The Respondent No.1’s parents kept on torturing her every day and the Complainant did not know who to turn to for support and help as her in laws felt the Respondent’s No.1’s behavior was normal and took the mental and physical abused very lightly and did not bother to speak to the Respondent No.1 to change his behavior towards the Complainant.”

Paragraph-13 reads as under:-

“13. The relationship between the complainant & respondent no.1 became more & more estranged. The Respondent No.1 continued with his assault, physical, emotional abuse and they were living as a strangers under the same roof. Things have become so bad that the Complainant had to call her father on some occasions to control the situation and prevent further physical abuse at the hands of the respondent No.1 in presence of Respondent No.2 an & 3.”

Paragraph-14 reads as under:-

14. The Respondent No.1 and Respondent No.3 on a daily basis shout and hurl verbal abuses to the Complainant and her family over cell phone of the complainant while was at Hyderabad.

In paragraph-17 it is stated:-

17. All on a sudden on 17.02.2017, the respondent no.1 came along with respondent no.2 to the house of complainant's father & caught hold of her & dragged her to move to the house of respondents by force shouting abusive & filthy languages saying "challe gharuku jiba eathi kana guduseti kama karibaku rahichu". When the complainant's father rushed to the spot learning his shouting, the Respondent No.1 misbehaved his Father-in-law also. Further very annoyingly told her the father to come to his house with an amount of Rs.2 lakh as FIRST JOGADA. Consequently, he left Berhampur without any information about his where abuts & Company details."

7. Referring to the averments as quoted above, Mr. Mishra submits that there is nothing to even remotely suggest that the petitioners ever subjected the complainant with any kind of cruelty and that the averments are too general and non-specific in nature. It is the admitted case that the complainant was residing with her husband at Hyderabad and had stayed in her in-laws house for only twenty days. The allegation that she was

forced to do household work cannot, by any stretch of imagination, be treated as an act of cruelty or violence in any form. All the other averments similarly are too general in nature to take notice judicially. Mr. Pradhan, on the other hand, submits that it is not necessary for the complainant to cite each and every instance of cruelty in detail. It would suffice if she makes a reference to the acts of cruelty in her complaint petition as in any case the veracity of the allegations would depend upon the evidence to be adduced by her.

8. After perusing the complaint petition, this Court is of the considered view that some allegations have been made undoubtedly in general terms but then it is not expected of the complainant to cite the detailed particulars of every single such act that may be treated as an act of domestic violence. It has been specifically alleged that the husband of the complainant used to exhibit violent behavior but the petitioners, instead of restraining him allegedly encouraged him to do so. They also restrained her from disclosing such acts before her parents. Thus, while the main allegations appear to be directed against the

husband, the role of the present petitioners appears to be confined to supporting their son and in omitting to restrain him from exhibiting violent behavior towards the complainant. Read as a whole, it cannot be said that the averments do not make out a case of domestic violence against the petitioners. On the contrary, this Court is of the view that the averments, prima facie, show acts of domestic violence by the petitioners against the complainant by way of commission as well as omission. It goes without saying that the allegations need to be proved to hold them finally guilty. But at this preliminary stage it would suffice for the proceeding to continue against them.

9. The case of ***Shyamlal (supra)*** cited by Mr.Mishra can be easily distinguished on facts inasmuch in the said case several other family members apart from the husband and parents-in-law had been impleaded as parties without any specific allegations of domestic violence against them. Under such circumstances, the Apex Court held that in the absence of specific allegations, the case of domestic violence was liable to be quashed.

Significantly, the Apex Court also allowed the case to continue against the parents-in-law.

10. In the final analysis, this Court finds no infirmity much less any illegality in the impugned order so as to be persuaded to interfere therewith. The Revision is therefore, held to be devoid of merit and is hereby dismissed.



Orissa High Court, Cuttack,
The 5th January, 2023/ B.C. Tudu