

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No. 2334 of 2021

(An Application under Section 482 Code of Criminal Procedure, 1973)

Rabindra Kumar Mishra and **Petitioners**
another

-versus-

State of Odisha and another **Opp. Parties**

Advocates appeared in the case by Hybrid mode:

For Petitioners : Mr. P.R. Singh & B. Das,
Advocates.

-versus-

For Opp. Parties : Mr. S.K. Mishra,
Additional Standing
Counsel,
Mr. N.B. Das,
Advocate
(For O.P. No.2)

CORAM:

JUSTICE SASHIKANTA MISHRA

JUDGEMENT

17.03. 2023

SASHIKANTA MISHRA, J.

The petitioners challenge the initiation of the proceeding under Section-12 read with Sections 19 and 20 of PWDV Act against them on the ground that

they are not related to the complainant in any domestic relationship.

2. The facts of the case are that the present opposite party No. 2 has filed the case registered as DV Case No.191 of 2021 in the court of learned S.D.J.M. (S). Cuttack with the following prayer:-

“The petitioners therefore, prays that your Lordship’s may graciously be pleased to allow the application and also may kindly be pleased to grant stay of further proceeding or pass any appropriate order in relating to D.V. Case No. 191 of 2021 pending before the court of learned S.D.J.M. (Sadar), Cuttack for the greater interest of justice.”

3. In the said petition it is stated that she had married one Sudhir Kumar Kara (opposite party No.1 in the complaint petition) way back in the year 1996 and that she is blessed with a son and daughter out of such marriage. It is alleged that opposite party Nos.3, 4, 6 and 7 (in the complaint petition) being her in-laws, subjected her to cruelty since her marriage was apparently solemnized against their wishes. The complainant has made several allegations citing

instances of torture, both physical and mental. In so far as the present petitioners are concerned, it has been alleged that her husband has an illicit relationship with the present petitioner No.2 who is married to petitioner No.1. The following allegation has been made under paragraph-13 and 14.

“13. That after going through the facts it is crystal clear that the petitioner no.2 along with petitioner no.1 were staying in a shared house for which the life of the opp. Party no.2 has been spoiled and destroyed and she has been tortured mentally and physically accordingly she prays for dismissed of the present petition.”

14. That it is humbly submitted that the conduct and behavior of the petitioner no.2 is encouraged by the petitioner no.1 as becoming a silent observer who has never raised any objection or restricted the petitioner no.2 from doing any illegal Act so as to save the life of the opp. party no.2.”

In so far as the petitioner No.1 is concerned, the following has been alleged under paragraph -17:

“17. That its further humbly submitted that the opp. party no.2 due to want of money to unable to maintain herself and her son to prosecute his study as

such is passing sorrowful days for which necessary direction be issued to the learned court before to conclude the proceeding within a stipulated time.”

4. Asserting that no case of domestic violence is made out against them, the petitioners have approached this Court seeking to quash the proceedings.

5. Heard Mr. Santosh Kumar Dwibedi on behalf of Mr. P.R. Singh for the petitioners and Mr. N.B. Das, learned counsel for the opposite party No.2.

6. Mr. Dwibedi submits that by no stretch of imagination the petitioners can be said to have been in any kind of domestic relationship with the complainant (present opposite party No.2) so as to be entangled in the DV preceding. Referring to the definition of domestic relationship as per Section 2(f) of the Act, Sri Dwibedi submits that the petitioners are not related to the opposite party No.2 in any manner whatsoever. Moreover, nothing has been claimed against them. Mr. Dwibedi also refers to the definition of 'Respondent' as per Section 2(q) of the Act to submit

that the petitioners cannot be made respondents in the case.

7. Mr. N.B. Das, learned counsel for the opposite party No. 2 has argued that the husband of opposite party No.2 had illicit relationship with petitioner No.2 and both of them stayed together in a building in which she was also residing. Therefore, it become a shared household.

8. In order to appreciate the contentions urged, it would be appropriate to refer to the relevant provisions of the PWDV Act. Section 2 (q) reads as under:-

“(q) “respondent” means any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act:

Provided that an aggrieved wife or female living in a relationship in the nature of a marriage may also file a complaint against a relative of the husband or the male partner;”

Similarly Section 2(s) reads as under:-

“(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.”

A bare reading of the provision would suggest that the question whether a person can be added as respondents it is dependent upon whether he or she has a domestic relationship with the aggrieved person. Similarly shared household is also relatable to domestic relationship. In other words, unless there is a domestic relationship between the parties, mere residence in the same household will not come within the purview of the definition of shared household as per Section 2(s). Therefore, primarily, the relationship between the parties has to be examined. Section 2(f) defines domestic relationship as under:-

“(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;”

9. It would be useful to refer at this stage to the observations made by the Apex Court in the case of ***Shyamlal Devda and others v. Parimala***, reported in (2020) 3 SCC 14 that it has become a practice to implead several persons including outsiders without any specific allegations of domestic violence being made 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.

10. The present case stands on a similar footing inasmuch as admittedly, the petitioners are not related to the opposite party no.2 by consanguinity, marriage or relationship in the nature of marriage, adoption or members of the joint family etc. The only allegation is that the husband of the complainant had an illicit relationship with the opposite party No.2 and in so far as petitioner No.1 is concerned it is alleged that he did not object to

such relationship. If such facts are true, the same may constitute criminal offences under the Indian Penal Code but, in no manner can be treated a ground to entangle the petitioners in a case under Domestic Violence Act. Moreover, the prayer made by the complainant before the court below is not in any manner directed against the present petitioners. This Court therefore, has no hesitation in holding that the proceeding, in so far as it relates to the present petitioners is not maintainable in the eye of law. This Court holds accordingly.

11. In the result, the CRLMC is allowed, the proceeding in DV Case No. 191 of 2021 pending in the court of learned SDJM (S), Cuttack in so far as it relates to the present petitioners are hereby quashed. It is open to the petitioners to seek appropriate remedy before the appropriate forum in case she has any grievance against them.

(Sashikanta Mishra)
Judge