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IN THE COURT OF SESSIONS JUDGE, CHITRAKOOT

Present- Shesh Mani.....HJS

UPCH010024182024



Criminal Appeal No. 15 / 2024

1. Chandan Singh aged 35 Years son of Bhola Singh
 2. Smt. Sushila aged 62 years wife of Bhola Singh
Residents of Karwi, P.S. Kotwali Karwi, District Chitrakoot, presently residing at 325, near Sahu Ata Chakki, Pathanpur, Chhatarpur, District Chhatarpur, M.P.
 3. Manoj Singh aged 45 years son of Biharilal Patel
 4. Smt. Kalpana Singh aged 43 years wife of Manoj Singh
 5. Sarang aged 24 years son of Manoj
Residents of Laudi, P.S. Laudi, Presently residing at 325 Pathanpur Road, near Sahu Ata Chakki, Chhatarpur, District Chhatarpur, M.P.
- Appellants.

Vs.

1. State of Uttar Pradesh, through DGC (Criminal), Chitrakoot.
 2. Smt. Neelam Devi wife of Chandan Singh aged 31 years Daughter of Heeralal Singh, Resident of Karwi, presently residing at Urai, Kharsedwa, P.S. Dhata, District Fatehpur.
- Opposite Parties.

U/s 29 of Protection of Women From Domestic Violence Act
P..S.- Kotwali Karwi, District – Chitrakoot.

JUDGMENT

1. Present Appeal is directed under Section 29 of the Protection of Women from Domestic Violence Act (In short DV Act) against the order dated 14.05.2024 passed by learned Judicial Magistrate-I, Chitrakoot, in case number 190/2019 Under Section 12 DV Act, P.S. Kotwali Karwi, District Chitrakoot, whereby the learned trial court has rejected application 18 Kha dated 28.08.2023.

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2. The facts giving rise to the present appeal are that an application 3 Ka has been filed by the applicant (respondent No.-2 herein) seeking relief of protection. An objection was filed by the opposite parties (applicant herein) wherein it is stated that after marriage physical relation was never established between the husband and wife. Their marriage was solemnized on 04.02.2014 and applicant used to stay in her matrimonial house for 2-4 days and then leaves for her parental home. The applicant used to tell that her parents had solemnized her marriage without her consent and she also tells that she is having love affair with another person and they are indulged in physical relationship since 2-4 years prior to their marriage and she is in fact that person's wife. The applicant left his house since year 2015 and had never returned to him since then. He came to know that on 06.11.2016 she had given birth to a child who is not born to his wedlock. The applicant pressurizes them to transfer their land in her brother's name and give her their gold and silver. She also used to beat them and threatens them to be implicated in dowry and domestic violence case. The opposite parties have never demanded any dowry or never had committed any domestic violence to the applicant. The opposite party has provided Rs. 6 Lakhs to the applicant as per the provisions of compromise in the case under Section 125 Cr.P.C. and had transferred their 2 bigha land situated at Karwi in the name of her son through registered sale deed and despite these, the applicant is not following the compromise and is disobeying the court's order.

3. During the course of hearing before the learned Judicial Magistrate (trial Court), an application 18 Kha was moved by respondents (appellant herein) raising the issue of the maintainability of petition wherein it is stated that the applicant moved an application under Section 125 Cr.P.C. before Principal Judge Family Court on 28.01.2019 seeking relief of maintenance which was decided on 13.03.2023. The applicant was living separately prior to that case. Non-applicant Chandan Singh moved a petition on 27.04.2018 under Section 13 of the Hindu Marriage Act seeking relief of divorce which was decided on 27.08.2018. The present petition is filed under D.V. Act. The application is incomplete. The evidence of the non-applicant is yet not commenced. The applicant is living separately from the respondent prior to

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year 2018 at her father's house, therefore, the question of cruelty by respondents on applicant does not arise. A criminal case against applicant is pending in the Court of Judicial Magistrate-I, Lavkushnagar which shows that the applicant is a lady of criminal antecedent and the present case is deliberately filed with intention to cause harassment to the opposite parties and thus the case is not maintainable and is liable to be dismissed.

4. Contending the averments made in application 18 Kha, the complainant (Opposite Party No.-2 herein) has filed objection stating therein that a case under Section 13 of the Hindu Marriage Act is pending in the Court of Additional District Judge Family Court, Lavkushnagar. The application has been moved only to harass the complainant and to delay the case and therefore, the application moved by the respondent is false and deserves dismissal.

5. The learned Magistrate, after hearing the parties and considering the facts and circumstances of the case, dismissed application 18 Kha of the opposite parties vide impugned order dated 14.05.2024 on the ground that the contention of the opposite parties is the matter of evidence which can only be decided on the merits of the case after hearing both the parties. Being aggrieved by the said order of the learned trial court, the present appeal is filed.

6. In the appeal it is stated that the impugned order passed by the learned trial Court is wrong on law and facts. The learned Magistrate has not followed the provisions of D.V. Act and had not perused the objection and the evidences available on record in this regard and the application of the opposite parties has been rejected without any ground.

7. Objection Paper No. 12 Kha has been filed by the opposite party No.-2 (complainant therein) stating therein that the impugned order of the learned trial court is correct in every aspect and is not liable for interference. While disposing of an application under sub-section (1) of Section 12 of the DV Act, the Magistrate may direct the respondent to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a consequence of the domestic violence and thus the appeal is devoid of merit and is liable to be dismissed.

8. Heard the learned counsels for the parties and have perused the record.

9. Shri Sachin Kumar Shrivastava, learned counsel for the appellant has submitted that affidavit has been submitted in support of the application but para 4 is not filled. It is also submitted that divorce has already taken place prior to filing of the present petition, therefore petition is not maintainable. The learned Magistrate has not considered the facts and circumstances of the case and has wrongly dismissed the application 18 Kha of the appellants. The impugned order is wrong on law and facts and is not liable to sustain.

10. In reply, Shri Chandrashekhar Singh, learned counsel for the opposite party No. 2 has submitted that even divorcee can claim protection under the Domestic Violence Act. The impugned order is correct on law and facts and is not liable for intervention.

11. In para-3 of the application No. 18 Kha dated 28.08.2023 it is stated that the applicant is living separately from the non-applicant. A petition under Section 13 of the Hindu Marriage Act was filed by the non-applicant Chandan Singh in the Court of Additional District Judge, Luvkushnagar on 27.04.2018 and the same was decided on 27.08.2018. In the objection 21 Ka dated 15.09.2023, applicant has stated that Suit under Section 13 of the Hindu Marriage Act between Chandan Singh and Smt. Neelam Devi is pending in the Court of Additional District Judge (Family Court), Lavkushnagar, Chhatarpur.

12. The learned counsel for applicant (respondent No.-2 herein) submits that the judgment dated 27.08.2018 was ex-parte and when applicant came to know about ex-parte Judgment, an application under Order 9 Rule 13 CPC for setting aside the Judgment was moved by the applicant. The said order was set-aside by order dated 21.12.2023 in Civil M.J.C. No. 06/2019, therefore, the petition under the D.V. Act is maintainable. The learned counsel further states that when the alleged incidence took place with applicant at that time marriage was valid. It is also submitted that if any cruelty was caused prior to dissolution of marriage, that also amounts to the domestic violence. Under such circumstance, the petition is maintainable.

13. The 'domestic relationship' has been defined widely under clause (f)

of Section 2 of the DV Act, 2005, which reads thus:

“(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”

14. Section 2(s) of DV Act, defines 'shared household' according to which '**shared household**' means:

2(s).- a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or alongwith 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 the 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.

15. In the case of **Prabha Tyagi Vs. Kamlesh Devi; AIR 2022 SC 2331**, the Hon'ble Apex Court has held that- Even when the marital ties cease and there is no subsisting domestic relationship between the aggrieved woman and the Respondent against whom relief is claimed but the acts of domestic violence are related to the period of domestic relationship, even in such circumstances, the aggrieved woman who was subjected to domestic violence has remedies under the D.V. Act.

16. In the case of **V.D. Bhanot Vs. Savita Bhanot; MANU/SC/0115/2012: (2012) 3 SCC 183**; The Hon'ble Apex Court has held that where an act of domestic violence is once committed, then a subsequent decree of divorce will not absolve the liability of the Respondent from the offence committed or to deny the benefit to which the aggrieved person is entitled to.

17. Basically, the respondent (appellant herein) has challenged the maintainability of the case on the ground that the complainant has been living separately from the respondent before the filing of the present case.

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The decree of divorce has also been passed. The applicant has filed the case before the trial court under DV Act seeking relief of protection against the accused persons. It has been discussed by the Hon'ble Apex Court that a domestic relationship does not strictly need to be actively subsisting on the very date the application is filed, provided that there was a past domestic relationship where the claimant was subjected to domestic violence.

18. Whether any domestic violence was caused with the applicant during the subsistence of marriage is the actual question under consideration irrespective of the fact whether the applicant (opposite party No.-2) is presently living with the accused persons or not. The facts surfaced from record reveals that the incidence/violence relates to the period prior to the dissolution of the marriage, therefore, the matter of domestic violence should be decided on merits after providing opportunities to the parties in the interest of justice rather than rejecting the same unheard on some technical issue. The learned trial court has rightly rejected the application 18 Kha of the appellant.

19. Keeping in view the entire facts and circumstances, I am of the considered view that the impugned order dated 14.05.2024 passed by the learned trial court is correct and does not suffers from any irregularity or infirmity and thus does not warrant any interference. The Criminal Appeal is devoid of merit and is liable to be dismissed.

ORDER

Present Criminal Appeal No. 15/2024 Chandan Singh & Others Vs. State of U.P. and Another is dismissed accordingly. Impugned Order dated 14.05.2024 is hereby confirmed. Let a copy of this order alongwith original record of the trial Court be sent back to the Court concerned. Parties are directed to remain present before the Court concerned on 28.08.2026. Office to consign the record.

Dated: 10.08.2026

(Shesh Mani)
Sessions Judge
Chitrakoot
J.O. Code- UP 5751

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Judgment signed, dated and pronounced today by me in open Court.

Dated: 10.08.2026

(Shesh Mani)
Sessions Judge
Chitrakoot
J.O. Code- UP 5751