

HIGH COURT OF CHHATTISGARH, BILASPURCriminal Misc. Petition No.1226 of 2016

1. Paleshwar Dewangan, aged about 30 years, S/o Shri Baldev Prasad Dewangan, R/o Ambajhari, Ordinance Factory, Amrawati Road, Nagpur (Maharashtra)
2. Baldev Prasad Dewangan, aged about 55 years, S/o Shri Babulal Dewangan.
3. Smt. Tarun Dewangan, aged about 49 years, W/o Baldev Pasad Dewangan.
4. Sourabh Dewangan, aged about 26 years, S/o Shri Baldev Prasad Dewangan.
5. Praveen Dewangan, aged about 23 years, S/o Shri Baldev Prasad Dewangan

R/o in relating to petitioners No.2 to 5 are M.I.G.-1 20/8, Jawahar Nagar, Supela, Bhilai, District Durg (C.G.)

---- Applicants

Versus

1. Smt. Swezal Dewangan, aged about 24 years, D/o Shri Vijay Dewangan, R/o Hanuman Nagar, Lakhe Nagar Ward, Raipur, District Raipur (C.G.)
2. State of Chhattisgarh, through the Incharge Mahila Thana, Raipur, District Raipur (C.G.)

---- Respondents

For Petitioners: Mr. Aman Kesharwani, Advocate.

For Respondent No.1: Mr. Kashif Shakeel, Advocate.

For Respondent No.2/State: -

Mr. Gary Mukhopadhyay, Deputy Govt. Adv.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

03/04/2017

1. Smt. Swezal Dewangan, respondent No.1 herein, filed a complaint under Section 12 read with Sections 17, 19, 20 and 22 of the Protection of Women from Domestic Violence Act, 2005 (for short 'the PWDV Act') alleging torture, cruelty etc., and sought relief of

residence and monetary relief as well as compensation for harassing her mentally, against the petitioners herein. The petitioners herein after appearance raised two fold objections that under the proviso to sub-section (1) of Section 12 of the PWDV Act, before passing order dated 7-9-2015 domestic incident report of the Protection Officer has not been obtained and the second objection was also raised that the provisions of the PWDV Act are not applicable against female / petitioner No.3 herein, and the provisions being mandatory, the application deserves to be rejected. The trial Magistrate by its order dated 7-9-2015 passed order under Section 12 (1) of the PWDV Act and also granted monetary relief under Section 20 (1) (d) of the said Act. Feeling aggrieved, the petitioners preferred revision before the Court of Sessions. The Additional Sessions Judge by its order dated 30-3-2016 rejected the revision finding no merit. Questioning legality and validity of the order passed by the Additional Sessions Judge / revisional Court, this petition under Section 482 of the CrPC has been filed.

2. Mr. Aman Kesharwani, learned counsel appearing for the petitioners, would submit that the trial Court while passing order under Section 12 (1) of the PWDV Act ought to have necessarily considered the report of the Protection Officer as envisaged under the proviso to Section 12 (1) of the said Act which makes the order vulnerable. He would further submit that female – petitioner No.3 herein is not covered by the provisions of the PWDV Act and both the provisions being mandatory, the trial Court as well as the revisional Court committed manifest illegality in rejecting their

objections and therefore, the impugned order deserves to be set aside and the application be dismissed as not maintainable. He would finally submit that the trial Magistrate ought to have called report from the Protection Officer before registration of the case.

3. Mr. Kashif Shakeel, learned counsel for respondent No.1 / complainant, would submit that it is nowhere indicated in the record that the Magistrate has not considered the domestic inspection report submitted by the Protection Officer, as such, the provision is directory in nature. He would further submit that female is also included within the meaning of relative under Section 2 (q) of the PWDV Act. He would rely upon a decision of the Supreme Court in the matter of Sandhya Manoj Wankhade v. Manoj Bhimrao Wankhade and others¹. Therefore, the impugned order deserves to be upheld and the petition as framed and filed under Section 482 of the CrPC deserves to be dismissed.

4. I have heard learned counsel for the parties and also considered the rival submissions made therein and gone through the record with utmost circumspection.
5. In order to decide the dispute raised herein, it would be appropriate to notice Section 12 (1) of the PWDV Act.

“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

1 (2011) 3 SCC 650

Protection Officer or the service provider.”

6. A focused perusal of the proviso to Section 12 (1) of the PWDV Act would show that the Magistrate is required to take into consideration the domestic incident report submitted before him by the Protection Officer. The mandate is consideration before passing the order under Section 12 of the PWDV Act on the complaint of the aggrieved person, in this case respondent No.1 herein. Thus, there is no legal requirement of calling for the report before the registration of case against the opposite party. Thus, the requirement is calling of report and consideration of report submitted by the Protection Officer.

7. The Bombay High Court in the matter of Manoj Harikisanji Changani v. Prema Shrinivas Changani² held that it is not mandatory for the court entertaining application under Section 12 of the PWDV Act to call for the report of the protection officer as regards the domestic violence. If such report is not called for and not considered, the proceedings would not be an abuse of process of law.

8. In the present case, after registration of case, report of the Protection Officer has been called and it has been considered and order has been passed. It is not the case of the petitioners herein that report of the Protection Officer has not been considered while passing order under Section 12 (1) of the PWDV Act. Therefore, the petitioners' submission has rightly been turned down by the trial Magistrate and duly affirmed by the revisional Court and report of the Protection Officer is not required to be called for before registering the case under the PWDV Act.

² (2012) 5 Mah LJ 249 (Bom)

9. Aforesaid finding would bring me to the next plea raised by the petitioners that the word “relative” as used in Section 2 (q) of the PWDV Act does not include petitioner No.3 herein, as she is a female. Section 2 (q) of the PWDV Act is 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 marriage may also file a complaint against the relative of the husband or the male partner;”

10. The aforesaid definition has been considered by the Supreme Court in **Sandhya Manoj Wankhade** (supra) in which the Supreme Court has held that relative of husband or the male partner include females. It has further been held that legislature never intended to exclude female relatives from ambit of complaint that could be made under the 2005 Act. It has also been held that though expression “female” is not used in proviso to Section 2 (q), but no restrictive meaning can be given to expression “relative” nor has said expression been defined to make it specific to males only. It has been observed as under: -

“14. From the above definition it would be apparent that although [Section 2\(q\)](#) defines a respondent to mean any adult male person, who is or has been in a domestic relationship with the aggrieved person, the proviso widens the scope of the said definition by including a relative of the husband or male partner within the scope of a complaint, which may be filed by an aggrieved wife or a female living in a relationship in the nature of a marriage.

15. It is true that the expression "female" has not been used in the proviso to [Section 2\(q\)](#) also, but, on the other hand, if the legislature intended to exclude females from the ambit of the complaint, which can be filed by an aggrieved wife, females would have been specifically excluded, instead of it being provided in the proviso that a complaint could also be filed against a relative of the husband or the male partner.

16. No restrictive meaning has been given to the expression "relative", nor has the said expression been specifically defined in the [Domestic Violence Act, 2005](#), to make it specific to males only. In such circumstances, it is clear that the legislature never intended to exclude female relatives of the husband or male partner from the ambit of a complaint that can be made under the provisions of the [Domestic Violence Act, 2005](#).

17. In our view, both the Sessions Judge and the High Court went wrong in holding otherwise, possibly being influenced by the definition of the expression "respondent" in the main body of [Section 2\(q\)](#) of the aforesaid Act."

11. In view of aforesaid discussion, it is held that Section 2 (q) of the PWDV Act also includes female and report of the Protection Officer is not required to be called for and considered before registration of case under the provisions of the Act. Therefore, the petition under Section 482 of the CrPC deserves to be and is accordingly dismissed leaving the parties to bear their own cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Misc. Petition No.1226 of 2016

Paleshwar Dewangan and others

Versus

Smt. Swezal Dewangan and another

HEAD NOTE

Female is included within the meaning of relative under Section 2 (9) of the Protection of Women from Domestic Violence Act, 2005 and can be tried under that Act.

घरेलू हिंसा से महिला संरक्षण अधिनियम, 2005 की धारा 2(9) के अंतर्गत, रिश्तेदार के अर्थ में महिला सम्मिलित है तथा अधिनियम के अधीन उसके विरुद्ध विचारण किया जा सकता

