

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 600 of 2018**

1. Pramod Ranjankar S/o Dharmi Mohankar Aged About 87 Years R/o Block 1-D, Sadak 8, Sector-9, Bhilai, Tahsil & District Durg Chhattisgarh.
2. Smt. Kshipra W/o Pramod Rajankar Aged About 77 Years R/o Block 1-D, Sadak 8, Sector-9, Bhilai, Tahsil & District Durg Chhattisgarh ---
Petitioners

Versus

1. Arunashankar S/o Pramod Rajankar Aged About 37 Years R/o Block 1-D, Sadak 8, Sector-9, Bhilai, Tahsil & District Durg Chhattisgarh,
2. Smt. Rinkukar W/o Shri Arunashankar, R/o Block 1-D, Sadak 8, Sector-9, Bhilai, Tahsil and District Durg Chhattisgarh.
3. State of Chhattisgarh through the Police Station Bhilai Nagar, Tahsil & District Durg Chhattisgarh. --- **Respondents**

For the Petitioners	:	Mr. T. K. Jha, Advocate.
For the Respondents 1 & 2	:	Mr. Rahul Tamaskar, Advocate
For the State/R-2	:	Mr. Sangharsh Pandey

Hon'ble Shri Justice Goutam Bhaduri

C.A.V. ORDER

(Reserved on 17-05-2018)

(Pronounced on 18-07-2018)

1. The jurisdiction of this Court under Section 482 of Cr.P.C., 1973 has been sought to be invoked by the petitioners who are father and mother of respondent No.1 and father-in-law and mother-in-law of respondent No.2. The petitioners are stated to be aged about 89 years and 77 years. The order under challenge is dated 28.2.2018 passed in Criminal Revision No.1/2018 by the IVth Additional Sessions Judge,

Durg whereby the order passed by the Judicial Magistrate First Class, Durg, in Criminal Case No.1382/2017 dated 06.10.2017 is confirmed.

2. The brief facts of the case are that the petitioners who are apparently Senior Citizens, aged about 89 years and 77 years had moved an application u/s 24 of The Maintenance and Welfare of the Parents and Senior Citizens Act, 2007 (hereinafter referred to as the Act of 2007) against their son and daughter-in-law and complained before the police that they are subjected to torture, cruelty and misbehavior. The first information report shows that the complaint was made stating that after retirement they were living in the house owned by Petitioner no.1 along-with his son and daughter in law who is Ex-Serviceman and is presently working in Indian Oil Corporation and the daughter-in-law who is working as teacher in a school. It was complained that the daughter-in-law used to conduct tuition classes in the house and had forcibly encroached upon their plot and house. It is further complained that for the last 4-5 years they were isolated and driven to a corner of the house and further they were made to live in captivity in their own house. It was further complained that they have endured the violent pathetic atmosphere created by the respondents and they had also sustained utmost grief, pain and suffering. It was also complained that they were treated as dead alive and they were subjected to torture, ill-treatment and misbehavior/ manhandling committed by the son and daughter in law and eventually claimed for help.

3. The JMFC took the cognizance on the basis of said complaint

and found that prima facie case is made out u/s 24 of the Act, 2007. The notices were issued to respondent 1 & 2 and while such proceeding was pending an application was filed by Petitioner No.1 seeking interim relief for eviction from the house. It was prayed that virtually they have been ousted from the house owned by them and though the report was made to the police for restoring possession but it has failed. It was categorically stated that disposal of pending criminal case which is registered may take some time, therefore, the son and daughter should be ousted from the house to protect the petitioners. The said application was dismissed by the JMFC on the ground that the eviction so prayed for is of civil nature, therefore, the application cannot be entertained and the same was dismissed.

4. The said order of dismissal to get the house vacated was challenged in Criminal Revision before the IVth Addl. District and Sessions Judge who by the impugned order dated 20.04.2018 dismissed the revision by holding that the ejection of like nature is not maintainable under the provisions of the Act, 2007. It was also held that when the petition filed u/s 24 of the Act is pending, ejection cannot be passed by the Court.
5. Learned counsel for the petitioners would submit that the Courts below failed to understand the spirit and object of the Act of 2007 wherein the implicit protection is provided for the senior citizen. It is further submitted that the senior citizens cannot be resorted to different courts when the Act, 2007 itself takes care of the rights of the senior citizens. He, therefore, submitted that the order passed by the courts

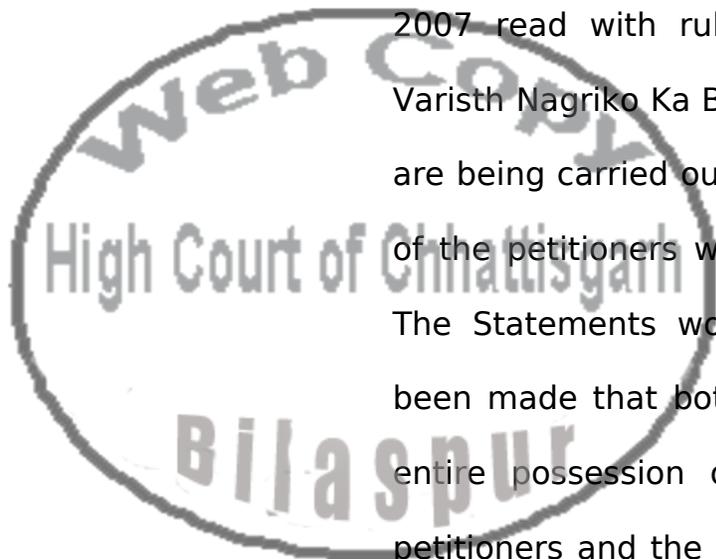
below are liable to be set aside.

6. Per contra, learned counsel for respondents 1 & 2 submits that the entire dispute as has been projected is at the behest of the sister-in-law and a dispute in between respondent No.2 i.e., daughter-in-law of the petitioners and the daughter of petitioners. It is stated that Annexure R-2 would show that physical violence, scuffle took place in between respondent no.2 and her sister-in-law as per Annexure R-2 and it is at the behest of sister-in-law, the respondents are sought to be ousted. It is further stated that the orders of the Courts below are well merited and the Court trying the offence u/s 24 of the Act, 2007 is denuded the power of ejection. It is further stated that the respondents are ready and willing to shift but some time may be provided.

7. Perused the order of the court below and the records. The record would show that complaint u/s 24 was registered against respondents 1 & 2. The affidavit has been filed by petitioner No.1, aged about 89 years. He has stated that his son is earning more than Rs.60,000/- per month and respondent No.2 is a teacher and she uses to take tuition classes in the premises wherein she is earning more than Rs.20,000 – 25,000/- per month. It is stated that despite huge earning by respondents 1 & 2 the petitioners are being mentally and physically tortured and the respondents have forcibly taken possession of the house and no payments of electricity bills and the water cess are made. It is stated that despite the fact that they are staying together, they have to suffer from starvation and have to get the food from the hotel and are subjected to abuses and physical manhandling.

It is further submitted that if someone tries to help the petitioners, they are also being abused. It is further stated that the house was purchased by the petitioners after his retirement and at this stage, they became old and infirm there is all apprehension of life and liberty, therefore, eventually when they were manhandled, a report was made to the police but the police has filed a case under section 24 of the Maintenance Act.

8. While this petition was preferred before this Court, the State/ District Magistrate was directed to call for a report as to whether the object and provisions of section 22 of the Act, 2007 read with rule 19 of Chhattisgarh Mata Pita Avam Varisth Nagriko Ka Bharan Poshan Tatha Kalyan Niyam, 2009 are being carried out or not. As against this, the statements of the petitioners were recorded by the District Magistrate. The Statements would show that similar averments have been made that both the respondents have taken over the entire possession of the house which is owned by the petitioners and the petitioners have been confined to live in single room. They further stated that the son and daughter-in-law do not provide them food, at some point of time they stopped water supply and at someone point of time, the electricity was also shut down and they had to get food from out side. He further stated that the son comes to the room and takes away the food instead they are being called as thief. It is stated that the petitioners and her wife used to survive on amount of interest which accrues on the lump-sum amount deposited in the bank after his retirement and except the house, no property exist in their name. It is



further stated that the son had attacked him in the year 2017 to kill him for which the report was made. It is stated that the parents are often subjected to continuous threats and physical manhandling by respondents 1 & 2. It is further stated that he wants to get the house vacated from the possession of respondents.

9. During the course of hearing, respondents 1 & 2 were called in person as also the petitioners and came to the Court. It is not in dispute that the respondents are residing in the said house which is exclusively belonged to the petitioner. The petitioners before this Court also again requested to get the house vacated for their survival as no other source of income exists. Taking into consideration the statements of physical violence of parents with abuses the gentle art of forgetting cannot be applied. The facts cannot be continued along the lines of holding a status quo. The object of the Act of 2007 is to institutionalize suitable mechanism for protection of life and property of senior citizens. The relevant portion of the statement of objects and reasons of the Act, 2007 is reproduced herein below:

STATEMENTS OF OBJECTS AND REASONS

Traditional norms and values of the Indian Society laid stress on providing care for the elderly. However, due to withering of the joint family system, a large number of elderly are not being looked after by their family. Consequently, many older persons, particularly widowed women are now forced to spend their twilight years all alone and are exposed to emotional neglect and to lack of physical and financial support. This clearly reveals that ageing has become a major social challenge and there is a need to give more attention to the care and protection for the older persons.

Though the parents can claim maintenance under the Code of Criminal Procedure, 1973, the procedure is both time-consuming as well as expensive. Hence, there is a need to have simple, inexpensive and speedy provisions to claim maintenance for parents.

2. The Bill proposes to cast an obligation on the persons who inherit the property of their aged relatives to maintain such aged relatives and also proposes to make provisions for setting up old-age homes for providing maintenance to the indigent older persons.

The Bill further proposes to provide better medical facilities to the senior citizens and provisions for protection of their life and property.

3. The Bill, therefore, proposes to provide for :

(a) appropriate mechanism to be set up to provide need-based maintenance to the parents and senior citizens;

(b) providing better medical facilities to senior citizens;

(c) for institutionalization of a suitable mechanism for protection of life and property of older persons;

(d) setting up of old-age homes in every district.

4. The bill seeks to achieve the above objectives.

10. By virtue of section 3 of the Act, 2007, it will have an overriding effect notwithstanding anything inconsistent therewith contained in any other statute. In the instant case, repeatedly the petitioner has stated that he is subjected to abuse in between torture and inhuman ill-treatment in his own house and was driven to a corner of one room of the house thereby inundated with vulgar insult and humiliation. The ownership of the house exclusively belonged to the petitioner has not been disputed during the course of argument. This fact cannot be ignored that since the acts of

respondents complained by the petitioners are prima facie made out, therefore, the Magistrate has registered the case u/s 24 of the Act of 2007. To protect the property of a senior citizen the provisions of section 23 of the Act 2007 are in the statute book of Act of 2007 whereas section 24 is meant for protection of senior citizen in person that is from exposure and abandonment.

11. The relevant sections 23 & 24 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 are reproduced herein:

23. Transfer of property to be void in certain circumstances.--

(1) Where any senior citizen who, after the commencement of this Act, has transferred by way of gift or otherwise, his property, subject to the condition that the transferee shall provide the basic amenities and basic physical needs to the transferor and such transferee refuses or fails to provide such amenities and physical needs, the said transfer of property shall be deemed to have been made by fraud or coercion or under undue influence and shall at the option of the transferor be declared void by the Tribunal.

(2) Where any senior citizen has a right to receive maintenance out of an estate and such estate or part thereof is transferred, the right to receive maintenance may be enforced against the transferee if the transferee has notice of the right, or if the transfer is gratuitous, but not against the transferee for consideration and without notice of right.

(3) If, any senior Citizen is incapable of enforcing the rights under sub-sections (1) and (2), action may be taken on his behalf by any of the organization referred to in Explanation to sub-section (1) of section 5.

12. Further Chapter VI of the Act, 2007 deals with offences and lays down procedure for trial thereof. Section 24 of the Act relates to exposure and abandonment of senior citizen which is reproduced as under :

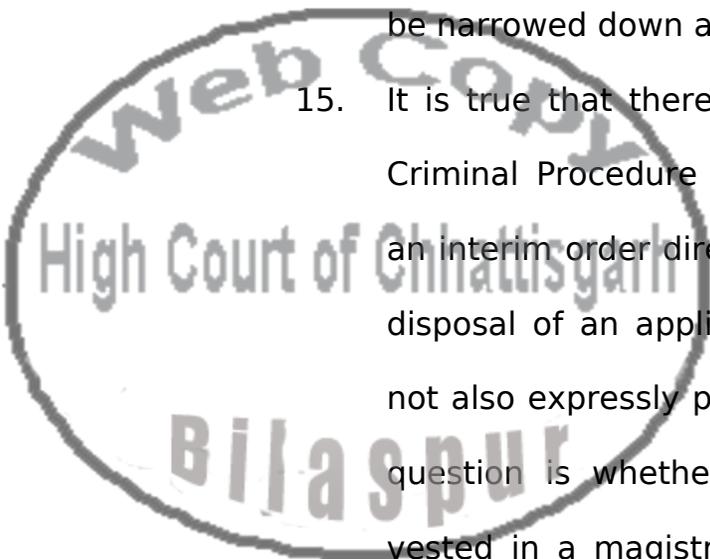
“24. Exposure and abandonment of senior citizen.-- Whoever, having the care or protection of senior citizen, leaves such senior citizen in any place with the intention of wholly abandoning such senior citizen, shall be punishable with imprisonment of either description for a term which may extend to three months or fine which may extend to five thousand rupees or with both.”

Reading of section 24 would show that it started with opening words “the exposure and abandonment of senior citizen” meaning thereby the entire object is to protect the senior citizen.

13. The JMFC in this case on a report made by the petitioners registered a case u/s 24 of the Act. The statements have been recorded before the District Magistrate in pursuance of the direction given by this Court and the District Magistrate came out with categorical finding that the petitioners are being physically tortured and confined to single room in the house owned by Petitioner no.1, which resulted into loss of income as the property cannot be used for his own purpose and it is being used by respondents 1 & 2. It is stated that he is completely depending on the interest amount which accrues on the deposits made in the Bank which he received after his retirement.
14. Having regard to the object of the Act and the intention of the legislature, there is no reason or justification or indication

to restrict the meaning and scope of the word protection. A combined reading of sections 23 & 24 the Act would show that even if the property has been transferred by way of a gift or otherwise to the transferee, in lieu of such transfer of property the transferee has to provide basic amenities and physical needs to the transferor and if the transferee refuses or fails to provide such amenities and needs, the said transfer can be annulled. Like wise protection in person also takes within its sweep when the senior citizen is abandoned. Therefore, if the provisions are examined in the backdrop of the object, the protection and concept of possession cannot be narrowed down and alienated.

15. It is true that there is no express provision in the Code of Criminal Procedure which authorises a magistrate to make an interim order directing ejection of respondents pending disposal of an application for maintenance. The Act does not also expressly prohibit the making of such an order. The question is whether such a power can be implied to be vested in a magistrate having regard to the nature of the proceeding under Sections 23 & 24 of the Act 2007 and other cognate provisions found in Chapter VI of the Act of 2007. Reading of section 24 of the Act shows that it gives protection to the senior citizens in any place if they are abandoned and the said act is punishable with imprisonment of 3 months or fine thereby the person who intentionally abandons a senior citizen is liable for punishment. Reading of the above provision shows that it is intended to provide for a preventive remedy for the safety of senior citizen which can be granted quickly.



16. The point for consideration is whether the magistrate can also make such an interim order or not. The jurisdiction of the magistrate in Chapter VI of the Act 2008 is not strictly a criminal jurisdiction. It contains a summary remedy for securing the safety of the parents. The Act, therefore, provides a quick remedy to protect the senior citizen to tide over immediate difficulties. These provisions are intended to fulfill a social purpose. The object is to compel a man to perform the moral obligation which he owes to his parents and give support to the shivering hands. Likewise the children were protected during their childhood to become a competent adult. The object of the Act, 2007 calls for a simple, speedy but limited relief and seeks to ensure that the parents are not shelved as a commodity or a good under the scrap/heap of society and allow the children to sail on their immorality for their own subsistence. The jurisdiction conferred by this section on the Magistrate is more in nature of a preventive, rather than a remedial jurisdiction. In view of this, it is the duty of the Magistrate to interpret the provisions of Chapter VI of the Act 2007 in such a way that the construction placed on them would not defeat the very object of the legislation. In absence of any express prohibition, it is appropriate to construe the provisions in chapter VI as conferring an implied power on the magistrate to direct the person against whom an application is made under Section 24 of the Act not to harm the senior citizen also.
17. In the instant case, if the facts are looked into from other angle, the two senior citizens aged about 89 years and 77

years have complained of physical assault and torture by the son and daughter-in-law by not providing them food, medicine and also confining them to a corner of their own house. It is not expected that a senior citizen will run from pillar to post and the assault and abuses would be allowed to be continued in the same house till the petition u/s 24 is decided on merits. One can foresee the impact that when a senior citizen who is subjected to torture occupying the same house and is confined in a room and are assaulted daily by the respondent son and daughter-in-law then strict measures have to be followed to arrest such humiliation and assault and the Court cannot follow the proposition of "wait and watch" by sitting on the fences.

18. The Delhi High Court in case of *Sunny Paul and another v. State NCT of Delhi and others* reported in *LAW(DLH)-2017-3-3* decided on March 15,2017 while interpreting the right over the immoveable property has observed that direction of eviction is a necessary consequential relief or a corollary to which a senior citizen would be entitled upon a transfer being declared void thereby the right over the immoveable property, possession and ejection thereof has been recognized which are incidental and ancillary. The Court has further held and quoted the text of Maxwell on Interpretation of statutes (11th edn.,) "where an act confers a jurisdiction, it impliedly also grants the power of doing all such acts, or employing such means, as are essentially necessary to its execution."
19. Further more, the Supreme Court in case of *(1985) 4 SCC 337 – Savitri, w/o Govind Singh Rawat v. Govind*

Singh Rawat has interpreted the power of the Court in a case of interim maintenance and held that every court must be deemed to possess by necessary intendment all such powers as are necessary to make its orders effective. In para 6 of the said judgment, it was further held as under :

“6. This principle is embodied in the maxim *“ubi aliquid conceditur, conceditur et id sine quo res ipsa esse non potest”* (Where anything is conceded, there is conceded also anything without which the thing itself cannot exist). [Vide Earl Jowitts Dictionary of English Law, 1959 Edn., P. 1797.] Whenever anything is required to be done by law and it is found impossible to do that thing unless something not authorized in express terms be also done then that something else will be supplied by necessary intendment. Such a construction though it may not always be admissible in the present case, however, would advance the object of the legislation under consideration. A contrary view is likely to result in grave hardship to the applicant, who may have no means to subsist until the final order is passed.”

20. Therefore interpreting in the line of the aforesaid facts it is not expected that after the damage is done to a senior citizen who is occupying some house with his son, the law will come to the rescue of the petitioners through the route of IPC. Therefore, the anxiety to stop the right of the abuse of senior citizen is to be made effective as otherwise it would be a symbolic collapse of the legal system by not responding to the request or by adhering to the dummy mode by Courts.
21. Under the facts and circumstances of the case, it is directed that the interim application filed by the petitioners seeking eviction of the respondents is allowed. The District

Magistrate is directed to evict the respondents within a further period of 30 days from the date of receipt of the order. Learned State Counsel is directed to communicate this order to the District Magistrate forthwith and thereafter the District Magistrate shall report the compliance of the order to the Registry of this court.

With the above observations/direction, this petition stands allowed.

Sd/-
GOUTAM BHADURI
JUDGE

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