

**Rakesh Sachdeva and ors Vs. State of Jharkhand and anr**

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**Court :** Jharkhand

**Decided On :** Jul-30-2013

**Appellant :** Rakesh Sachdeva and ors

**Respondent :** State of Jharkhand and anr

**Judgement :**

IN THE HIGH COURT OF JHARKHAND AT RANCHI Cr. Rev. No. 1088 of 2012  
With I.A. No. 2380 o

1. Rakesh Sachdeva 2. Ramesh Sachdeva 3. Sharda Sachdeva 4. Rajan Sachdeva 5. Minakshi Sachdeva @ Meenu Sachdeva Petitioners Versus 1. The State of Jharkhand 2. Neelam Sachdeva Opposite Parties ----- CORAM : HONBLE MR. JUSTICE H. C. MISHRA For the Petitioner: Mr. Rajan Raj, Advocate For the State: Mr. Manoj Kumar No. 3, A.P.P. For the Opposite Party No. 2: M/s. Dilip Jerath, Advocate, Vineet Kr. Vashistha, Advocate ----- C.A.V. on 18.07.2013 Pronounced on 30.07.2013 ORDER H.C.Mishra,J.

: Heard learned counsel for the petitioners, learned counsel for the State, as also learned counsel for the complainant opposite party No.

2. 2. The petitioners are aggrieved by the Judgement dated 03.10.2012 passed by learned Additional Sessions Judge-II, Dhanbad, in Cr. Appeal No. 184 of 2010, whereby the appeal filed against the Judgement and Order dated 19.07.2010 passed by Smt. Veena Mishra, learned Judicial Magistrate, 1st Class, Dhanbad, in

C.P. Case No. 754 of 2009 / T.R. Case No. 727 of 2010, has been dismissed by the learned Appellate Court below.

3. It may be stated that in the complaint filed under the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as the Act), the petitioner No. 1, who is the husband of the complainant, has been directed to provide an alternative accommodation to the victim complainant of the same level as being enjoyed, or pay rent for the same. He has also been restrained from renouncing his rights in the shared household. The petitioner No. 1 has further been directed to make the payment of Rs.2,000/- per month for a period of 9 years and 1 month prior to the order, which comes to Rs.2,18,000/-, medical expenses @ Rs.200/- per month for -2- the same period, which comes to Rs.21,800/- and to make the payment of compensation of Rs.50,000/- for mental injury, and he has been further directed to make the payment of Rs.6,000/- per month towards the food, clothing, medication etc., from the date of filing of the case. All the petitioners have been directed to make the payment of Rs.10,000/- each, as compensation to the victim complainant under section 22 of the Act and they were also refrained from restraining the complainant from continued access to her personal effects in the shared household. The petitioner No. 1 has also been directed to make the payment of 50% of the arrears of Rs.6,000/- per month from May, 2009 till July, 2010, within a period of two months and the rest arrear amount and other amounts within a period of six months in three installments. In view of the fact that it was found by the Trial Court that the complainant was residing outside her matrimonial house / shared household and as there was no evidence against which the respondents be restrained from committing domestic violence, she was not found entitled to any relief under section 18 of the Act.

4. The record shows that the complainant opposite party No. 2, filed the complaint case before the Chief Judicial Magistrate, Dhanbad, which was numbered as C.P. Case No. 754 of 2009 under the provisions of the Act. According to the complainants case she was married to the petitioner No. 1, Rakesh Sachdeva, as per Hindu customs on 21.2.1985, and thereafter she came to reside in the joint family house of her husband at Dhanbad. In the year 1986 the elder brother of the husband, viz., Ramesh Sachdeva, came from Punjab alongwith his family, and

started living in the same house and thereafter the trouble of the complainant lady began. It is alleged that she was being subjected to mental agony by calling her as a barren lady, by the family members, except her husband, as she had not given birth to any child. Subsequently, the complainant along with her husband was shifted to the outhouse to avoid the regular unruly scenes. The younger brother of the husband of the complainant was married in the year 1988 and in the same year they were blessed with -3- a daughter and thereafter the agony of the complainant further increased for not having given birth to any child, despite the marriage having taken place more than three years ago. She was always asked to stay away from the family functions, festivals and ceremonies and when such cruelty to the complainant further increased, the petitioner No. 1, husband brought the complainant to her brothers house on the pretext that her absence from the house would ease the situation and with a promise to take her back as soon as the situation normalized. She was however, never taken back to her matrimonial home, except for a short period when her mother-in-law died in the year 2002, when she had visited her matrimonial home. Again the petitioners continued casting aspersions against her being a barren lady and she was again brought at her brothers house. It was further alleged that while staying at her brothers house, she had taken up a job of a teacher in a local school, but there also she became a subject of talk between the teachers due to her disturbed matrimonial life, which forced her to leave her job due to mental and social stigma. All of a sudden the complainant learnt that the petitioner No. 1 had filed a Title Matrimonial Suit bearing No. 100 of 2006 against the complainant for divorce on the ground of cruelty and desertion. Claiming, that the complainant also perceived that her husband may alienate his share of the joint family property in order to deprive her of her share in the same, and stating that she had no means to maintain herself, whereas her husband was having a lucrative business of supplying earth moving machinery to B.C.C.L. and its sister concerns, the complaint was filed seeking protection under the Act.

5. Upon notice the petitioners appeared in the Court below and they filed their written statement from which it appears that the marriage between the parties is an admitted fact. Objection was taken by the petitioners in the Court below that no report had been received from the Protection Officer as required under Section 12

of the Act, and as such the complaint was not maintainable. The petitioners also denied the allegation that the complainant was ever subjected to any -4- mental cruelty by the petitioners, and it was stated that the complainant in her W.S. filed in T.M.S. No. 100 of 2006 had stated that her husband was impotent and accordingly, the claim of the petitioner that she was being called as barren lady was absolutely false. The petitioners also denied the claim of the complainant for monetary compensation.

6. The record shows that both the parties adduced evidence in the Court below, both oral and documentary, and on the basis of the detailed discussions of the evidence on record, the Court below has found that the complainant had been able to prove that she was mentally tortured and she was subjected to domestic violence by the petitioners and that continued even after the year 1993 when she was dropped at her brothers house and not taken back in the matrimonial home.

7. The Trial Court below on the basis of the evidence on record also came to the conclusion that it was due to the social stigma, that the complainant had to leave the job of teacher. The Court below took into consideration the objection taken by the petitioners that no report had been received from the Protection Officer as required under Section 12 of the Act, and relying upon a decision of the Allahabad High Court, found that Section 12 of the Act did not mandate for calling a report from the Protection Officer, and held the complaint maintainable. The Court below however, did not find the complainant entitled to any relief under section 18 of the Act, in view of the fact that she was admittedly residing outside the matrimonial home, but she was found entitled to the relief under section 19 of the Act and the respondents were restrained from denying the continued access to the complainant to her personal effects in the shared household and the husband was also directed to provide her an alternative accommodation for which the rent was to be paid by her husband and he was also restrained from renouncing his rights in the shared household, apart from the other monetary reliefs and compensation under sections 20 and 22 of the Act, as detailed above. -5- 8. Learned counsel for the petitioners has submitted that the impugned Judgements and Order passed by the Courts below are absolutely illegal and cannot be sustained in the eyes of law. It has been submitted that the only allegation against the petitioners as regards the

domestic violence is that they ill-treated the complainant calling her a barren lady, whereas it is an admitted position in her W.S. filed in the Title Matrimonial Suit filed by the petitioner No. 1, that the petitioner No. 1 is an impotent person. It has been submitted that when the complainant realized her mistake, she tried to amend the pleadings, but the same was not allowed and all these documents have been proved in the Court below. Learned counsel has submitted that without taking those documentary proof into consideration, the Court below has held that she was being subjected to domestic violence on the ground that she was being called a barren lady and not able to bear a child. Learned counsel submitted that the admission by the complainant that the petitioner No. 1 is an impotent person, the allegation of torturing her as a barren lady, has no legs to stand.

9. It is further submitted by the learned counsel that actually the complainant treated the petitioner with cruelty and torture and she herself left the matrimonial home in the year 1993 and she never returned back thereafter. It has been submitted that it has come in the evidence that there was no telephonic conversation between the parties since the year 2007, and as such the allegation of domestic violence does not stand at all. Learned counsel has also submitted that only when the suit for divorce was filed by the petitioner No. 1 on the ground of cruelty and desertion, the complainant filed the instant complaint and she has also filed an application for restitution of conjugal rights.

10. Learned counsel has further submitted that the allegation that she had left the job of a teacher due to social stigma is absolutely false. In this connection learned counsel has placed reliance upon the documents filed and proved by the complainant herself, to show that she was working in the school. These documents were marked as -6- Exhibits-1 and 2 which only show that the petitioner was working in the school satisfactorily. There is nothing in these documents to show that the petitioner had left the job due to any social stigma as alleged by her.

11. It is next contended by learned counsel for the petitioner that the Court below has not given any finding as regards the income of the petitioner and accordingly, the monetary reliefs and compensation could not have been granted by the Courts

below without giving a finding about the income of the petitioner. In this connection learned counsel has placed reliance upon the decision of the Orissa High Court in *Manorama Swain Vs. Giridhari Swain*, reported in, (1993) 3 RCR (Cri.) 279. Learned counsel has also placed reliance upon a decision of the Rajasthan High Court in *Madhu Sudan Vs. Pushpa @ Bhawana*, reported in (1987) 2 RCR (Cri.) 144, wherein it has been held that when the order of maintenance pendente lite is not supported by reasons and does not discuss the pros and cons of rival versions of the parties relating to the quantum of income of the husband, the order is liable to be set-aside.

12. Lastly, it has been submitted by learned counsel for the petitioners that the impugned orders granting monetary relief to the complainant under section 20 of the Act have been granted for a period of nine years and one month from the date of order, which was passed on 19.7.2010, and accordingly this period goes back to sometimes in the year 2001, when the Act itself was not in force and accordingly, the monetary relief has been granted to the complainant with retrospective effect from prior to the coming of the Act into force, which cannot be allowed. With these submissions learned counsel for the petitioners has submitted that the impugned Judgments are absolutely illegal and are fit to be set aside.

13. Learned counsel for the State, as also learned counsel for the complainant opposite party No. 2, on the other hand have opposed the prayer and have stated that the Courts below have -7- discussed the evidence in detail and have come to the conclusive finding that the complainant was being subjected to domestic violence since the year 1986 itself, and ultimately she was dropped at her brothers place in the year 1993 and the domestic violence continued to her even thereafter, due to the social stigma of being a deserted women, due to which she had to leave the job of teacher in the school, as she was not able to bear the social stigma. Learned counsel has submitted that domestic violence has been defined in Section 3 of the Act, which includes the verbal, emotional and economic abuses, as well as mental injury, and accordingly, it cannot be said that the complainant was not subjected to domestic violence by the petitioners. Learned counsel has submitted that even if the complainant had stated in the written statement that her husband was impotent, this in itself is not sufficient to disbelieve the evidence of

the complainant that she was being characterized as a barren lady due to the fact that she did not bear any child. Learned counsel further submitted that the complainant in her cross-examination has clearly stated that the petitioner had to leave the job of the school due to the social stigma which she was not able to bear, and accordingly it cannot be said that since there is nothing in the Exts-1 & 2 to show that she had left the job of the teacher in the school due to the social stigma, the same was not proved.

14. Learned counsel further submitted that the petitioner No. 1, who had examined himself as D.W.-1 in the Court below, had admitted in his cross-examination that he is a Mechanical Engineer and presently he is running a firm which deals in earth moving machines spares, and he is running the firm since 1991 itself. It is submitted by learned counsel for the complainant that since no income was disclosed by the petitioner from his business, in view of the admitted fact that the petitioner was running the said business, the Court below found that the petitioner No. 1 is a man of means, and has also held that the complainant has no source of income and -8- accordingly, allowed the monetary reliefs and compensation to the complainant under Sections 20 and 22 of the Act.

15. Learned counsel for the petitioner has also submitted that it is well settled principle of law that the Courts may take into consideration the conduct of the parties even prior to the coming into force of the Act, and as such, there is no illegality in allowing the monetary relief and compensation with the retrospective effect. In this connection learned counsel has placed reliance upon the decision of the Supreme Court of India, reported in V.D. Bhanot Vs. Savita Bhanot, reported in (2012) 3 SCC 183. wherein it has been held as follows:- 12. We agree with the view expressed by the High Court that in looking into a complaint under Section 12 of the PWD Act, 2005, the conduct of the parties even prior to the coming into force of the PWD Act, could be taken into consideration while passing an order under Sections 18, 19 and 20 thereof. In our view, the Delhi High Court has also rightly held that even if a wife, who had shared a household in the past, but was no longer doing so when the Act came into force, would still be entitled to the protection of the PWD Act, 2005. Placing reliance on this decision, learned counsel submitted that there is no illegality in the impugned Judgements and

Order passed by the Courts below, worth interference in the revisional jurisdiction.

16. After having heard learned counsels for both the sides and upon going through the record, I find that the Trial Court as well as the Appellate Court below have dealt with the evidence led by both the parties, both oral and documentary, and have come to the conclusion about the domestic violence, to which the complainant opposite party No. 2 had been subjected to. As the findings of the Courts below are based on the evidence on record, the same cannot be interfered with in the revisional jurisdiction. All the findings in the impugned Judgments regarding the domestic violence to which the complainant was subjected to, by the petitioners right from the year -9- 1986, when the elder brother of the husband came and started living in the same house, which continued even after 1993 when the complainant was left by her husband at her brothers place, are fully supported by evidence. The definition of domestic violence as given in Section 3 of the Act clearly embraces the verbal, emotional and economic abuses, as also the mental injury to the victim, and accordingly, no fault can be found in the Judgements passed by the Courts below finding that the complainant was subjected to domestic violence by the petitioners. Similarly, even the finding by the Court below that the complainant had to leave the job due to social stigma attached to a deserted lady, is also based on the evidence on record and the same cannot be interference with.

17. Thus, I do not find any illegality and / or irregularity in the impugned Judgments and Order passed by the Courts below, finding that the complainant had been subjected to domestic violence and she is entitled to the protection under the Act.

18. Similarly, I do not find any merit even in the submission of the learned counsel for the petitioner that the Court below has not given any finding as regards the income of the petitioner. The petitioner No. 1, who had examined himself as D.W.- 1 in the Court below, had admitted in his cross-examination that he is a Mechanical Engineer and presently he is running a firm which deals in earth moving machines spares, and he is running the firm since 1991 itself. Since no income was disclosed by the petitioner from his business, the Court below has found that the petitioner No. 1 is a man of means, and accordingly, has rightly

allowed the monetary reliefs and compensation to the complainant, and the same cannot be said to be excessive, taking into consideration the nature of the business of the husband.

19. This takes us to the last submission of the learned counsel for the petitioner that some of the monetary reliefs under Section 20 of the Act have been allowed with retrospective effect from prior to the coming into force of the Act. The petitioner No. 1 has been -10- directed to make the payment of Rs.2,000/- per month for a period of 9 years and 1 month, as also the medical expenses @ 200/- per month for the same period, which clearly shows that these monetary reliefs under Section 20 of the Act have been allowed to the complainant sometimes from the year 2001. The Protection of Women from Domestic Violence Act, 2005, came into force with effect from 26.10.2006, and this clearly shows that the said monetary reliefs have been granted to the complainant with retrospective effect from prior to the coming into force of the Act. In my considered view, this is a clear violation of Article 20 (1) of the Constitution of India. It is a well settled principle of law that the penal provisions do not operate retrospectively. {Authority: Harjit Singh Vs. State of Punjab, reported in (2011) 4 SCC 441}. However, I do not find any illegality and / or irregularity in the other directions, monetary reliefs and compensation allowed by the Trial Court below, worth interference in the revisional jurisdiction.

20. In view of the aforementioned discussions, the monetary reliefs granted to the complaint opposite party No. 2, under Section 20 of the Act, which have been allowed for the period of 9 years and 1 month, are hereby, set aside, and it is directed that the same may be recalculated at the same rates as allowed by the Court below, with effect from the coming into force of the Act, and not prior to that date. With this modification in the impugned Judgement and Order dated 19.7.2010 passed by Smt. Veena Mishra, learned Judicial Magistrate, 1st Class, Dhanbad, in C.P. Case No. 754 of 2009 / T.R. No. 727 of 2010, this application stands dismissed.

21. Accordingly, I.A. No. 2380 of 2013 filed by the complainant opposite party No. 2, for vacating the stay order dated 7.2.2013, also stands disposed of.

(H.C.Mishra, J.) Jharkhand High Court, Ranchi. Dated the 30th of July, 2013. D.S./  
N.A.F.R.

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