

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**CR.M.P. No. 346 of 2016**

1. Jitesh Singh, S/o. Chhotu Singh, Aged About 31 Years, R/o. House No 515, N-2, C-Sector, Pipalni Bhel, Bhopal, Madhya Pradesh.
2. Achala Singh, W/o. Chhotu Singh, Aged About 55 Years,
3. Chhotu Singh, S/o. Late Kunwar Singh, Aged About 64 Years,
4. Subhesh Singh, S/o. Chhotu Singh, Aged About 27 Years,
5. Ku. Anuja Singh, D/o. Chhotu Singh, Aged About 20 Years,  
No.2 to 5 are R/o. Village Chanwaridad, Manendragarh, District-Koria, Chhattisgarh.
6. Manisha Singh, Aged About 40 Years, R/o. Village Chirimiri, District-Koria, Chhattisgarh.

**---- Petitioners**

**Versus**

1. State of Chhattisgarh, Through : The Station House Office, Mahila Thana, Durg, District -Durg, Chhattisgarh.
2. Smt. Renu Singh, W/o. Jitesh Singh, Aged About 31 Years, R/o. N.H. 8/H, Street No. 82, Sec. 06, Kotwali, Bhilai, District- Durg, Chhattisgarh.

**-----Respondents**

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For Petitioner	: Mr. C.K. Kesharwani, Advocate
For Respondent/State	: Mr. Lav Sharma, Panel Lawyer
For Respondent No.2	: Mr. Mayank Chandrakar, Advocate

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**Hon'ble Shri Justice Rajendra Chandra Singh Samant**

**Order On Board**

**31/08/2017**

Heard.

1. This petition has been brought under Section 482 of Cr.P.C. with a prayer to quash the proceedings against the petitioners pending before the Court of Judicial Magistrate First, Class- Durg.

2. It is submitted by the learned counsel for the petitioners that respondent No.2 is the wife of petitioner No.1 and petitioner No.2 to 6 are in-laws of respondent No.2. On a compliant filed by respondent No.2, a case under Section 498A/34 of Indian Penal Code and Section 3 and 4 of Dowry Prohibition Act is pending before the Court of Judicial Magistrate First Class, Bhopal, registered as Criminal Case No.3617/2015. Petitioner No.1 has also filed an application under Section 9 of Hindu Marriage Act for restitution of conjugal rights before the Family Court, Bhopal. It is submitted that due to differences between the petitioners and respondent No.2, respondent No.2 is residing in her paternal home in Bhilai.
3. Subsequent to the proceeding above mentioned, respondent No.2 has filed a complaint under Section 12 of Protection of Women from Domestic Violence Act, 2005 (in short the 'Act of 2005'), before the Court of Judicial Magistrate First Class, Durg. Petitioners objected to the maintainability of this application, which has been rejected by the learned Judicial Magistrate First Class, Durg. The order passed by the learned Judicial Magistrate First Class, Durg was subject of appeal before the Court Sessions Judge and the Court of Additional Sessions Judge, Durg vide impugned order dated 02.02.2016 has dismissed the appeal filed by the petitioners and affirmed the order passed by the Court below.
4. It is submitted by the counsel for the petitioners that two parallel proceeding can not go on against the petitioners on the same set of facts, hence for these reasons, it is prayed that proceeding against

the petitioners pending before the Court of Judicial Magistrate First Class, Durg, be quashed.

5. Counsel for the respondents submits that Section 36 of the Act of 2005 provides that act is not in derogation to the provisions of any other law for the time being in force. Hence, the domain of the Act of 2005 is different. Section 27 of the Act of 2005 provides that person aggrieved can bring an application under this Act, in place where she permanently or temporarily resides or carries on business or is employed etc. This provisions entitles the respondent No.2 to file an application under Section 12 of the Act of 2005, before the Court of Judicial Magistrate First Class, Durg. Respondent No.2 has brought the application under Section 12 of the Act of 2005 for protection order, for arrangement of residence, for compensation, for expenses on treatment, maintenance and for return of Stridhan, which is a maintainable application.
6. Counsel for the petitioner has placed reliance on the judgment passed by the ***Madhya Pradesh High Court (Indore Bench) dated 26.08.2014*** in case of ***Swapnil Kolhe and Ors Vs. Smt. Kirti Kolhe, passed in M.Cr.C. No.8955/2013***, in which considering the facts of this case, the High Court of M.P. was pleased to quash the proceeding under Section 12 of the Act. The fact in that case do not apply to the case here under consideration. Further reliance has also been placed on the judgment passed by the ***Madras High Court dated 28.04.2009, in case of K. Kamala & Ors. Vs. M. Parimala & Anr., passed in Case No. Crl.O.P. (MD) No.11066 of 2008*** and on the judgment of ***Karnataka High Court dated***

**01.07.2014**, passed in case of ***Sri Ravikumar & Anr. Vs. Smt. Pankaja***, passed in ***Criminal Petition No.11022/2013***.

7. Counsel for the respondent No.2 has relied upon the judgment of Hon'ble Supreme Court in case of ***Pritam Ashok Sadaphule and Ors. Vs. State of Maharashtra and Anr., passed in Criminal Appeal No.487/2015 decided on 19.03.2015***, in which it was held that criminal proceeding under Section 498-A of I.P.C. pending in Vikroli (East), Mumbai and proceeding under the Act of 2005 pending in Delhi both can survive together and order was passed to transfer one of the case to the Court of other places where another criminal proceeding was pending.
8. I have heard the learned counsel for the parties and perused all the documents placed on record.
9. Considering the submission made by both the parties and the documents placed on record, it is clear that proceeding under Section 498-A of I.P.C. and other offences is penal proceeding, whereas, the proceeding under the Act of 2005 provides for claim of reliefs by a women in domestic relationship.
10. The definition of aggrieved person in Section 2 (a) of the Act of 2005 that any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent is said to be the aggrieved person for this case. Further the domestic relation has been defined in Section 2 (f) which means a relationship between two persons who live or have, at any point of time, lived together in a shared household.

11. In view of these definitions, relationship between the petitioners and respondent No.2 is continuing on and it is not necessary that for filing an application under the provisions of the Act of 2005, aggrieved person should be in continuous residence along with the persons with whom she is aggrieved. Hence for these reasons, and in view of the judgment of Hon'ble Supreme Court in case of *Pritam Ashok Sadaphule (supra)*, it appears that application under Section 12 of the Act of 2005 pending before the Court of Judicial Magistrate First Class is maintainable.
12. In the result, this petition has no merit and it is dismissed at the motion stage itself.

**Sd/-**  
**(Rajendra Chandra Singh Samant)**  
Judge

Balram