

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 542 OF 2007**

Smt. Tikeshwari Chaudhari aged about 21 years wife of Shri Krishna Kumar Chaudhari Occupation Hosuewife Resident of village Teka Thana Kotararoad Taigarh Thasil and District Raigarh Chhattisgarh

---- **Petitioner****Versus**

Krishna Kumar Chaudhari S/o Gokul Prasad Chaudhari aged about 24 years Occupation Railway Employee Resident of village Garjanjor Thana Himgir District Sundargarh (Orissa)

---- **Respondent**

For Petitioner	:	None.
For Respondent	:	Shri Amit Sharma, Advocate.

Hon'ble Shri Deepak Gupta, Chief Justice**Order on Board****04/08/2016**

1. This petition by the wife is directed against the order dated 7.9.2007 passed by the Family Judge, Raigarh whereby the petition filed by the wife under Section 125 Cr.P.C. has been dismissed mainly on the ground that despite the husband having obtained order for restitution of conjugal rights under Section 9 of the Hindu Marriage Act, the wife has failed to perform her matrimonial duties and has refused to reside with the husband.

2. All I can say is that the approach of Learned Trial Court is feudalistic. According to the finding of Learned Court below, all that is proved is that some time the husband used to raise his hand on the wife and used to slap her. The Court goes on to say that is by itself is not sufficient reason for the wife not to live with the husband. I am constrained to observe that this approach of the Court is totally against the settled position of law. No human

being has a right to physically assault another. The wife is not a chattel. She is not a property of the husband. She is a living human being. The husband has no right to use physical force against wife. In today's day and age to come to a finding that the wife was not justified in leaving the matrimonial home because the husband used to give few slaps now and then is an absurd finding which cannot be sustained in any Court of law.

3. In view of the above, I have no hesitation in setting aside the order of the Learned Family Court. It is proved that the income of the husband is Rs.4000/- per month. Normally the wife is always entitled to $\frac{1}{3}^{\text{rd}}$ of his income. Therefore, Rs.1300/- per month is awarded to the wife as maintenance with effect from the date of filing of the petition. Arrears of enhanced amount of maintenance be paid within one year in 12 equal monthly installments. Future maintenance amount be deposited on or before 15th of each month and the Petitioner/wife shall be at liberty to approach the Family Court for enhancement of maintenance in terms of Section 127 Cr.P.C.

4. With the aforesaid observation, criminal revision stands disposed of.

**Sd/-
(Deepak Gupta)
Chief Justice**