

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 368 of 2016

- Sohil Agrawal S/o Shri Nandkishor Agrawal Aged About 25 Years R/o A-1 Parijat Extension, Police Station - Civil Lines Bilaspur, Tahsil - Bilaspur, Civil & Rev. Distt. Bilaspur Chhattisgarh. --- **Petitioner**

Versus

- Smt. Anjali Agrawal W/o Sohil Agrawal Aged About 23 Years R/o Belgahana, Police Station Kota, Tahsil - Kota, Civil And Rev. Distt. Bilaspur Chhattisgarh... **Respondent**

For the applicant : Mr. Kripesh Kela, Advocate.

Hon'ble Shri Justice Goutam Bhaduri

Order on Board

27.04.2016

1. This petition is against the order dated 30.03.2016 passed by the Fourth Additional Sessions Judge, Bilaspur in Criminal Appeal No.11/2016, whereby the order dated 08.01.2016 passed by JMFC, Bilaspur (C.G) in Case No.145/2015 directing the petitioner to pay maintenance of Rs.5000/- per month to the respondent wife and children by way of interim maintenance was affirmed.
2. An application was filed under Section 12 of the Protection of Women from Domestic Violence Act (henceforth called as Act, 2005) by the respondent wife that she was married to petitioner on 26.04.2012 and thereafter she was subjected to cruelty and was tortured for demand of dowry which led to different dispute under the Hindu Marriage Act and the proceeding u/s 125 of Cr.P.C. During such pendency, an application was filed u/s 23 of the Act 2005 and an amount of interim maintenance was prayed on the

ground that the respondent wife did not have any sufficient means to maintain her and since the proceeding before the Court may take some time, the interim maintenance was prayed for. The Court of JMFC after adjudication of the application has passed an order dated 08.01.2016 directing the petitioner to pay the maintenance of Rs.5000/- per month to the wife.

3. Learned counsel for the applicant would submit that both the orders of the court below have not taken into consideration the income which was being made by the applicant as the applicant do not have any source of income and instead the respondent is earning her livelihood by conducting hobby classes and tuitions. It is submitted that the respondent is an income tax payee and therefore, the same cannot be ignored while adjudicating the interim maintenance and hence, the order may be stayed. Section 12 of the Act 2005 envisages that the aggrieved person may present an application to the Magistrate seeking various reliefs and the Magistrate thereafter may enquire into such facts and section 20 lays down that the monetary relief can be granted. Section 23 of the Act especially empowers the Court that Magistrate may pass such interim order as he deems just and proper. Further it says that if the Magistrate is satisfied that an application prima facie discloses that the respondent is committing or has committed an act of domestic violence or that there is a likelihood that the respondent may commit an act of domestic violence, he may grant an ex parte order on the basis of the affidavit in such form, as may be prescribed, of the aggrieved person under Section 18. Section 19, Section

20, section 21 or as the case may be.

4. A perusal of the order would show that the Magistrate after the application having been filed by the respondent-wife came to a conclusion that there are chances of her being subjected to domestic violence and thereby in exercise of power under section 23 of of the Act, 2005 has passed the order of interim maintenance of Rs.5000/- per month in favour the respondent wife.
5. A copy of affidavit which is filed along-with petition would show that out of the wedlock a male child was born and now he is aged about one year. It is also stated that the husband is running a factory whereby he is earning Rs.50,000 to Rs.1 lakh per month. A perusal of the application Annexure P-1 which is an application filed by the wife u/s 12 of the Domestic Violence Act, many narrations have been made about the cruelty meted to her in the domestic violence.
6. In view of this, the power exercised by the Magistrate u/s 23 of the Act, 2005 cannot be stated to be illegal. The stay of maintenance would amount to killing the object of the domestic violence Act 2005 in the facts of the case, therefore, I am not inclined to interfere with such order as no jurisdictional error has been found in the said order.
7. In the result, the revision has no merit and is dismissed.

Sd/-

**GOUTAM BHADURI
JUDGE**