

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No.718 of 2015**

Ashok Bagga, S/o Late Bodhraj Bagga, Aged about 42 years, R/o In front of Gurudwara, Ward No.3, Bilha, District Bilaspur, Chhattisgarh

---- Petitioner**versus**

1. Payal Bagga, D/o Kishan Lal, aged about 35 years, R/o Berla Road, Bijabhat, District Bemetara, Chhattisgarh
2. Ku. Mannat (Minor) through natural guardian mother Payal Bagga, D/o Ashok Bagga, R/o Bijabhat, Tahsil Thana and District Bemetara, Chhattisgarh

---- Respondents

For Petitioner	:	Shri Aman Kesharwani, Advocate
For Respondents	:	Shri Yogeshwar Sharma, Advocate

Hon'ble Shri Deepak Gupta, Chief Justice**Order on Board****25/11/2016**

1. This criminal revision is directed against the order dated 12.8.2015 passed by the Additional Sessions Judge, Bemetara, District Bemetara in Appeal No.7 of 2015, whereby he dismissed the appeal filed by the husband under Section 29 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as 'the Domestic Violence Act') on the ground that the appeal was not maintainable.
2. The undisputed facts are that the Petitioner/husband was married to Respondent No.1/wife and out of this wedlock, one daughter/Respondent No.2 has been born. The wife and daughter filed a petition for maintenance under the Domestic Violence Act. The Court, after hearing the parties, passed an order granting

maintenance to the wife and daughter. Aggrieved by the said order, the husband filed the appeal before the Learned Additional Sessions Judge. This appeal was rejected not on merit but only on the ground that the same was not maintainable.

3. The Learned Additional Sessions Judge has held that the appeal under Section 29 of the Domestic Violence Act is not maintainable. The view taken by the Learned Additional Sessions Judge is totally erroneous and incorrect. The scope of Section 29 of the Domestic Violence Act has been dealt with in detail by a Learned Single Judge of this Court in Criminal Revision No.799 of 2012 (Vishal Jindal and others versus Puja Jindal and another) decided on 23.7.2014, wherein after referring to Section 29 of the Domestic Violence Act, the Learned Single Judge held as follows:

“29. Appeal- There shall lie an appeal to the Court of Session within thirty days from the date on which the order made by the Magistrate is served on the aggrieved person or the respondent, as the case may be, whichever is later.”

10. The crucial question that falls for consideration is whether an appeal under Section 29 of the Act of 2005 is maintainable against purely interlocutory orders passed by the trial Magistrate or it is confined to the final orders passed under Sections 18 to 22 of the Act of 2005.

11. On plain and careful reading of the Section 29 of the Act of 2005, which provides for an appeal to the Court of Session against 'the order' made by the Magistrate which is served on the aggrieved person or the respondent as the case may be, the legislature has consciously used the word 'the' in Section 29 must certainly have reference to the orders referred earlier and therefore, all final orders referred under Section 18 to 22 must be held to be fall within the expression 'the order' and it includes the final orders passed on an application under sub-section (1) of Section 12 of the Act of 2005. Thus, in the considered opinion of this Court the word 'the order' must take within its sweep all orders passed under Sections 18 to 22 of the Act of 2005.”

4. In view of the aforesaid decision, the appeal of the husband is definitely maintainable. Therefore, the impugned order of the Learned Additional Sessions Judge is set aside. The matter is remanded to the Additional Sessions Judge to decide the same on merits. The parties are directed to appear before the Additional Sessions Judge on 10th January, 2017. No notice will be issued to the parties in this regard by the Additional Sessions Judge.
5. With the aforesaid directions, the criminal revision is disposed of. I.A. No.2 of 2016, an application for urgent hearing also stands disposed of.

Sd/-

(Deepak Gupta)
CHIEF JUSTICE