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HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 951 of 2016**

1. Pawan Kumar Advani S/o S. K. Advani, Aged About 53 Years R/o Riddhi- Siddhi Medical Store, Opposite Rajput Hotel, Ganesh Ram Nagar, Police Station- Golbazar, Raipur, District- Raipur Chhattisgarh.
2. Sushila Advani, W/o S. K. Advani, Aged About 66 Years R/o Riddhi- Siddhi Medical Store, Opposite Rajput Hotel, Ganesh Ram Nagar, Police Station- Golbazar, Raipur, District- Raipur Chhattisgarh.
3. Smt. Sima Advani, D/o S. K. Advani, Aged About 43 Years R/o Riddhi- Siddhi Medical Store, Opposite Rajput Hotel, Ganesh Ram Nagar, Police Station- Golbazar, Raipur, District- Raipur Chhattisgarh.
4. Jaiprakash Advani, S/o S. K. Advani, Aged About 46 Years R/o Riddhi- Siddhi Medical Store, Opposite Rajput Hotel, Ganesh Ram Nagar, Police Station- Golbazar, Raipur, District- Raipur Chhattisgarh.
5. Sangita Advani @ Sangita Rawlani, W/o Harish Kumar Rawlani, Aged About 49 Years R/o Bharti Kapas Centre, Budhwari Bazar, Sivni (Madhya Pradesh) **---- Petitioners**

Versus

Smt. Anita Advani W/o Pawan Advani, Aged About 39 Years R/o Ware House, Opposite 27 Kholi, Bilaspur, Presently Late Arjun Dev Nathani, Ware House Road, Jarhabhatha, Bilaspur, District- Bilaspur Chhattisgarh..... (Appellant) **---- Respondent**

For Petitioners	:	Mr. Ashish Surana, Advocate.
For Respondent	:	Mr. Sunil Otvani with Mr. Aditya S. Gupta, Advocates

Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****28/02/2017**

Heard.

1. This petition under Section 482 of Cr.P.C. has been preferred by the petitioners challenging order dated 13.07.2016, by which, the Appellate Court has passed an order in favour of respondent-wife and granted compensation and monthly maintenance etc.

2. Learned counsel for the petitioners submits that the Learned Lower Appellate Court has recorded a finding of domestic violence against the petitioners by wrong appreciation of oral and documentary evidence on record. He submits that the statement of the respondent and her witnesses are improbable and not liable to be believed in the absence of there being kind of any specific injury. It is also submitted that the independent and cogent evidence of domestic violence has not been led, therefore, the learned Magistrate had dismissed the application. The Appellate Authority was not justified in arriving at his own conclusion of domestic violence, relying only on the oral testimony of the respondent. It is next submitted that in order to assess the financial condition of the applicant, the statement of the applicant recorded in the proceeding under Section 125 Cr.P.C. has been also taken into consideration ignoring that in course of time, there had been a dispute amongst the family members of the applicant, himself, and his father has already excluded him from the use of any property and therefore, the applicant had to take house on rent. Next submission is that while fixing an amount of maintenance of Rs.2,000/- to respondent wife, the Court below has not taken into consideration the fact that the applicant is already required to pay Rs.5,000/- per month. The order passed under Section 125 Cr.P.C. proceedings, directing payment of such huge amount of Rs.7,000/- per month is extremely harsh and without any basis. It is lastly submitted that the amount of Rs.50,000/- has been wrongly assessed as compensation only on subjective basis without there being any specific report of any injuries caused to the wife.

3. On the other hand, learned counsel for the respondent submits that after assessment of oral and documentary evidence on record, the Appellate Authority came to the conclusion regarding respondent having been subjected to domestic violence and thereafter, considering that the applicant is running a medical store and having assessed his capacity and also taking into consideration that some amount has already been awarded for payment as maintenance under Section 125 Cr.P.C. proceedings, the amount has been fixed which does not call for interference.

4. Present is a petition under Section 482 Cr.P.C. These proceedings, cannot be acquainted with proceedings of appeal. The power of this Court

under Section 482 Cr.P.C. is to be exercised sparingly only on the satisfaction that there has been abuse of the process of law or to otherwise secure the ends of justice.

5. Learned Lower Appellate Court in order to come to the conclusion that the respondent wife has been subjected to domestic violence defined under Section 3 of the Protection of Women from Domestic Violence Act, 2005 (for short "the Act of 2005") has taken into consideration the oral evidence of the respondent and other attending circumstances. It is not a case where without any evidence, finding of domestic violence has been recorded. Merely, because any injury has not been proved, it cannot be said that in such a cases, finding of domestic violence cannot be recorded. The meaning and import of domestic violence, as contained under Section 3 of the Act of 2005, is of wide amplitude. Section 3 of the Act of 2005 is very wide and comprehensive and even a mental agony caused by cruel attitude or treatment by the husband, may come within the purview of domestic violence. What has been stated by respondent No.1 in her evidence, definitely amounts to a case of domestic violence. This Court would not re-appreciate the whole evidence to reach a different conclusion as if it was exercising appellate jurisdiction.

6. As far as the amount of maintenance of Rs.2,000/- per month is awarded, it appears that the Court below has awarded that amount taking into consideration that the applicant is running a medical shop. The applicant has relied upon a document Ex.D/1, which shows that the applicant has been excluded from use and enjoyment of the family property. He has placed on record a rent deed to show that he is now occupying and working in the rented premises and has led the oral evidence to prove that he is presently earning almost Rs.50/- to Rs.60/- per day. This aspect has already been taken into consideration by learned Lower Appellate Court and after appreciation of evidence, it has come to the conclusion with regard to the financial capacity of the applicant. However, it appears that there is some dispute between the applicant, father and other family members and also taking into consideration that the applicant has placed on record new document relating to his illness and also that he is suffering from epileptic disease and also suffering from 55% disability, as per the certificate of

disability on record, and further taking into consideration that the maintenance of Rs.5,000/- has already been awarded to wife under Section 125 Cr.P.C., in so far as direction for payment of additional amount of Rs.2,000 per month is concerned, that order requires to be interfered with keeping in view that it may cause serious hardship to the applicant in the circumstances he is facing, as discussed herein above.

7. Amount of Rs.50,000/- which has already been awarded to the respondent for domestic violence, does not require any interference. All other direction do not require any interference.

8. In the result, this petition is partly allowed only to the extent that keeping in view that there is already an order of Rs.5,000/- per month to the respondent by the Family Court under Section 125 Cr.P.C. proceeding, no further amount of monthly maintenance would be liable to be paid by the applicant. Except this, no ground for interference requires to be made by this Court in the impugned order.

Sd/-

(Manindra Mohan Shrivastava)
Judge