

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No.618 of 2017

1. Pramod Tripathi, S/o Shankar Dutt Tripathi, aged about 22 years,
2. Acharya Shankar Dutt Tripathi, aged about 50 years,
3. Sumitra Tripathi, W/o Shankar Dutt Tripathi, aged about 45 years,
4. Ku. Maya Tripathi, D/o Shankar Dutt Tripathi, aged about 19 years,
5. Pradeep Tripathi, S/o Shankar Dutt Tripathi, aged about 20 years,
All R/o Mangla Maharshi Vidhya Mandir Road, Bajrang Chowk, In
front Mans Hear Trading, Bilaspur, District Bilaspur, Chhattisgarh

---- Applicants

versus

Smt. Sangita Tripathi, W/o Pramod Tripathi, aged about 26 years, R/o
Chakradhar Nagar, Banglapara, Tahsil and District Raigarh,
Chhattisgarh

--- Respondent

For Applicants	:	Smt. Indira Tripathi, Advocate
For Respondent	:	Shri Rajendra Tripathi, Advocate

Hon'ble Shri Justice Arvind Singh Chandel

Order on Board

22.2.2018

1. This revision has been preferred under Section 397/401 of the Code of Criminal Procedure against the judgment dated 26.5.2017 passed by the Sessions Judge, Raigarh in Criminal Appeal No.130 of 2016 dismissing the appeal and affirming the order dated 17.11.2016 passed by the Chief Judicial Magistrate, Raigarh in Miscellaneous Criminal Case No.270 of 2016 allowing the application preferred by the Respondent/wife under Section 23 of the Protection of Women from Domestic Violence Act, 2005 and awarding an interim maintenance of Rs.7,000/- per month in favour of the Respondent/wife and against the Applicants.
2. The marriage between Respondent/wife Smt. Sangita Tripathi and Applicant No.1 Pramod Tripathi was solemnised on 24.6.2014. Applicant No.2 is father-in-law, Applicant No.3 is mother-in-law,

Applicant No.4 is sister-in-law and Applicant No.5 is brother-in-law of the Respondent/wife. They were residing together under a same roof. At the time of marriage, no demand of dowry was made. Only gifts were given by the father of the Respondent/wife. Due to harassment and disputes taken after few months of her marriage, the Respondent/wife left the matrimonial house and now she is residing at her paternal house. She is unable to maintain herself. She filed an application under Section 12 of the Protection of Women from Domestic Violence Act, 2005. During pendency of the said application, she filed another application before the Chief Judicial Magistrate for interim maintenance which was allowed vide order dated 17.11.2016. An appeal, being Criminal Appeal No.130 of 2016 was preferred by the present Applicants against the order dated 17.11.2016. The appeal was dismissed by the Sessions Judge vide the impugned judgment dated 26.5.2017. Hence, this revision.

3. It is submitted by Smt. Indira Tripathi, Learned Counsel appearing for the Applicants that no document regarding earning of Applicant No.1/husband is filed. Applicant No.2, father-in-law is engaged in the profession of doing worship and thereby he earns Rs.4,000/- to Rs.5,000/- per month only. Applicant No.3 is housewife and Applicants No.4 and 5 are students. The Respondent/wife is residing separately without any reasonable cause. The husband has filed an application under Section 9 of the Hindu Marriage Act for restitution of conjugal rights. Since the wife is residing separately without any reasonable cause, she is not entitled to get any maintenance. There is no likelihood of delay in disposal of the matter by the Trial Court. Though some delay is occurred yet it is

due to the Respondent/wife.

4. Per contra, Shri Rajendra Tripathi, Learned Counsel appearing for the Respondent/wife supported the impugned judgment.
5. I have heard Learned Counsel appearing for the parties and perused the material available with due care.
6. There is no dispute that Applicant No.1 is husband, Applicant No.2 is father-in-law, Applicant No.3 is mother-in-law and Applicants No.4 and 5 are sister-in-law and brother-in-law of the Respondent/wife. There is no dispute on the point also that the Respondent/wife is residing separately at her paternal house and she has no means to maintain herself. Therefore, she is certainly entitled to get interim maintenance. The finding of the Courts below is proper and well reasoned regarding her entitlement to interim maintenance.
7. The Trial Court has granted Rs.7,000/- per month as interim maintenance in favour of the Respondent/wife and against all the Applicants. As per the contention raised on behalf of the Applicants, Applicant No.3 is mother-in-law and Applicants No.4 and 5 are sister-in-law and brother-in-law of the Respondent/wife and Applicants No.4 and 5 are students. This fact is not disputed during the course of arguments. Applicant No.3 is a housewife is also an admitted fact. Applicant No.2 is father-in-law and is engaged in the profession of doing worship. There is no document on record regarding his income. According to the Applicants themselves, Applicant No.2 earns Rs.4,000/- to Rs.5,000/- per month by his worshipping profession. No document is available to show that Applicant No.2 is earning more than Rs.4,000/- to

Rs.5,000/- per month. Applicants No.3, 4 and 5 are dependent on Applicant No.2. The Respondent/wife has stated that Applicant No.1/husband is engaged as a contractor in the business of furniture, but she has not stated about his income from the said profession. Since Applicant No.1 is the husband, he is aged about 22 years and is stated to be a healthy person, the Respondent is his wife, he only is responsible to maintain her. Since his probable monthly income is not established, granting Rs.7,000/- per month as interim maintenance appears to be excessive.

8. Taking into consideration the facts and circumstances of the case and the submissions put-forth on behalf of the parties, it is directed that in place of Rs.7,000/- per month, only a sum of Rs.5,000/- per month shall be paid to the Respondent/wife as interim maintenance. Further, in place of all the Applicants, only Applicant No.1/husband is held liable to pay the amount of interim maintenance of Rs.5,000/- per month. This order shall be effective from today.
9. In the result, the revision is allowed in part to the extent indicated above.

Sd/-
(Arvind Singh Chandel)
Judge