

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No.979 of 2017

Yogesh Yadav, A/a 26 years, S/o Shri Santosh Yadav, R/o Ganesh Chowk,
Chingrajpara, Bilaspur, Thana Sarkanda, Tahsil and District Bilaspur, C.G.

---- Applicant

versus

Smt. Rekha Yadav, A/a 23 years, D/o Shri Rajkumar Yadav, W/o Shri Yogesh
Yadav, R/o Village Amali, Thana Kota, Tahsil Kota, Bilaspur, C.G.

--- Respondent

For Applicant	:	Shri Arvind Shrivastava, Advocate
For Respondent	:	Shri C.P. Lahrey, Advocate

Hon'ble Shri Justice Arvind Singh Chandel

Order on Board

9.8.2018

1. The instant revision has been preferred against the judgment dated 7.9.2017 passed by the 6th Additional Sessions Judge, Bilaspur in Criminal Appeal No.92 of 2017 affirming the order dated 15.6.2017 passed by the Judicial Magistrate First Class, Kota, District Bilaspur in Miscellaneous Criminal Case No.6 of 2016, whereby the Judicial Magistrate First Class has allowed the application moved under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (henceforth 'the Act of 2005') and granted Rs.3,000/- per month in favour of the Respondent/wife and Rs.2,000/- per month in favour of the son of the Applicant and Respondent as monetary relief for their maintenance and expenditure of residence and medical treatment.
2. Learned Counsel appearing for the Applicant submits that an application under Section 12 of the Act of 2005 was moved by the Respondent/wife. No relief was sought for son of the Respondent

nor was he made a party to the said application. Therefore, both the Courts below have committed error in granting the monetary relief. He further submits that the Judicial Magistrate First Class has granted the monetary relief of Rs.3,000/- and Rs.2,000/- only on presumptions. There is nothing on record on the basis of which it can be accepted that what is the monthly income of the Applicant. Therefore, only on the basis of presumptions, the grant of monetary relief of Rs.3,000/- and Rs.2,000/- is on higher side which deserves to be reduced suitably.

3. Learned Counsel appearing on behalf of the Respondent submits that though son was not impleaded as a party, in paragraph 7 of the pleadings of the Respondent/wife she has pleaded for grant of maintenance for both, i.e., for her and for the son. He further submits that on the basis of provision contained in Section 20(1)(d) of the Act of 2005 also, the son who is residing with the mother/Respondent is entitled to get said monetary relief. He further submits that on the basis of social and financial status of the Applicant, the Judicial Magistrate First Class has rightly granted the monetary relief of Rs.3,000/- and Rs.2,000/- in favour of the Respondent and her son.
4. I have heard Learned Counsel appearing for the parties and perused the record with due care.
5. It is not in dispute that the Respondent is legally wedded wife of the Applicant. Their marriage was performed on 10.5.2014 and it is also not in dispute that out of their wedlock, one son took birth who, at present, is residing with the Respondent/mother.

6. A bare perusal of the record makes it clear that son of the Respondent was not impleaded as a party to the application under Section 12 of the Act of 2005, but in paragraph 7 of her pleadings of the said application, the Respondent has sought monetary relief for her son also.
7. Section 20(1) of the Protection of Women from Domestic Violence Act, 2005 reads as under:

“20. Monetary reliefs.—(1) While disposing of an application under sub-section (1) of section 12, the Magistrate may direct the respondent to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of the domestic violence and such relief may include, but is not limited to,-

- (a) the loss of earnings;
- (b) the medical expenses;
- (c) the loss caused due to the destruction, damage or removal of any property from the control of the aggrieved person; and
- (d) the maintenance for the aggrieved person as well as her children, if any, including an order under or in addition to an order of maintenance under section 125 of the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force.”

8. Thus, in view of the above-quoted provision also, it is clear that son of the Respondent/mother, who is residing with her, is also entitled to the monetary relief.
9. With regard to the quantum of the monetary relief, there is nothing on record on the basis of which monthly income of the Applicant could be determined. The Judicial Magistrate First Class, on the basis of presumptions, has assessed that the monthly income of the Applicant is handsome. In paragraph 76 of her cross-

examination, the Respondent has admitted the fact that she does not know whether any agricultural land or house is registered in the name of the Applicant or not. In paragraph 77 of her cross-examination also, she has admitted the fact that the Applicant does not run any shop and he is not engaged in any contractorship of painting job. The Applicant/husband has categorically stated in paragraph 28 of his examination-in-chief that at present he is unemployed and he has no source of income and he is dependent upon his father. His above statement was not rebutted during his cross-examination. Thus, it is clear that at present the Applicant/husband is jobless and is not working anywhere. Since he is husband of the Respondent and also father of the son who is residing with the Respondent/mother, it is moral responsibility of the Applicant to maintain both the wife and the son. Looking to the financial status of the Applicant, the grant of monetary relief of Rs.3,000/- and Rs.2,000/- is on higher side and, therefore, the same is reduced. The monetary relief of Rs.3,000/- granted to the Respondent/wife is reduced to Rs.2,000/- per month and that of Rs.2,000/- granted to the son of the Applicant is reduced to Rs.1,000/- per month. This reduction in the monetary relief shall be effective from today.

10. In the result, the revision is allowed to the extent indicated above.
11. Record of the Court below be sent back along with a copy of this order forthwith for information and necessary compliance.

Sd/-

(Arvind Singh Chandel)
JUDGE