

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No.371 of 2015

Order Reserved on : 17.1.2019

Order Passed on : 22.4.2019

Hemant Singh Rajput, S/o Ramadhar Singh Rajput, aged about 40 years,
R/o Nutan Chowk, Near Water Tank, Bhilai-3, District Durg, Chhattisgarh

---- **Applicant**

versus

Smt. Rekha Rajput, W/o Hemant Rajput, aged about 32 years, R/o Shankar
Nagar, P.S. Mohan Nagar, Durg, District Durg, Chhattisgarh

--- **Respondent**

For Applicant	:	Shri Amiyakant Tiwari, Advocate
For Respondent	:	None for the Respondent even when the matter was called out on 14 th , 15 th , 16 th and 17 th January, 2019

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. ORDER

1. Vide order dated 18.7.2014 passed in M.Cr.C. No.11 of 2013, the Judicial Magistrate First Class, Durg rejected the complaint filed by the Respondent/wife under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (henceforth 'the Act of 2005'). While deciding an appeal, being Criminal Appeal No.215 of 2014 preferred by the Respondent/wife against the said order of rejection of the complaint, 7th Additional Sessions Judge, Durg, vide judgment dated 10.2.2015, reversed the finding of the Judicial Magistrate First Class, allowed the complaint and granted Rs.1,500/- per month for residence of the Respondent/wife and also granted her Rs.1,500/- per month as maintenance.
2. Facts of the case, in a nutshell, are that marriage between the

Applicant and the Respondent was solemnised on 24.6.2004. Out of their wedlock, one child, namely, Ankita took birth. Presently, the child is residing with the Applicant/father. The Respondent/wife filed an application under Section 12 of the Act of 2005 against the present Applicant and others before the Judicial Magistrate First Class with a prayer to order for providing her a suitable separate accommodation, grant her maintenance of Rs.10,000/- per month and compensation as well. She also prayed in the complaint for return of her *stridhan*. She made allegations against the Applicant that he along with his other relatives used to torture her. The Applicant used to consume alcohol and beat her. She anyhow managed to live with him, but all of a sudden, on 9.6.2012, he lodged a false complaint against her. It was further alleged by her that his parents advised both of them to live elsewhere. Then he took her to a rented house at Supela, Bhilai where they lived together. But, 1 month thereafter, he left her and that rented house and started living with his parents. Thereafter, she shifted to her parental house. She also lodged a complaint against him and his family members against their cruelty. In his reply, the Applicant denied all the allegations made against him. It was also stated by him that due to ill-behaviour of the Respondent/wife, his family life has disturbed. She used to quarrel on petty issues. She also used to beat him. She has no respect towards his parents and due to her, his mother suffered heart attack. The Judicial Magistrate First Class, after recording evidence of both the parties and hearing their Counsel, vide order dated 18.7.2014, rejected the complaint/application of the Respondent/wife on the ground that she was unable to establish that any domestic violence was done with her. Against the order of rejection, an appeal, being Criminal

Appeal No.215 of 2014 was preferred by the Respondent/wife. The Additional Sessions Judge, vide the impugned judgment dated 10.2.2015, allowed the appeal, reversed the finding of the Judicial Magistrate First Class and granted a sum of Rs.1,500/- per month for accommodation of the Respondent/wife and also granted her monthly maintenance of Rs.1,500/-. The Appellate Court also ordered that the amount of Rs.500/-, which was granted by the Family Court as an interim maintenance in a separate proceeding under Section 125 Cr.P.C. shall be adjusted in the amount of monthly maintenance of Rs.1,500/-. Hence, this revision by the husband.

3. Learned Counsel appearing for the Applicant/husband submitted that the Appellate Court has committed an error of law in reversing the finding of the Trial Court. The order of the Trial Court is based on correct appreciation of the facts and evidence on record. The impugned judgment dated 10.2.2015 passed by the Appellate Court is erroneous and arbitrary. It was further submitted by him that after the judgment of the Appellate Court, vide order dated 22.8.2015, the Family Court, Durg, in a separate proceeding moved by the Respondent/wife under Section 125 Cr.P.C., has granted her monthly maintenance of Rs.2,000/-. Therefore, in the proceeding relating to the Act of 2005, the Respondent/wife is not entitled to get any maintenance separately.
4. No one appeared for the Respondent/wife even when the matter was called out for hearing on 14th, 15th, 16th and 17th of January, 2019.
5. I have heard Learned Counsel appearing for the Applicant and

perused the records with due care.

6. Domestic violence is defined in Section 3 of the Act of 2005, which reads thus:

“3. Definition of domestic violence.—For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it—

(a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or

(b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or

(c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or

(d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person.

Explanation I.—For the purposes of this section,—

(i) “*physical abuse*” means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force;

(ii) “*sexual abuse*” includes any conduct of a sexual nature that abuses humiliates, degrades or otherwise violates the dignity of woman;

(iii) “verbal and emotional abuse” includes—

(a) insults, ridicule, humiliation, name calling and insults or ridicule specially with regard to not having a child or a male child; and

(b) repeated threats to cause physical pain to any person in whom the aggrieved person is interested;

(iv) “*economic abuse*” includes—

(a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a Court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance;

(b) disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person; and

(c) prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.

Explanation II.—For the purpose of determining whether any act, omission, commission or conduct

of the respondent constitutes “domestic violence” under this section, the overall facts and circumstances of the case shall be taken into consideration.”

7. In the light of above definition, now, it is to be seen in the case in hand whether the Applicant/husband did any domestic violence with the Respondent/wife.
8. Before the Judicial Magistrate First Class, the Respondent/wife examined herself as Applicant Witness No.1. The Applicant/husband examined himself as Non-Applicant Witness No.1. He also examined his father Ramadhar Singh as Non-Applicant Witness No.2 and his neighbour Bodhanlal as Non-Applicant Witness No.3. The Applicant and the Respondent also led some documentary evidence before the Judicial Magistrate First Class.
9. From the evidence adduced by the parties, it is well established that when the Respondent/wife was residing with the Applicant/husband, he gave her a notice of divorce (Ex.P6). Thereafter, on 15.10.2012, the wife lodged a report (Ex.P3). On 28.1.2013, a written complaint (Ex.P4) was also lodged by her. Again on 3.5.2013, a written complaint (Ex.P5) was lodged by her. In all the complaints, she levelled allegations of quarrel and beatings to her by the husband. From perusal of Ex.P8, it is also established that on the report of the wife, a charge-sheet for an offence punishable under Section 498A, 34 IPC was filed against the husband and his family members. During his cross-examination, the husband himself admitted the fact that in November, 2012, he had taken a house on rent in which he was

residing with the Respondent/wife. In paragraphs 30 and 42 of his cross-examination, he has also admitted the fact that he himself had left the Respondent/wife as also the rented house and he had also not paid the rent of that house. In paragraph 17 of his cross-examination, he has categorically stated that he does not want to keep the Respondent/wife with him. From the evidence adduced by the parties and admission made by the Applicant/husband, it is well established that he gave a notice of divorce to the Respondent/wife while he was living with her. Thereafter, the wife made continuous reports against the husband in police in which she levelled allegations of quarrel and beatings to her by the Applicant/husband. On the basis of the report of the wife, a charge-sheet for an offence punishable under Section 498A, 34 IPC was also filed against the husband and his family members. From the admission made by the husband, it is also established that the husband and the wife were living together in a separate rented house, but, later on, the husband left the wife and the rented house as well. He also did not pay the rent of that house. Therefore, as defined in Section 3 of the Act of 2005, it is established that the husband has done physical and economic abuses with the wife. Thus, from the evidence available on record, it is established that the Appellate Court has rightly arrived at the conclusion that domestic violence has been done with the Respondent/wife by the Applicant/husband.

10. As submitted by Learned Counsel appearing for the Applicant/husband, the interim maintenance of Rs.500/- per month granted earlier by the Family Court to the Respondent/wife in a separate proceeding under Section 125 Cr.P.C. has been adjusted

by the Appellate Court while passing the impugned judgment dated 10.2.2015. Later on, in the said proceeding under Section 125 Cr.P.C., final order has been passed on 22.8.2015 and the Family Court has granted monthly maintenance of Rs.2,000/- in favour of the Respondent/wife. In the case in hand which relates to the domestic violence, the Appellate Court has granted a sum of Rs.1,500/- per month for accommodation of the Respondent/wife and has also granted her Rs.1,500/- per month as maintenance. Now, the Respondent/wife has also been granted Rs.2,000/- per month as maintenance in the proceeding under Section 125 Cr.P.C.

11. This Court, in **Santosh Kumar Agrawal v. Smt. Sarita Goyal**, Criminal Revision No.735 of 2016 decided on 20.10.2016, relying upon a decision of the Delhi High Court in **Renu Mittal v. Anil Mittal**, Crl.R.P. No.633 of 2010 decided on 27.9.2010, has taken a view that the claimants would be entitled for seeking maintenance only under one of the forums available to them from among different statutes enacted by the Government. It was decided by this Court that the claimants would have liberty of seeking maintenance under either of the provisions of the Act of 2005 or under Section 125 Cr.P.C.
12. In Criminal Revision No.433 of 2015 (**Satish Rai v. Smt. Aarti Rai**) decided on 9.2.2017, this Court observed as under:

“6. True it is there is no embargo or bar claiming maintenance under both the provisions i.e. under the Act, 2005 and under Section 125 CrPC, but so far as claim for maintenance is concerned, the same would be entitled only under either of the provision. It can be either under the Act, 2005 or under the provision of Section 125 CrPC. Just because grant of

maintenance is permissible in 125 proceeding as well as under the Act, 2005, by itself would not entitle the respondents to claim for maintenance under both the forums. Even if, the two forums have passed the order of maintenance, the subsequent order of maintenance passed would only be subject to adjustment of the maintenance which has been ordered by the court in a previous proceeding,

13. In the light of above discussion, I am of the considered opinion that out of the amount of Rs.2,000/- granted by the Family Court in the proceeding under Section 125 Cr.P.C. and the amount of total Rs.3,000/- granted by the Appellate Court vide the impugned judgment dated 10.2.2015 passed in the proceeding under the Act of 2005, the amount of Rs.3,000/- granted by the Appellate Court, which is on higher side, shall only prevail and be payable to the Respondent/wife and, therefore, she shall not separately be entitled to the amount of Rs.2,000/- granted by the Family Court.
14. Consequently, the instant revision stands disposed of in the aforesaid terms.
15. Records of the Courts below be sent back along with a copy of this order forthwith for information and necessary compliance.

Sd/-

(Arvind Singh Chandel)
JUDGE