

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****CRR No. 113 of 2019**

- Gunjan Kumar, aged about 38 years, S/o Ashok Kumar Singh, R/o Flat No. 1103, Lavender Building, Goregaon East (Mumbai) Maharashtra.
- Ashok Kumar Singh S/o Late Dineshwar Prasad Singh, aged about 65 years.
- Smt. Bimal Singh wife of Ashok Kumar Singh, aged about 62 years.

Applicant No.2 and 3 are R/o House No.D/301, Rama Green City, Khamtra Road, District Bilaspur (C.G.)

----Applicants**Versus**

- Charu @ Abhilasha Singh, aged about 30 years, W/o Gunjan Kumar, R/o Central Hospital Colony, Manendragarh, District – Korla (C.G.)

At present R/o Abhilasha Singh C/o Dr. D.K. Singh, in front of residence Saral Agarwal, Circum Ground Colony, Manendragarh, District Korla (C.G.)

---- Respondent**And****CRR No. 450 of 2019**

- Charu @ Abhilasha Singh W/o Gunjan Singh, aged as mentioned in impugned judgment 35 years, R/o Flat No.1103, Levender Building, Goregaon East, Mumbai, Maharashtra, at present opp. House of Saral Agarwal, Sarkas Ground, Manendragadh, District Koriya

----Applicant**Versus**

1. Gunjan Singh S/o Ashok Singh, aged 38 years R/o Flat No.1103, Levender Building, (Mantiri Park), Goregaon East, Mumbai, Maharashtra.
2. Ashok Singh S/o Late Dineshwar Prasad Singh, aged about 64 years.
3. Vimal Singh W/o Ashok Singh, aged about 60 years.

Both are resident of D-301, Ramagreen City, Khmtarai

Road, Bilaspur, District Bilaspur (C.G.)

---- Respondents

For Applicants in CRR No.113/2019 : and Respondents in CRR No.450/2019	Shri Parag Kotecha, Advocate.
For Respondent in CRR No.113/2019 : and Applicant in CRR No.450/2019	Shri S.S. Rajput, Adv.

Hon'ble Smt. Justice Rajani Dubey

CAV order

30/07/2019

With the consent of the parties, the matter is heard finally.

1. Since both the revisions arise out of the common order dated 05.12.2018, they are being disposed of together by this common order.
2. The instant revisions have been preferred against the order dated 05.12.2018 passed by the 1st Additional Sessions Judge, Manendragarh, District Koriya in Criminal Appeal No.11/2018 modifying the judgment and order dated 08.02.2018 passed by Judicial Magistrate First Class, Manendragarh in Miscellaneous Criminal Case No.22/2011.
03. The applicant in CRR No.450/2019 is the wife of respondent No.1 in CRR No.450/2019 and applicant No.1 in CRR No.113/2019 and the applicants No. 2 and 3 in the same petition (CRR No.113/2019) are the father-in-law and mother-in-law. The applicants' wife Charu filed a case under the

Protection of Women from Domestic Violence Act, 2005 (for short 'the D V Act') seeking right of residence in the shared household, for maintenance and for surrendering the *stridhan*.

04. The learned JMFC allowed the petition of wife and directed husband, father-in-law and mother-in-law to pay maintenance of Rs.30,000/- per month as also to return all the ornaments mentioned at Sl. No.1 to 8 in the list produced before the lower Court (P. No.498 of lower court record). This order was appealed by the husband, father-in-law and mother-in-law, but the appellate Court vide order dated 05.12.2018 partially modified the order of JMFC and granted maintenance of Rs.25,000/- instead Rs.30,000/-.

05. The applicant wife filed CRR No.450/2019 against respondents for enhancement of maintenance and supported the judgment of learned JMFC stating that the maintenance of Rs.30,000/- awarded by the learned JMFC was adequate.

06. Learned counsel for the applicants in CRR No.113/2019 argued that the respondent (wife) has not made any specific pleading with regard to allegation raised against the applicants. The D.V. Act is not the substitute to grant the maintenance only, hence, the proving of pleading is must for holding the applicants guilty of the provision of D.V. Act. He further argued that both the Courts below have failed to consider that the allegation made in the complaint are unproved and based on false grounds because the respondent (wife) had admitted in para 11 of her cross-examination that

how the applicants had tortured her, the same are not specifically mentioned in the complaint made under Section 12 of the D.V. Act as well as failed to produce single document related to *Stridhan*, therefore, in the absence of specific allegations and non-production of documents in respect of list of *Stridhan*, no case is made out against the present applicants and also not comes under the provisions of Section 3 of D.V. Act. It has been also argued that the respondent has admitted in para 23 of her cross-examination that due to typographical error, price of the diamond set i.e. Rs.21,00,000/- has wrongly been mentioned in the list of *Stridhan*, whereas the actual price of diamond set is 2,10,000/- and the applicant No.1 has stated in para 16 of his cross-examination that respondent wife failed to produce any invoice, delivery challan etc. with regard to the T.V., Refrigerator and Air Conditioner, whereas the applicant has proved that he purchased the above articles and also produced the relevant documents in this regard, as such the respondent wife has prepared false list of the articles. He also argued that both the Courts below have failed to consider the fact that *Stridhan* claimed requires supporting purchase cash memos and income tax return filed to this effect by her father, therefore, while passing such orders both the Courts below ought to have considered that if gold, diamond, silver etc. were ancestral, wife's father had to declare it in annual property return of SECL, a Govt. Company, where her father

was serving. The main objection of applicants was that the application filed by the respondent wife was barred by limitation. She has admitted that she left her matrimonial house in the year 2009 and filed an application under Section 12 of D.V. Act before the Court of JMFC on 11.05.2011 and as such her petition is barred by limitation. He has also argued that the learned trial Court, without any documentary evidence, granted maintenance of Rs.30,000/- and the appellate Court partially modifying the order of JMFC reduced the maintenance amount to the tune of Rs.25,000/- per month, thus, this order is liable to be set aside. He placed reliance on the decisions of the Apex Court in the matter of **Inderjit Singh Grewal V. State of Punjab** reported in **2012(2) C.G.L.J. 595 (SC)**, **Sangita Saha V. Abhijit Saha & Ors** in **(SLP (Cri.) No (s). 2600-2601/2016)** and the decision of the Bombay High Court (Nagpur Bench) in the matter of **Chief Officer, Nagar Parishad V. Laxminarayan** reported in **(2018) 2 ALLMR 607 : (2018) 1 BCR 412 : (2017) 6 MhLJ 381.**

07. Learned counsel for the applicant in CRR No.450/2019 has argued that the learned appellate Court has committed grave error by partially allowing the appeal of the respondents without appreciating the evidence adduced by the applicant as also without observing any illegality in the order dated 08.02.2018 passed by the learned JMFC. He also argued that the Domestic Violence Act is social legislation enacted to

protect the vulnerable class of society. Unless contrary is proved by the respondents, the learned appellate Court ought to have gone through benefiting the petitioner, but contrary to that, against the spirit of legislation, the order benefiting the respondents has been passed in illegal and arbitrary manner. He has also argued that the petitioner put-forth the entire facts, documents and records before the learned JMFC, based on which, the protective order was passed. The order passed by learned JMFC was just and proper and was not required to be disturbed but the learned appellate Court corrected such order in illegal and arbitrary manner. Thus, the order of the appellate Court is liable to be set aside to the extent that the CRA No.11/2018 of the respondent has been partially allowed and modified and further upheld the order dated 08.02.2018 passed by the learned JMFC and also apart from the Stridhan at Sl. No. 1 to 8 of the list, the entire list presented before the learned JMFC may kindly be allowed. In support of his argument, he placed reliance on the decisions of the Supreme Court in the matter of **Krishna Bhattacharjee V. Sarathi Choudhury and Anr.** reported in **(2016) 2 SCC 705** and **V.D. Bhanot V. Savita Bhanot** reported in **AIR 2012 SC 965.**

08. I have heard learned counsel for the parties and perused the material available on record.

09. Learned counsel for the applicants in CRR No.113/2019 raised objection with regard to maintainability of petition on

the ground of limitation.

This Court do not find much force in his argument in view of the Supreme Court's decision in the matter of **Krishna Bhattacharjee (Supra)**, wherein it has been held that the appellant wife can claimed stridhan 2 years after decree of judicial separation.

10. From the material and evidence available on record, it is clear that neither any list of gift items has been prepared at the time of marriage nor there is any such list of stridhan duly signed by both the parties. Applicant wife in CRR No.450/2019 has deposed in her evidence that she received the gifts item as mentioned in the list of stridhan 'Article A-1'. But in rebuttal, the applicant husband in CRR No.113/2019 has stated that the wife had taken all the articles along with her, which she had brought at the time of marriage and rest of the item he had purchased from his income, documents of which are available on record. Further, the documents of loan taken for purchasing Car and house are also available on record. Both the Courts below believing list of stridhan 'Schedule A-1', have passed the order without there being any bills or vouchers, which is not in accordance with law for the reason that the applicant wife herself admitted in her evidence that the actual price of diamond set is Rs.2,10,000/- and not Rs.21,00,000/-. This indicates that while preparing the list of stridhan she was not careful and unrestrainedly prepared the list.

11. So far as the maintenance part is concerned, it is clear from the document that applicant husband's income is Rs.1,65,000/-, and the appellate Court without there being any sufficient and reasonable ground reduced the maintenance amount to Rs.25,000/- per month from Rs.30,000/-, which is not justifiable in this case. Moreover, the applicant husband, after marriage, had not taken his wife along with him. This shows that wife was subjected to torture by the applicant husband.

12. From the aforesaid discussion, both the revision petitions are partly allowed and the impugned order dated 05.12.2018 is modified to the extent indicted herein below:-

- (i) Both the Courts below have not committed any error with regard to conditions at Sl. No.1, 2 and 5 as mentioned in the impugned order dated 05.12.2018 and as such they shall remain intact.
- (ii) Condition at Sl. No. 3 is modified to the extent that applicant husband in CRR No.113/2019 shall pay maintenance of Rs.30,000/- per month to respondent wife.
- (iii) Condition at Sl.No. 4 is modified to the extent that respondent wife is not held liable to receive articles mentioned in the list of stridhan at Sl. No. 1 to 8.

Sd/-

(Rajani Dubey)
JUDGE

vijay