

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Order reserved on 10.7.2019****Order delivered on 31.7.2019****CRR No. 403 of 2019**

- Rajeshwar Kurre S/o Late Nandu Rurre Aged About 26 Years R/o Bisambhar Badha, Behind Bus Stand, Baloda Bazar, Disrtict-Baloda Bazar, Bhatapara, Chhattisgarh., District : Balodabazar-Bhathapara, Chhattisgarh

---- Applicant**Versus**

1. Shrimati Ganga Kurre W/o Rajeshwar Kurrey Aged About 24 Years R/o Village Dodekala, Tehsil And District- Raipur, Chhattisgarh., District : Raipur, Chhattisgarh
2. Chanchal Kurre D/o Rajeshwar Kurrey Aged About 4 Years Through Natural Guardian Mother Shrimati Ganga Kurrey (Res. No.1), R/o Village Dodekala, Tehsil And District- Raipur, Chhattisgarh., District : Raipur, Chhattisgarh

----Respondents

For Applicant	: Shri Shobhit Koshta, Advocate
For Respondents	: Shri J.K. Gupta, Advocate

Hon'ble Smt. Justice Rajani Dubey**CAV Order****31/07/2019**

1. Heard on admission.
2. The present revision arises out of the order dated 1.2.2019, passed in Criminal Appeal No. 411/2018 by the 9th Additional Sessions Judge, Raipur, District Raipur (CG), whereby the order dated 22.11.2018 passed in Case No. 843/2017 by the Judicial Magistrate First Class, Raipur, has been affirmed.
3. Facts of the case are that marriage between the applicant and respondent No.1 was solemnized in the year 2013 as per social

customs and rituals and out of their wedlock a female child was born. After few years of the marriage, respondent No.1 filed an application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 stating that applicant (husband) used to harass her (respondent No.1, wife) on account of not bringing appropriate dowry and also subjected her to cruelty. The applicant and his family members meted out several other harassment to respondent No.1 such as pouring kerosene on her and threatening to burn her, due to which she left the matrimonial house. It is also alleged that her mother in law had kept all the gold ornaments and not returned her.

4. The applicant denied all the allegations in his reply and stated that the applicant has to maintain his family members i.e. his father, mother and two unmarried sisters. He and his family members have never demanded any dowry from the respondent and she left the house without sufficient reason and is residing separately.

5. The Judicial Magistrate First Class after hearing both the parties and recording evidence of the witnesses has finally granted maintenance of Rs.10,000/- per month to the respondents. The order was appealed by the applicant in appeal and the learned appellate court has confirmed that order. Hence, the applicant has filed this revision.

6. Learned counsel for the applicant submits that the learned Court below has completely failed to appreciate that maintenance under the Domestic Violence Act can only be granted if it is proved

that the respondent has been subjected to cruelty which in the instant case is not proved by the respondent. The allegations made by the respondent regarding cruelty and harassment are omnibus and not specific, hence the same cannot be relied to prove that the respondent was being subjected to cruelty and harassment. Respondent No.1 has admitted in her evidence that she has neither lodged any FIR nor any Panchayat meeting was convened, therefore, the allegations made by the respondent are baseless and frivolous. The learned court below has completely failed to see that no other witness has been examined by the respondent neither her family members nor any neighbour to prove the incident of cruelty and harassment against the respondent, thus, offence under the Domestic Violence Act cannot be proved. He further argued that in a recent case of ***Sangita Saha Vs. Abhijit Saha and Ors***, in Special Leave to Appeal (Crl.) No(s). 2600-2601/2016, the Hon'ble Supreme Court has held that proof of domestic violence is necessary for claiming maintenance amount under the Domestic Violence Act, but in the present case neither any FIR nor any Police report has been exhibited by the respondent to prove the allegations of cruelty and harassment. The court below has completely failed to see that the applicant is earning only Rs.14,000/- per month and his mother and two unmarried sisters are dependant on him and the amount of maintenance is on higher side. The court below has also failed to appreciate that the applicant has filed an application under Section 13 of the Hindu Marriage Act for divorce on the ground of desertion and cruelty, therefore, the order of the court below is liable to be set

aside. He placed reliance in the matters of **Sri. Abhijit Saha & Ors. V. Smt. Sangita Saha, 2015 SCC OnLine Cal 7119, Anil Kumar V. Shashi Bala & Ors., 2017 Cri LJ 4821.**

7. On the other hand, learned counsel for the respondents supported the judgment passed by the Court below. He submits that there is sufficient evidence of cruelty and harassment by the applicant, due to which respondent No.1 along with her daughter (respondent No.2) was compelled to leave the matrimonial house and is living separately, therefore, the court below has rightly passed the order of maintenance in favour of the respondents.

8. I have learned counsel for the parties and perused the record.

9. Perusal of the evidence shows that respondent No.1 in her evidence stated that her husband, mother in law and sisters in law had beaten her by stick (danda) and poured kerosene on her. But when she was asked as to when the incident had taken place, she replied that she did not remember the date. In detailed cross-examination and examination in chief, she has clearly stated about the cruelty and harassment and the applicant has also admitted in para 1 of his evidence that when respondent No.1 went to her parents house, she made a complaint to Mahila Police Station then Police persons have reasoned with them. This shows that respondent No.1 has been subjected to cruelty and harassment due to which she left the matrimonial house and living separately. It is an admitted fact that respondent No.1 is legally wedded wife of the applicant and respondent No.2 is his daughter. The trial Court in order dated 22.11.2018 has properly appreciated the oral and documentary evidence and arrived at

a finding that respondent No.1 along with her daughter is living separately on account of cruelty and harassment by the applicant and his family members, which falls under Protection of Women from Domestic Violence Act and finally granted maintenance of Rs.10,000/- per month in favour of the respondents. Considering the facts and circumstances of the case, I am of the view that there is no irregularity or illegality in the order passed by the Additional Sessions Judge whereby order dated 22.11.2018 has been affirmed.

10. Accordingly, the revision is dismissed at the motion stage itself.

11. Consequently, I.A.No.1/2019 for stay of effect and operation of the impugned order is also dismissed.

12. Needless to mention that the Court below shall not be influenced by any of the observations made in this order.

Sd/

(Rajani Dubey)

JUDGE