

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No.384 of 2018

Order Reserved on : 14.2.2019

Order Passed on : 1.5.2019

Anil Shivramwar, son of late Lingayya, aged about 56 years, resident of Jabdapara, Sarkanda, Police Station Sarkanda, Tahsil and District Bilaspur, Chhattisgarh

---- Applicant

versus

Smt. Rekha Shivramwar, wife of Anil Shivramwar, aged about 53 years, resident of house of Vijay Bajpai, Tilak Nagar, Bilaspur, Police Station Civil Lines, Tahsil and District Bilaspur, Chhattisgarh

--- Respondent

For Applicant : Ms. Madhunisha Singh, Advocate
For Respondent : Shri S.S. Baghel, Advocate

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. ORDER

1. This revision has been preferred by the husband against the judgment dated 12.3.2018 passed by the 7th Additional Sessions Judge, Bilaspur in Criminal Appeal No.202 of 2017, whereby the Additional Sessions Judge has allowed the appeal and set aside the order dated 6.6.2017 passed by the Judicial Magistrate First Class, Bilaspur in Criminal Case No.136 of 2014.
2. Briefly stated the facts of the case are that the Applicant married the Respondent in the year 2005. On 18.6.2013, the Respondent filed Complaint Case No.129 of 2013 under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (henceforth 'the Act of 2005'). Vide order dated 25.9.2013, the Trial Court partly allowed the application of the Respondent and granted

her a sum of Rs.2,000/- as maintenance and also granted her a sum of Rs.1,500/- towards house rent. After passing of the above order, an application under Section 125 Cr.P.C. was also filed by the Respondent and the matter was referred to the Counsellor. During the counselling proceeding, the Respondent herself stated that she has vacated the rented accommodation and at present she is residing at her maternal house along with her parents. On the basis of this fact, the Applicant moved an application under Section 25(2) of the Act of 2005 before the Judicial Magistrate First Class, Bilaspur which was registered as M.Cr.C. No.136 of 2014. Vide order dated 6.6.2017, the Judicial Magistrate First Class set aside the order granting the sum of Rs.1,500/- towards house rent. Being aggrieved by the order dated 6.6.2017, the Respondent filed an appeal under Section 29 of the Act of 2005 before the Court of Session. In the appeal, the Additional Sessions Judge, vide the impugned judgment dated 12.3.2018, set aside the order dated 6.6.2017 passed by the Judicial Magistrate First Class on the ground that the Judicial Magistrate First Class has wrongly interpreted the words "change of circumstances". The Additional Sessions Judge restored the earlier order dated 25.9.2013. Hence, the present revision by the husband.

3. Learned Counsel appearing for the Applicant/husband submitted that Section 25(2) of the Act of 2005 gives a wide discretion to the Magistrate, who may, for reasons to be recorded in writing, pass such order, as he may deem appropriate on receipt of an application and on being satisfied that there is a change in the circumstances requiring alteration, modification or revocation of any order made under the Act of 2005. While entertaining the

appeal, the Appellate Court has committed a grave error of law in reversing the well reasoned finding given by the Trial Court. It is further submitted by Learned Counsel that since the Respondent herself has admitted the fact that presently she is residing at her maternal house, therefore, order passed by the Judicial Magistrate First Class is based on evidence available on record. Without considering this, the Appellate Court has wrongly set aside the order dated 6.6.2017 passed by the Judicial Magistrate First Class.

4. Learned Counsel appearing for the Respondent/wife submitted that though in the proceeding relating to Section 125 Cr.P.C., during counselling proceeding, the Respondent admitted the fact that she was residing with her parents, but before the Judicial Magistrate First Class, she has categorically stated on oath that she stayed with her parents at their house for a few days only, but thereafter, she is residing at a rental house. Thus, the order of the Judicial Magistrate First Class is not in accordance with the evidence on record. Therefore, the Appellate Court has rightly set aside the order dated 6.6.2017 passed by the Judicial Magistrate First Class.
5. I have heard Learned Counsel appearing for the parties and perused the records with due care.
6. In Ex.A1, which is a report of Counsellor, it is mentioned that the Respondent/wife has left the rental house and is residing at her parental house. On this ground only, the Judicial Magistrate First Class modified his earlier order regarding grant of house rent. The report (Ex.A1) was prepared on 3.4.2014. The application under Section 25 of the Act of 2005 for modification of the order was submitted on 13.12.2014. On 13.12.2014, on which the application

for modification was filed by the Applicant/husband, there was no averment in the said application by the husband that the Respondent/wife is still residing at her parental house nor has he deposed before the Court to this effect. Contrary to this, the Respondent/wife has categorically deposed that while the continuation of counselling proceeding, she had stayed at her parental house for 2 days only, but thereafter, she was expelled out of her parental house by her brothers and thereafter she stayed at Vriddhashram for sometime and thereafter she is again residing at a rental house owned by Vijay Bajpai. Vijay Bajpai (Respondent Witness No.2) has also supported the statement of the Respondent/wife and has categorically stated that the Respondent/wife is residing at his house situated at Tilak Nagar, Bilaspur since January, 2015. During his cross-examination, the Applicant/husband has stated that the Respondent/wife is still residing with her brothers at her parental house, but in support of this statement, he has not examined any witness before the Judicial Magistrate First Class. Therefore, from the evidence on record, only this fact is established that at the time of proceeding of counselling, the Respondent/wife was residing at her parental house, but thereafter, particularly, at the time of adjudication of the application for modification, she was continuously residing at the rental house. Thus, the finding of the Judicial Magistrate First Class is not in accordance with the evidence available on record. Therefore, the finding of the Appellate Court that there is no change in circumstances is in accordance with the evidence available on record. Therefore, the Appellate Court has rightly set aside the order dated 6.6.2017 passed by the Judicial Magistrate First Class.

7. Consequently, I do not find any merit in the instant revision. It is, therefore, dismissed.
8. 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