

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 2633 of 2019**

- Smt. Parmeshari Rajwade, W/o- Vijay Rajwade, Aged about- 25 years, Caste- Rajwar, Occupation- Housewife, R/o- Village- Salka Patra Toli, P.S.- Darima, District- Surguja, (C.G.) Mobile No. 9131694502. **----- Petitioner**

Versus

1. Vijay Rajwade, S/o- Dharamsai, Aged about- 30 years, Caste- Rajwar, Occupation- Rice Mill, R/o- Village- Upperpara Bhattikala, P.S.- Kotwali Ambikapur, District- Surguja (C.G.)
2. State of Chhattisgarh, through- District Magistrate- Ambikapur, District- Surguja (C.G.) **----- Respondents**

For Petitioner : Shri Sanjay Pathak, Advocate.

For State/Respondent No. 2 : Shri Raghvendra Verma,
Government Advocate.

Hon'ble Shri Justice Ram Prasanna Sharma**Order on Board****06/12/2019**

1. Heard on application for leave to appeal under Section 378 (4) of the Cr.P.C.
2. On due consideration, leave is granted.
3. As the respondent No. 1 is ex-parte before the trial Court, no notice is required to him for disposal of this appeal because the same is filed against the order by which the trial Court dismissed the complainant for want of prosecution. Case is not decided on merit.
4. This appeal is preferred against the order dated 10th October, 2019 passed by Judicial Magistrate First Class, Ambikapur, District- Surguja (C.G.) in Miscellaneous Complaint Case No. 1888/2017 filed under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (for short 'the Act, 2005')

wherein the said Court dismissed the complaint for want of prosecution.

5. It appears from the record that application was filed under Section 12 of the Act, 2005 on 12th December, 2017. As per Section 12(5) of the Act, 2005 the Magistrate shall endeavour to dispose of every application made under sub-section (i) within a period of sixty days from the date of its first hearing.
6. It appears from the record that respondent No. 1 was not appearing before the trial Court, therefore, trial Court should have disposed of the application within stipulated period. The trial Court was not required to fix the case for final argument repeatedly. No argument is required as per provision of the Section 12 of the Act, 2005, therefore, order passed by the trial Court is not in the fitness of provisions of the Act, 2005 and the same is liable to be set aside.
7. Accordingly, the appeal is allowed. Order passed by the trial Court is set aside. Now the matter is remanded back to trial Court for deciding the case afresh. The trial Court is directed to decide the matter as per provisions of Section 12 of the Act, 2005 in expedite manner within time frame of Section 12 of the Act, 2005.
8. The appellant shall appear before the trial Court for further proceeding on 15th January, 2020.

Sd/-

(Ram Prasanna Sharma)
Judge