

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**CRR No. 1631 of 2019**

K. Ravi Kumar S/o Shri K Rama Rao Aged About 37 Years R/o Amarkantak Road, Gaurella, Tehsil Pendra Road, District Bilaspur Chhattisgarh.

**---- Applicant**

**Versus**

1. Smt. K Lekha Devi D/o Shri D Murali Aged About 29 Years W/o K Ravi Kumar , R/o House No. - 51 Hig -2, Sector- 1 , Dd Nagar, Tahsil And District Raipur Chhattisgarh.
2. Minor K Surya S/o K Ravi Kumar Aged About 4 Years R/o House No. - 51 HIG -2, Sector- 1 , Dd Nagar, Tahsil And District Raipur Chhattisgarh.
3. K Rama Rao S/o Late Surya Narayan R/o Amarkantak Road, Pendra Road, District Bilaspur Chhattisgarh.
4. J Joyti W/o J Santosh R/o Aarilova, Visakhapatnam Andhra Pradesh, District : Visakhapatnam, Andhra Pradesh
5. J Santosh S/o Late Shri J Bhairagi R/o Aarilova, Visakhapatnam, Andhra Pradesh., District : Visakhapatnam, Andhra Pradesh

**---- Respondents**

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| For Applicant   | : Mr. Achyut Tiwari, Advocate. |
| For Respondents | : Ms. Purnima Singh, Advocate. |

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**AND**

**CRR No. 369 of 2020**

1. Smt. K. Lekha Devi D/o Shri D Murli Aged About 29 Years W/o K Ravi Kumar , Resident Of House No. 51, HIG - 2, Sector - 1, DD Nagar, Tehsil And District Raipur , Chhattisgarh.
2. Minor K Surya S/o K. Ravi Kumar Aged About 4 Years Through Natural Guardian Smt. K. Lekha Devi, Resident Of House No. 51, HIG - 2, Sector - 1, DD Nagar , Tehsil And District Raipur, Chhattisgarh. (Applicants Before Court Below)

**---- Applicants**

**Versus**

1. K. Ravi Kumar S/o K. Ramarao Aged About 34 Years R/o Sahayak Pariyojana Adhikari (Project Officer) Zila Panchayat Karyalay Kahipali Coloney Kabirdham Chhattisgarh.
2. K. Ramarao S/o Late Suryanarayan R/o Amarkantak Road , Gaurella , Tehsil Pendraroad, District Bilaspur Chhattisgarh.
3. J. Jyoti W/o J. Santosh Resident Of Aarilova, Vishakapatnam (Andhra Pradesh).

4. J. Santosh S/o Late J. Bairagi Resident Of Aarilova, Vishakapatnam (Andhra Pradesh). (Non Applicants Before Court Below), District : Visakhapatnam, Andhra Pradesh

---- Respondents

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| For Applicants  | : Ms. Purnima Singh, Advocate. |
| For Respondents | : Mr. Achyut Tiwari, Advocate. |

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**Hon'ble Shri Justice Rajendra Chandra Singh Samant**

**Order on Board**

**16-03-2020**

Heard.

1. Both the revision petitions have been filed against the order dated 30.11.2019 in Criminal Appeal No. 351 of 2019 passed by the Learned 11<sup>th</sup> Additional Sessions Judge, Raipur, by which the appeal against the order of Judicial Magistrate First Class granting interim monitory relief under Section 23 of the Protection of Women from Domestic Violence Act (in short 'the DV Act) has been reduced to Rs.6,000/-.
2. Cr.R. No. 1631 of 2019 has been filed by the applicant/ husband challenging the order granting interim monitory relief to the respondents and Cr.R. No. 369 of 2020 has been filed challenging the order and also praying for enhancement of the interim maintenance. Applicant – K. Ravi Kumar in Cr.R. No. 1631 of 2019 shall be referred as applicant and applicants in Cr.R. No.369 of 2020 shall be referred to as respondents in this order.
3. It is submitted by counsel for the applicant in Cr.R. No.1631 of 2019 that the learned JMFC has passed erroneous order without taking into consideration the facts presented that the respondents are living separately without any sufficient cause. The report of Family Welfare Committee, Kabirdham which is attached as Annexure-P/7 mentions that the allegation of cruelty against the applicant was not found proved.

Therefore, respondent No.1 had no entitlement for grant of interim maintenance. It is also submitted that the applicant was although employed as Assistant Project Officer at the time of filing of the application, on contract basis and getting an honorarium of Rs.36,462/-, but his employment is on temporary basis and he has other responsibilities also. Hence, the amount ordered to be paid is excessive. It is also submitted that in case this Court does not find the prayer of the applicant fit to be allowed then at least the amount of interim maintenance ordered be reduced to some extent for granting relief to the respondent.

4. Learned counsel for respondents No.1 and 2 opposes the grounds raised in Cr.R. No. 1631 of 2019 and submits in Cr.R. No. 369 of 2020 that both the Courts below have not considered granting maintenance to respondent No.2 who is the child of the applicant and respondent No.1. The amount of interim maintenance i.e. Rs.7,000/- ordered by learned Judicial Magistrate First Class has been erroneously reduced to Rs.6,000/- by the Appellate Court without considering that respondent No.2 is also the liability of the applicant for whom there is no order of maintenance. Placing reliance on the judgment of the Supreme Court in the case of **Kalyan Dey Chowdhury vs. Rita Dey Chowdhury Nee Nandy** reported in **(2017) 14 SCC 200**, it is submitted that the Supreme Court has held that 25% of the husband's net salary would be just and proper to be awarded as maintenance to the respondents/ wife. Therefore, the interim maintenance order is insufficient for the needs of the respondents and as such, prayer for enhancement is made.
5. Learned counsel for the applicant in Cr.R. No. 1631 of 2019 rebuts the arguments advanced in Cr.R. No. 369 of 2020.

6. Heard counsel for both the parties and perused the documents on record.
7. Respondents No.1 and 2 have filed an application under Section 12 of the Domestic Violence Act. During the pendency of this application a separate application under Section 23 of the DV Act, 2005 was filed on which the Learned JMFC has passed an order of interim maintenance, which has been interfered and reduced by the Appellate Court in the impugned order.
8. The entitlement of the respondents, liability of the applicant and his capacity for making that payment is yet to be examined in the proceedings before the learned JMFC and yet finding shall be arrived at at the strength of evidence that will be produced by both the sides. As it has been observed in the order passed by learned JMFC that the applicant is getting a monthly honorarium of Rs.36,462/-, the order passed for payment of interim maintenance of Rs.7,000/- was not excessive in any respect.
9. On perusal of the impugned order, I am of this view that there is no specific reason assigned for which the amount has been reduced. The prayer of respondents No.1 and 2 was jointly considered by the learned JMFC and the same has been jointly considered by the Appellate Court also.
10. As regards, the submissions made by the applicant in Cr.R. No. 1631 of 2019, there appears to be no need for interference for the simple reason that the order passed was just and proper and the monetary relief which may be confirmed or set aside at the time of passing final order by the learned JMFC itself. However, the prayer made by respondents No.1 and 2 appears to be proper and there had been no need for reduction in the interim maintenance ordered by the learned JMFC. At the same

time, I also do not find any specific reason to further enhance the maintenance granted to respondents No.1 and 2.

11. The rival contentions of the applicant and the respondents shall be considered by the learned JMFC and it would be proper to have a final order subsequent to the conclusion of the proceedings between the parties. Hence, on the basis of these discussions and the findings arrived at herein-above Cr.R. No.1631 of 2019 is found to be without any substance which is dismissed and Cr.R. No. 369 of 2020 is partly allowed. The order of the Appellate Court is set aside and the order passed by the Learned JMFC is restored as it is.

Sd/-

**(Rajendra Chandra Singh Samant)**  
Judge