

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
Criminal Revision No. 965 of 2017

1. Amarjeet Singh @ Sonu S/o Late Ranjeet Singh Saluja, Aged About 37 Years Occupation Electrical Dukan.
2. Smt. Mahendra Kour Saluja Wd/o Late Ranjeet Singh Saluja, Aged About 58 Years Occupation House Wife.
3. Ku. Kamaljeet Kour @ Neha Saluja D/o Late Ranjeet Singh Saluja, Aged About 24 Years.

All are R/o Belthukari Chowk, Near Dadaji Bhawan, Village Khariyar Road, District Nayapara, Odisha.

---- Applicants

Versus

Smt. Jasvinder Singh Kour @ Rani W/o Amarjeet Singh @ Sonu Saluja, Aged About 36 Years Occupation House Wife, At Present Punjabi Para, Village and Tahsil Navagarh, District Bemetara, Chhattisgarh (wrongly written as R/o Belthukari Chowk, Near Dadaji Bhawan, Village Khariyar Road, District Nayapara Odisha).

-----Respondent

For Applicants	: Mr. Radhvendra Pradhan, Advocate.
For Respondent	: Mr. Vaibhav A. Goverdhan Advocate.

Hon'ble Shri Manindra Mohan Shrivastava, Judge &
Hon'ble Smt Vimla Singh Kapoor, Judge
Judgment on Board

Per Manindra Mohan Shrivastava, J

02.03.2020

1. Heard.
2. This revision arises out of the order dated 12.07.2017 passed by learned Additional Sessions Judge, Bemetara, Distt. Bemetara (CG) in Criminal Appeal No.32/2016, thereby partly allowing the application filed by the respondent wife, under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (for short, ' the Act of 2005') and directing applicant No.1 herein to pay monthly maintenance of Rs.6000/- to her.
3. An application under Section 12, read with Sections 18, 19 & 20 of the Act of 2005, was filed by the respondent/wife seeking appropriate direction from the Magistrate on the pleadings that she was married to applicant

No.1 (Amarjeet Singh @ Sonu) and was blessed with two children. According to her pleadings in the application, initially, for about one year, there was no dispute and they were leading a happy married life. After giving birth to a female child, the dispute arose between them and her husband started committing physical cruelty upon her. It was further pleaded that in the year 2005, she had been left behind in her parental house after having been subjected to cruelty, insult & misbehavior by her husband. After about two years of living in the parental house, she was again brought back to the matrimonial house with the assurance that cruelty, insult & misbehavior, as committed in the past, shall not be repeated in future. However, after the marriage of her brother-in-law, her husband again started subjecting her to cruelty and started beating her in the state of intoxication. In this manner, the cruelty continued. It was also alleged that discriminatory treatment was also being meted out to her and her children and even an attempt was made to kill her. Further pleadings was that the husband had refused to bear the entire educational expenses of the children, except the payment of their school fee. It was further pleaded, that in the year 2012 the husband gave a call to the parents of respondent and asked them to take her daughter and grand daughters back to their house. In this manner, respondent was ousted from her matrimonial house. It was, therefore, stated that the expenses of maintaining children, which included expenses of their education, was being incurred by the respondent's father/ Now, the children have been admitted in the school and therefore she needs adequate financial assistance for maintaining the children, which includes their educational expenses.

4. The prayer made by the respondent wife was opposed by the applicant-

husband by denying all the allegations and according to him, the wife herself had left the matrimonial house and there was also denial that he had committed any cruelty on the wife.

5. In the summary enquiry before the Magistrate, the respondent -wife led her own evidence and also examined other witnesses to support her case, which included her mother, uncle and one Malak Singh.
6. The learned Magistrate, after scrutiny of the evidence on record and other materials collected during enquiry, found that no case is made out for grant of relief prayed for in the application. The application was therefore, rejected.
7. On appeal being filed, the learned lower Appellate Court partly allowed the same. The learned lower Appellate Court found that the allegation of cruelty was *prima facie* made out; the applicant-husband had neglected to maintain the wife and children and that looking to the requirement of maintaining children including their expenses of education, an amount of Rs.6,000/- per month as monetary benefits was ordered, which has been called in question before this Court.
8. In this revision, the learned counsel for the applicants argued that the learned lower Appellate Court reversed the findings of the Magistrate in a mechanical manner without proper appreciation of evidence on record. He would argue that the allegation of subjecting the respondent-wife to cruelty are vague and unspecific in terms of months, dates or the manner in which such cruelty was committed. It has been admitted in the evidence that against such alleged cruelty, the matter was neither taken to any community platform nor any report was lodged in any police station. Further submission is that the evidence of respondent -wife and another

witness clearly goes to prove that it is the wife who has left the matrimonial home of her own even after she was brought back by the husband and his relatives earlier. Further submission is that the applicant has neither committed any violence on his wife nor has neglected to maintain his wife and children and the evidence is also to the effect that as long as children were residing in village Khariyar Road, the applicant-husband had been paying their school fee and bearing other expenses. Learned counsel further submits that the proceedings under the Act of 2005 are summary in nature and are subject to proceeding relating to matrimonial dispute. He would submit that the respondent -wife had also moved an application for grant of decree of divorce on the ground of cruelty on identical pleadings, as contained in the present case, and there also she had made similar allegations that in the year 2007, she was again subjected to cruelty and in that case, this Court vide order dated 28.02.2020 passed in FAM No.96/2017, has held that respondent -wife failed to prove cruelty so as to entitle her for grant of decree of divorce. Therefore, in view of the aforesaid decision, prima facie findings in the summary case could not be sustained, more so, when in the present case also, the evidence is not specific. No other evidence except the alleged cruelty, as pleaded in respect to the period after 2007, has been brought on record. He would also submit that even if it is accepted that the meaning assigned to the words "Domestic Violence", is given wide meaning under Section 3 of the Act of 2005, in such a situation also, unless it is found that the husband has indulged himself in any of the activities as defined in Section 3 of the Act of 2005, a case of domestic violence cannot be said to be made out nor any relief can be granted to the wife under Sections 18, 19 & 20 of the Act of 2005.

9. On the other hand, the learned counsel for the respondent -wife submits that in the present case, the Magistrate made a summary inquiry and on prima facie consideration, found that present was a case of domestic violence. He further submits that not only in the pleading but also in the evidence, the respondent-wife has clearly stated that after the birth of first daughter, applicant-husband indulged in beating her in state of intoxication, due to which, she had to leave the matrimonial house and she stayed in the parental house for about two to two and a half year, until she was brought back to the matrimonial life on the assurance that the earlier acts of cruelty shall not be repeated. However, after sometime, those very cruel treatment were again repeated. He would further submit that as far as the departure of respondent wife, along with her children in the year May, 2012 is concerned, it was because the applicant-husband had threatened her parents over telephone that if they will not take their daughter back to their home, they would face serious consequences. In this manner, she was unceremoniously thrown out of the matrimonial house. The learned counsel would further submit that even if, cruelty was a ground for decree of divorce, it may not have been made out in the proceedings under Section 13 of the Hindu Marriage Act. The finding recored by the learned lower Appellate Court in the proceedings under the Act of 2005 need not be interfered with as there is only prima facie consideration for the purpose of granting certain statutory benefits as provided in Sections 18, 19 & 20 of the Act of 2005. He further argues that the Act of 2005 is enacted to grant instant relief of the nature specified in Sections 18, 19 & 20 thereof. Further, meaning of “domestic violence” is much more wide than the word 'cruelty' as defined under Section 13 of the Hindu Marriage Act. The application for grant of decree of divorce on the

ground of cruelty has been dismissed, as the Court recorded finding that the evidence on record did not meet the required standard of proof to hold that the cruelty is proved. In summary proceeding under the Act of 2005, the high degree of proof of cruelty is not as high as in civil proceeding or in any proceedings of trial for commission of offence under Section 498(A) of IPC. On prima facie consideration, the order can be passed by a criminal Court constituted under the Act of 2005. He would submit that present is a case of grant of monetary relief because, undeniably, the husband is under an obligation, not only to maintain his wife, but also to make necessary arrangement for the education, clothes and other requirements of his children. There is no evidence to prove that the respondent wife is earning and is in a position to maintain herself or her children. Mere statement that her father, for the time being, is meeting expenses does not mean that she herself is competent to earn. Keeping all these in consideration, the learned lower Appellate Court has granted appropriate monetary relief of Rs.6,000/- per month alongwith other reliefs with regard to the payment of the school fee etc.

10. We have heard learned counsel for the parties and perused the records including pleadings of the parties and evidence available on record.

11. Respondent- wife made an application under Section 12 of the Act of 2005 seeking reliefs as provided in Sections 18, 19 and 20 of the Act of 2005 on the pleadings that after the marriage between the parties, though things were smooth in the matrimonial life, after birth of the daughter which was after about one year, the husband started subjecting her to cruelty. The pleadings are that she was subjected to beating by her husband in state of intoxication. The evidence led by the respondent-wife and her witnesses is

that in the year 2005, she went to her parental house where she stayed till she was again brought back after two years on the assurance that earlier cruel treatment will not be repeated. Further evidence led by her is that after her return to the matrimonial house, cruelty again started after marriage of her brother-in-law and finally in May, 2012 her husband pressurised her family members to take her and daughters back otherwise it may result in grave circumstances.

12. Though, the respondent-wife led her own evidence and three other witnesses to prove the allegations of cruelty, we find that no specific detail or instance in respect of the alleged acts of cruelty by the applicant husband has been given, except making bald statement. Apart from that, no date or month has been mentioned. Atleast some details could have been given with regard to cruelty. Further, we find that no report was lodged anywhere and even the matter was not taken before the police alleging any cruelty. The application for grant of decree of divorce based on cruelty and application under the provisions of the Act of 2005 were filed by the respondent -wife. This Court, almost on similar pleadings and somewhat similar set of evidence, led in the divorce proceedings, has held that the wife failed to prove the cruelty so as to entitle her to decree for divorce. While holding so, this Court in order dated 28.02.2020 has taken into consideration similar pleadings and allegations of cruelty, which is said to be subjected to wife after she returned from parental house to the matrimonial house. In the present case also, the allegation of cruelty is with regard to that very period and the alleged cruelty has been described in exactly the same manner as described in the matrimonial proceeding.

13. Learned counsel for the applicant has rightly pointed out to us that even though, there are allegations of respondent-wife that she was subjected to cruelty, but in her cross-examination what has been elicited in cross examination shows that allegation are liable to be rejected. In Paragraph No.11 of her cross-examination, she admitted that she is residing separately from her husband because of there being strained motion between them. Importantly, she denied the suggestion that this dispute is related to any physical or mental cruelty. Therefore, according to her own statement, the operative reason why she is residing separately from her husband is some kind of dispute with him which is unconnected with physical or mental cruelty. She also admitted that neither any report has been lodged against such alleged cruelty before any police station nor any platform of the community. Similar evidence was also considered by this Court in the matrimonial case.
14. Furthermore, she has also admitted in Paragraph No.14 of her cross-examination that even though, her husband is prepared to bring her back with all honor and respect in the matrimonial life, but she is not inclined to reside with him and cases relating to domestic violence and divorce have been filed so that she may not be required to go back to her husband.
15. Other witness, Smt. Swarnkaur Gumbar (mother of respondent) examined as PW/2, though stated that she was informed by her daughter that the applicant -husband used to beat her in the state of intoxication but in Paragraph No.18 of her cross-examination, she admitted that the applicant-husband and his mother had come to her house to take the respondent and children back but she refused to sent her daughter back. She also admitted that no report was lodged in any police station and even

though, the applicant-husband had offered to take the children and the wife back to the matrimonial house, they were not inclined to send them back.

16. Another witness namely, Shri Jagdeep Singh (uncle of respondent) was examined as PW/3 and his evidence is similar to the evidence given by PW/2. His evidence is not on the aspect that after the marriage, he has paid Rs.50,000/- on demand being made. He is not in a position to support the allegation of cruelty on the basis of his personal knowledge.

17. Shri Malak Singh was examined as fourth witness and he has not supported the case.

18. Considering the aforesaid evidence on record, it is difficult to hold that the evidence with regard to cruelty has been proved. No doubt the proceedings were summary in nature, but the evidence with regard to the cruelty is quite vague and unspecific. In view of what has been stated by the respondent in her cross-examination, which we have considered herein-above, the allegation of cruelty cannot be said to be proved.

19. However, we are required to consider that present is proceeding under the Act of 2005. The word "Domestic Violence" has been given a very wide meaning under Section 3, which reads as under :-

"3. Definition of domestic violence. – For the purpose of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it –"

20. Classes (a) (b) (c) & (d) provide a wide range of the acts of commission and omission of conduct which may constitute domestic violence. In clause – (a) word physical abuse, sexual abuse, verbal & emotional abuse as also economic abuse has been included to constitute domestic

violence. Under Explanation -I, physical abuse, sexual abuse, verbal & emotional abuse as also economic abuse have been explained in exclusive manner. Economic abuse, has been also been given a wider meaning so as to include deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or customs, whether payable under an order of a Court or otherwise of which, the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children and that may also include stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance.

Looking to such a wide meaning given to the word “Domestic Violence”, it cannot be accepted that it is confined and limited only to any physical violence or cruelty. To say, therefore, that if no physical cruelty is proved, no case of domestic violence can be made out, would be against the very spirit and the provisions contained in Section 3 of the Act of 2005.

21. In the present case, the allegation made by respondent-wife with regard to the cruelty in the sense of physical violence/abuse has been found unacceptable. We also noticed that, though, the respondent-wife has failed to prove the allegation of cruelty, it remains on record that she is living separately from her husband and there is no evidence to prove that she is earning herself and able to maintain herself or her children. The evidence which has been led by her only proves that she is dependent on her father, who for the time being is providing financial support to her. Furthermore, we also find that the applicant has two sons. The admission which has been made by the wife in her evidence that she paid the School

fee at Village Khariyar Road does not mean that the applicant is absolved of making necessary arrangements for maintenance of the children, who are presently residing with the respondent-wife.

22. Taking into consideration the wide meaning of the word “Domestic Violence”, particularly 'economic abuse' as defined in Clause -(iv) of Explanation – I appended to Section 3, even if the wife may not be held entitled to any monetary benefits as she has failed to prove the allegation of cruelty, the provisions permits issuance of appropriate direction under Section 20 of the Act of 2005 for providing necessary financial assistance for children. The order passed by the learned lower Appellate Court, therefore, warrants interference only to the extent, financial benefits has been provided to the wife.

23. We find that apart from other reliefs granted by the learned lower Appellate Court, a sum of Rs.6,000/- per month has been awarded to the respondent wife and her children. In view of the above findings, the aforesaid amount is liable to be reduced to the extent it is necessary to meet the requirements of two children. We therefore, partly allow this revision and reduce the financial liability of payment of Rs.6,000/- per month to Rs.4,000/- per month which amount shall be used by the respondent-wife for maintenance of the children. All other directions including the payment of school fee shall remain an obligation of the applicant No.1.

24. In the result, this revision partly succeeds and allowed in the manner and to the extent, stated above.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Sd/-

(Vimla Singh Kapoor)
Judge