

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved for orders on :02/02/2021

Order passed on : 16/03/2021

CRR No. 12 of 2019

- Smt. Deepti Vaishnav, W/o Ravishankar Vaishnav, Aged About 30 Years, R/o Vaikunthpur, Near Bawli Kunwa, House of Khiredra Bairagi, Police Station- City Kotwali, Post and District- Raigarh, Chhattisgarh., District : Raigarh, Chhattisgarh (Applicant)

---- Petitioner

Versus

1. Ravishankar Vaishnav, S/o Late Ramdas Vaishnav, Aged About 35 Years, R/o Mahant Gali, Purani Basti, Post, Police Station and Tahsil- Kharsia, District- Raigarh, Chhattisgarh. Present Address- C.R.P.F. Constable No. 041682408, C.B.I., A.C.B. Village- Dhdarampura, V.I.P. Road, Near P.T.S. Chowk Raipur, Police Station- Kotwali, Raipur, District- Raipur, Chhattisgarh., District : Raipur, Chhattisgarh
2. Smt. Savita Vaishnav, W/o Late Ramdas Vaishnav, Aged About 53 Years, R/o Mahant Gali, Purani Basti, Post, Police Station And Tahsil- Kharsia, District- Raigarh, Chhattisgarh., District : Raigarh, Chhattisgarh
3. Gaurav Vaishnav S/o Late Raju Vaishnav, Aged About 23 Years, R/o Mahant Gali, Purani Basti, Post, Police Station and Tahsil- Kharsia, District- Raigarh, Chhattisgarh., District : Raigarh, Chhattisgarh
4. Purnima Vaishnav, D/o Late Raju Vaishnav, Aged About 32 Years, R/o Mahant Gali, Purani Basti, Post, Police Station and Tahsil- Kharsia, District- Raigarh, Chhattisgarh., District : Raigarh, Chhattisgarh

Respondent No.1's present Address C.R.P.F.Constable No.041682408, C.B.I., A.C.B. Village Dhdarampura, V.I.P. Road, Near P.T.S. Chowk Raipur P.S. Kotwali Raipur Daistrict Raipur Chhattisgarh

(Non-applicants)

---- Respondents

CRR No. 32 of 2019

1. Ravishankar Vaishnav (wrongly mentioned as "Ravishanker Vaishnav" in the impugned judgment dated 30.11.2018) S/o Late Shri Ramdas Vaishnav, Aged About 38 Years, R/o Mahant Gali, Purani Basti Kharsiya, Tahsil and District Raigarh Chhattisgarh., District : Raigarh, Chhattisgarh
2. Smt. Savita Vaishnav Wd/o Late Shri Ramdas Vaishnav, Aged About 57 Years, R/o Mahant Gali, Purani Basti Kharsiya, Tahsil and District Raigarh Chhattisgarh., District : Raigarh, Chhattisgarh
3. Gaurav Vaishnav S/o Late Shri Raju Vaishnav, Aged About 27 Years, R/o Mahant Gali, Purani Basti Kharsiya, Tahsil and District Raigarh Chhattisgarh., District : Raigarh, Chhattisgarh
4. Purnima Vaishnav S/o Late Shri Raju Vaishnav, Aged About 36 Years, R/o Mahant Gali, Purani Basti Kharsiya, Tahsil and District Raigarh Chhattisgarh., District : Raigarh, Chhattisgarh

(Appellants/ Non-applicants)

---- Petitioners

Versus

- Smt. Deepti Vaishnav W/o Shri Ravishankar Vaishnav, Aged About 33 Years, Present Address : Vaikuntpur, Near Bawli Kunwa, House of Khirendra Bairagi, Tahsil and District Raigarh Chhattisgarh., District : Raigarh, Chhattisgarh

---- Respondent

For Petitioner in CRR No.12 of 2019 and for Respondent in CRR No.32 of 2019 – Shri Pramod Verma, Senior Advocate with Shri Virendra Verma, Advocate.

For Petitioners in CRR No.32 of 2019 and for Respondents in CRR No.12 of 2019 – Shri Bhaskar Payashi and Shri Vaibhav P. Shukla, Advocates.

Hon'ble Shri Justice Rajendra Chandra Singh Samant
CAV Order

16-03-2021

1. Both these criminal revisions arise out of the same impugned order dated 30-11-2018 passed in Criminal Appeal No.146/2018 by the Court of 5th Additional Sessions Judge, Raigarh, Chhattisgarh.
2. The petitioner in CRR No.12 of 2019 shall be referred to as the applicant in both the cases and respondents in CRR No.12 of 2019 who are petitioners in CRR No.32 of 2019 shall be referred to as respondents for both the cases.
3. The facts of the case are these, that the applicant filed an application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (in short 'the Act, 2005') praying for various reliefs. The application was contested by the respondents side. The learned JMFC Raigarh, passed the order dated 24-08-2018 by allowing the application. The applicant was granted residence order under Section 19 of the Act, 2005 directing to provide for house or in lieu of that Rs. 3000/- per month to the applicant. She was granted monetary relief under Section 20 of the Act, 2005 of Rs.10,000/- per month to be paid from the date of order, medical expenses Rs.2000/- and also return of stridhan was ordered. The applicant was further granted Rs.75,000/- as compensation under Section 22 of the Act, 2005.

This order was challenged in appeal which has been decided by the

impugned order in which the appeal was partly allowed. The monetary relief of Rs.10,000/- was modified as under all the heads claimed against respondent No.1. Rest of the reliefs granted by the JMFC were set aside.

4. Learned counsel for the applicant in CRR No.12 of 2019 submits that the impugned order has been erroneously passed there was no reason to set aside the residence order. The applicant had been living with her parents under constraint, as living in matrimonial home was made impossible by the respondents. Similarly, the ground of medical expenses of Rs.2,000/- per month to the applicant was very reasonable and fair and there was no reason to set aside the same. The amount of compensation of Rs.75,000/- granted by the JMFC was perfectly justified in view of the prolonged and intense suffering of the applicant. Hence, the impugned order is not sustainable, which is liable to be set aside.

5. Learned counsel for the respondents submits in reply to CRR No.12 of 2019 that learned Magistrate has wrongly appreciated the evidence present in the proceeding and drawn incorrect conclusion. The statement of the mother of the applicant and the applicant herself had not been reliable regarding the gifts given to the applicant and also there was no evidence to hold that the jewelry belonging to the applicant was retained by her mother-in-law. There is evidence present in the form of the admission of the applicant herself that she was willingly residing separate, which disentitles her for the relief of residence order. It is further submitted that respondent No.1 is working as Constable in CRPF and getting a net salary of Rs.35,000/-. There are other dependants upon him who are getting maintenance from the same salary. There had been no material present for the reliefs that were claimed by the applicant under the various heads. During argument learned counsel for respondent No.1 concedes to the maintenance order of Rs.10,000/- per months and submits that the impugned order be suitably modified. On the revision petition No.32 of

2019 the modification of order is prayed for.

6. In reply, it is submitted by learned counsel for the applicant that her evidence demonstrates the reasons for separate living. Therefore, she has entitlement for residence order and also that order for return of stridhan by learned Magistrate is proper regarding which there is unrebutted evidence present in the proceeding. It is further submitted that the CRR No.32 of 2019 challenging the impugned order is baseless and unreasonable. Therefore, the same may be dismissed. It is prayed that suitable orders be passed.

7. Considered on the submissions.

8. It has been observed in the impugned order by the appellate Court, that the applicant is residing with her parents and that she has not made a claim for residence in the shared house-hold. In submission before the Court the applicant has stated that she has demanded for a house and in case she is not given house, then she may be given rent of Rs.10,000/- instead. The definition of shared house-hold is given under Section 2(s) of the Act, 2005 which reads as follows:

“2. (s) “shared household” means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or enquiry and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household.”

The words in this definition, that the person aggrieved lives or at any stage has lived is to be emphasized and according to that the shared household would be the only matrimonial house in which the applicant had lived before she left the house or she was driven out of the house. Section 17 of the Act, 2005 provides that such a woman in a domestic relationship shall have right to reside in the shared household. The residence order which can

be passed under Section 19 of the Act, 2005 may be in the form of restraint to dispossess the applicant from the shared household, or directing to remove the respondent from shared household, or restraining the respondent and relatives from entering into any portion of the shared household, where the aggrieved person resides or restraining the respondent from alienating or disposing off or encumbering that shared household etc. In clause (f) of Section 19 of the Act, 2005 direction may be given to respondent to secure same level of alternate accommodation for the aggrieved person as enjoyed by her in the shared household or to pay rent of the same, if the circumstance so require.

What can be the circumstance under which there was requirement to pass the order under Section 19(f) of the Act, 2005 needs consideration.

9. The applicant has not made any proposition, that she wants to go back and live again in the shared household, therefore, no direction can be issued to make such arrangement as are provided under Section 19 of the Act, 2005, it has to be strong willingness of the applicant herself to reside in the shared household and in case of failure of the respondent side to provide for such accommodation to the applicant, the respondent can be directed to provide for alternate accommodation or to pay for rent for the same. On perusal of the evidence present in the record of the proceedings, I am of this view that no such circumstance has arisen for the reason that no willingness has been shown by the applicant to go back and reside in shared household. Hence, in such a case the observation made by the appellate Court against the genuineness of the prayer for residence order of the applicant cannot be said to be erroneous in any respect. Hence, the order passed for setting aside the residence order passed by learned JMFC appears to be sustainable.

10. Considered on other ground raised that the order of setting aside return of stridhan in the impugned order is erroneous. There is statement of the applicant in her examination-in-chief, that on asking of respondent No.1 she

had handed over of her jewelery and things of her mother-in-law. Subsequent to which, she was sent to her parental house and that she had made such prayer for return of stridhan before the Protection Officer also. The application that was moved through the Protection Officer mentions about gold, silver, household articles and clothes. But there is no specific list given regarding that jewelery and the articles and neither there is mention of any such details of the jewelery, clothes and articles in the statement of the applicant. In cross-examination in one place there is admission of the applicant, that her stridhan is in possession of respondent No.1 and there is her denial that her stridhan is in possession of other respondents. This admission of the applicant has been denied by respondent No.1 in his cross-examination. Although, there is admission about the gifts of household articles that were given at the time of marriage. Respondent No.1 has specifically denied about retaining of jewelery and other things of the applicant.

11. The question regarding return of stridhan which may be granted under Section 19(8) of the Act, 2005 cannot be decided on the basis of vague statement. There is statement of the applicant, which has been denied by respondent No.1 in his statement before the Court, specifically regarding jewelery etc., does not hold any ground and therefore the relief of return of such stridhan to the applicant by learned Magistrate was not passed on any cogent evidence, which appears to have been rightly set aside by the appellate Court.

12. As regards, the ground of monthly medical expenses of Rs.2,000/-, there has to be specific statement of that point as to why the medical expenses are needed. On perusal of the statement of the applicant, it is nowhere seen that she is suffering from any kind of ailment and she has not made any statement making claim for medical expenses before learned Magistrate. Hence, the claim of medical relief has to be based on such evidence to show

the reasonability of grant of such relief. Hence, I do not find any error in the order of the appellate Court denying such relief to the applicant.

13. The order of monetary relief of Rs.10,000/- per month as maintenance to the applicant by learned Magistrate has been upheld in the order of the appellate Court and the same has been conceded by the respondent side during arguments. Therefore, the only thing remains to be considered is the grant of compensation to the applicant.

14. Section 22 of the Act, 2005 provides that the Magistrate has authority to grant compensation and damages to the applicant for injuries including mental torture and emotional distress caused by the act of domestic violence committed by the respondents. This finding of learned Magistrate which has been upheld by the appellate Court that the applicant has suffered domestic violence while residing with the respondents. Domestic violence has been defined under Section 3 of the Act, 2005 which is a very wide scope definition. Hence, the setting aside of order of compensation in the appellate order was not altogether correct, although the quantum of compensation granted should have been considered.

15. After considering on the evidence of the applicant and other witnesses and also the consequence that the applicant is now compelled to reside with her parents, it can be gathered that the abuse she has faced while living with the respondents and the mental distress she has undergone because of the friction in her relationship with respondent No.1, she was entitled for compensation in this respect. The compensation granted by learned Magistrate appears to be on higher side, which has been totally denied in the appellate order, should have been reduced to some extent so that it can be said to be a fair compensation.

16. After considering on all the submissions and all the aspects in the case between the parties and on the basis of the conclusion drawn hereinbefore,

CRR No.12 of 2019 is partly allowed. The order of monetary relief granted by the appellate Court is confirmed. Apart from that, it is ordered that respondent No.1 shall make payment of Rs.50,000/- to the applicant as compensation under Section 22 of the Act, 2005 within a period of two months from the date of this order. CRR No.32 of 2019 is dismissed and disposed off alongwith.

Sd/-

(Rajendra Chandra Singh Samant)
Judge