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HIGH COURT OF CHHATTISGARH, BILASPUR**Proceedings through Video Conferencing****Reserved on 2-9-2021****Delivered on 09-9-2021****CR.R. No. 1531 of 2019**

1. Smt. Archana Gautam W/o Hemant Kumar Deshmukh, aged about 29 Years
2. Anjaneya Kumar S/o Hemant Kumar Deshmukh, aged about 4 years through natural guardian Pet. No. 1 Archana Gautam W/o Hemant Kumar Deshmukh,
Both R/o Anil Kumar Gautam , Gali No. 02, Shishaknagar , Durg P.S. Durg, Tahsil Durg and Dist. Durg CG

----Applicants**Versus**

Hemant Kumar Deshmukh S/o Late Daman Lal Deshmukh aged about 36 Years R/o In Front of Prohit Lodge, Aapapura, Kachahari Road, Durg Tahsil and Distt. Durg CG

----Non-applicant**CR.R. No. 61 of 2020**

Hemant Kumar Deshmukh S/o Late Shri Daman Lal Deshmukh aged about 33 Years R/o In-Front of Purohit Lodge, Aapapura, Kachahari Road Durg, Tahsil Durg, CG

----Applicant**Versus**

1. Smt. Archana Gautam W/o Shri Hemant Kumar Deshmukh aged about 29 Years
2. Anjney S/o Shri Hemant Kumar Deshmukh, aged about 4 Years
Both R/o Through Shri Anil Kumar Gautam, Street No. 2 Shikshak Nagar Durg, Tahsil and District Durg, CG

----Non-applicants

For Applicants CRR. No. 1531/2019 &
For Respondents in CRR No. 61/2020 : Smt. Astha Shukla, Adv.

For Applicant in CRR No. 61/2020 &
Respondent in CRR No. 1531/2019 : Shri Sunil Sahu, Adv.

Hon'ble Shri Justice N.K. Chandravanshi**CAV Order**

1. Since both the above revision petitions arise out of same order, they are heard together and disposed of by this common order.
2. Both the revisions have been preferred challenging the correctness, legality and propriety of the order dated 23-10-2019 passed by the 1st Addl. Principal Judge, Family Court, Durg (CG) in Misc. Cr. Case No. 65/2017 (CIS No. 1290/2016), allowing the

application filed by the applicants Smt. Archana Goutam and Anjneya in CR.R. No. 1531/2019, they are non-applicants in CRR No. 61/2020 and hereinafter referred to as 'wife' and 'son' respectively, under Section 125 of the Criminal Procedure Code, 1973 (in short 'Cr.P.C.') and granting maintenance to them to the tune of Rs. 15,000/- and Rs. 10,000/-, respectively against the non-applicant in CRR NO. 1531/2019 and applicant in CRR No. 61/2020 (hereinafter referred to as 'husband').

3. It is not in dispute in this case that wife and husband are legally wedded with each other and Anjneya is their son. The only ground which the wife and the son have raised in their revision is that amount of maintenance granted by learned Family Court is not proper, therefore, they have prayed for enhancement of maintenance amount, whereas the husband has not challenged the amount of maintenance granted to their son Anjneya, but has challenged in his revision that wife is living separately from him without any sufficient reason and looking to his limited income, amount of maintenance granted to the wife who is well educated lady and also having so many properties, is on higher side, therefore, the order impugned pertaining to wife be set aside or the amount of maintenance be reduced suitably.

4. Learned counsel for the husband submits that despite many efforts made by the husband, the wife did not adjust in his family and without any rhyme and reasons, she herself left his company. The husband tried many times to take her with him but she denied to go and reside with him. Despite in counseling, she had agreed to reside with him, but she did not come with him. Even, she had filed application under Section 9 of the Hindu Marriage Act against the husband, but she withdrew said application, which shows that she herself does not want to live with him, rather, she has filed criminal case and various other cases against husband. He further submits that the evidence adduced by the wife does not prove sufficient reason to live separately from husband, despite, that learned Court below has without properly appreciating the evidence, held against it. He also submits that wife is well and highly educated lady, earlier

working as Assistant Grade III, and also having 2.680 hectare agricultural land, from which she receives Rs. 2,00,000/- per annum, whereas the husband is also having liability of his old aged mother and he is receiving salary of Rs. 65,000/- per month only, therefore, he prays that the order impugned be set aside or the amount of maintenance be reduced.

5. Learned counsel for the wife submits that the order impugned, in respect of reasons for living separately by the wife is well founded and based on evidence, therefore, it needs no interference. She further submits that the husband is working as Dy. Manager in the Power Grid Corporation of India Ltd, Tamnar, Raigarh and is earning salary Rs. 1,20,000/- per month, which is proved from his Salary Slip Ex. P-4, apart from this, he is also having immovable properties. In Cr. Revision No. 596/2018, this High Court has granted Rs. 30,000/- per month interim maintenance in favour of wife and their son, which was pertaining to case of Domestic Violence Act. Despite that, learned Family Court has granted maintenance of Rs. 25,000/- per month. She further submits that their son Anjneya is only of the age of 4 to 5 years' and is suffering from chronic bronchitis, huge amount is spent for his treatment, and wife is not having any source of income, therefore, maintenance amount Rs. 25,000/- cumulatively granted to them is not proper to maintain their livelihood and for treatment of their son, therefore, she prays for enhancement of maintenance amount. In support of his arguments, learned counsel for the wife submits placed reliance on decisions of Hon'ble Supreme Court in **Dr. Kulbhushan Kumar -v- Smt. Raj Kumari and another** [(1970) 3 SCC 129] and in **Kalyan Dey Chowdhury -v- Rita Dey Chowdhury Nee Nandy** [(2017) 14 SCC 200].

6. I have heard learned counsel for both the parties, perused the record of the trial Court as also the impugned order.

7. So far as reasons for living of wife separately from her husband is concerned, wife Smt. Archana Goutam (AW 1) has stated in her duly sworn affidavit/examination-in-chief that, when she was living in her matrimonial house at Durg, her mother-in-law,

Devar and other relatives of husband used to torture her physically and mentally on various counts. Even husband, without her will, committed unnatural intercourse with her. She has further stated that the relatives of the husband used to address her witchcraft and in absence of her husband, her Devar used to molest her by putting his hands upon her body and , by various other acts. She has further stated that on 29-6-2016, when her Devar was coming to Raigarh along with his friend, despite her refusal, the husband was ready to go to station to bring them, in this regard, quarrel took place between them. On 30-6-2016, her husband left them to her parental home, thereafter, he never took them back. Smt. Karuna Goutam (AW 2) is mother of wife Smt. Archna Goutam. She has supported her statement. Both of them have denied all the adverse suggestions put by learned counsel for the husband. Husband Hemant Kumar Deshmukh (NAW 1) in his affidavit/examination-in-chief filed in the Court has denied all the allegations of his wife. He has stated in his affidavit that after marriage, wife resided with him for 3 years at Raigarh, she has never resided with his mother and brother in his house at Apapura, Durg, whereas his wife Smt. Archna Goutam on being asked by learned counsel for the husband himself in cross-examination, has stated that after marriage, she lived for two months in her matrimonial house and thereafter also, she lived in her matrimonial house in various time, her this version is not supposed to be incorrect because as per facts of the case, till the month of June, 2013, she was doing her job at Raipur, by up-down from Durg to Raipur.

8. Husband Hemant Kumar Deshmukh (NAW1) has stated in his evidence that his wife neither wants to keep his mother and brother with him, nor she likes to give any amount for their maintenance. He has further stated that wife always used to force him to leave the relationship with mother and brother, but these statements do not inspire confidence of the Court, because he has stated in his statement that her marriage was solemnized with him without her (wife's) liking. But this fact has neither been mentioned

in his reply nor has been asked in cross-examination of wife Smt. Archna Goutam.

9. Ex. P-1, Ex. P-2 and Ex. P-3 show that wife has filed various cases against the husband. Ex. D-4 also shows that application filed by her under Section 9 of the Hindu Marriage Act was dismissed on her request as not pressed. R.P. Amrit (NAW 2) who is maternal uncle (Mama) of husband Hemant Kumar Deshmukh has stated in his evidence that in the month of August, 2016, wife Smt. Archna Goutam had told him telephonically regarding their matrimonial dispute. As per his statement, the matter was tried to be solved by family members, but wife Archna and her father refused to go with them, but he has not stated that what was the dispute between the husband and wife, and who is victim of the dispute.

10. Statements of wife Smt. Archna Goutam (AW 1), her mother Smt. Karuna Goutam (AW 2) and even statement of husband Hemant Kumar Deshmukh (NAW 1) show that husband and wife lived together for about 3 years at Raigarh, but due to conduct and behaviour of her Devar, as has been stated above, she was very much tortured. The mother of wife Smt. Karuna Goutam (AW 2) has clearly stated in her cross-examination in para 13 that there was quarrel between husband and wife, because of her Devar. She has also admitted that if quarrel relating to Devar is left, then their life would go smoothly. She has also stated that when her daughter Archna Goutam told her about molesting conduct of her Devar, then on being asked by her to husband Hemant Kumar Deshmukh, he had said that he will sort out the matter, but he did not do so.

11. Considering the totality of the oral evidence as well as documentary evidence adduced by the wife, finding given by learned Family Court that wife is living separately from her husband with sufficient reason is not improper. Therefore, said finding is upheld.

12. So far as sufficiency of maintenance granted to wife and son is concerned, Ex. P-4 is salary slip of husband of the month of January, 2017, which shows that his total earning of that month was Rs. 1,43,562/-, out of which Rs. 27,174/- was leave encashment

amount, which is not a part of monthly salary. If it is deducted then his salary for the month of January comes to Rs. 1,16,388/-. Ex. P-5 is Form B-1 Kistbandi Khatoni, which shows that Hemant Kumar Deshmukh is also having 0.570 hectare agricultural land, but no document has been proved, showing his income from that agricultural land. AW 1 Archana Goutam has admitted that she is holding post graduate degree in Bio-Technology and also hold B.Ed. degree, she had also worked as AG-III, which is said to be Legal Advisor in CG and Orissa Sub Area Station Headquarters (Kosa), which is a department of Army. Ex. D-1, copy of Khasra shows that she is having 2.680 hectare irrigated agricultural land, which shows that she is also having some source of income. Therefore, looking to above facts and also taking into consideration the cost of living, price index and basic needs of human being, etc., it would be appropriate to enhance the maintenance amount granted to the wife from Rs.15,000/- per month to Rs. 20,000/- per month.

13. No document has been proved before learned Court below which proves that applicant Anjneya is permanently suffering from chronic bronchitis and he is getting continuous treatment for said disease. As per impugned order, he was of the age of one year, looking to his age, maintenance amount of Rs. 10,000/- granted to him by learned Family Court is just and proper. It needs no change.

14. Consequently, the criminal revision No. 61/2020 filed by the husband being devoid of substance, is hereby dismissed.

15. Criminal Revision No. 1531/2019 filed by the wife and the son is partly allowed. The amount of maintenance of Rs. 10,000/- per month granted to the applicant No. 2 Anjneya/son is upheld. The amount of maintenance granted to the applicant No. 1/wife is enhanced from Rs. 15,000/- to Rs. 20,000/- per month. The enhanced amount shall be payable from the date of impugned order i.e. 23-10-2019. Rest of the finding of the impugned order passed by the trial Court shall remain intact.

Sd/-
N.K. Chandravanshi
Judge