

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****FA(MAT) No. 50 of 2020**

- Smt. Wageshwari @ Vaishali Hirwani, wife of Amil Prabhat, aged about 23 years, at present R/o village Piperchhedi, Tahsil and District Dhamtari (C.G.).

---- Appellant**Versus**

- Amil (wrongly written as Amit) Prabhat son of Shobha Ram Hirwani, aged about 28 years, R/o 255, Jyoti Nagar, Mathmuraina, Raipur, District Raipur (C.G.)

---- Respondent

For Appellant : Shri Praveen Dhurandhar, Advocate.
For Respondent : Shri C.R. Sahu, Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra &
Hon'ble Smt Justice Rajani Dubey

Order on Board by Rajani Dubey, J**05/01/2021**

01. The appellant-wife has filed this present appeal under Section 19 (1) of the Family Court Act being aggrieved by the order dated 12.12.2019 passed by Judge, Family Court, Dhamtari (C.G.) in Civil M.J.C. No.5/2019, whereby the learned Judge partly allowed the application of appellant filed under Section 27 of the Hindu Marriage Act, 1955 (for short 'the Act') in respect of the property claimed.

02. Appellant's case in short is that she is legally wedded wife of respondent and their marriage was solemnized on

25.05.2013 at Dhamtari according to Hindu ritual. Soon after the marriage, the appellant was subjected to harassment physically and mentally for demand of dowry and after some time she was ousted from matrimonial house. At the time of marriage, the parents of appellant and other near relatives had gifted some jewellery and also given cash. That apart, Rs.31,500/- was also paid to the respondent-husband.

03. The learned Family Court, after examining oral and documentary evidence, partly allowed the application of appellant-wife filed under Section 27 of the Act and directed the respondent-husband to return articles as mentioned in para 14 of its order and also cash of Rs.5000/- and gifted amount of Rs.21,000/- to the appellant-wife. Hence, this appeal.

04. The respondent-husband, in his reply, denied all the allegations and stated that the behaviour of appellant-wife was not good enough, she used to avoid household work and she left the matrimonial house with all jewellery and that she made a false report in Mahila Thana on 19.07.2018. It was further stated that the attempt was made for restitution of marriage but the appellant-wife refused and instituted proceeding for domestic violence which is pending consideration. It was further stated that respondent-husband works in private company and he is ready to keep the appellant with him. The appellant-wife has already taken the jewelleries brought by her and annexed the list of articles,

which the respondent-husband is ready to return.

05. Before the Family Court, appellant-wife examined herself as AW-1, her maternal uncle as AW-2 and filed documents Ex.P-1 to P-10 and respondent-husband examined as NAW-1 and filed documents Ex.D-1 to D-5.

06. Learned counsel for the appellant submits that the learned Family Court was not justified in partly allowing the application of the appellant and it ought to have awarded entire articles to the appellant specified in para No.8 of the plaint. The learned Family Court has given wrong finding that the appellant has failed to prove that the list of articles given by her was in the possession of the respondent-husband and also erred in not appreciating the bill Ex.P/1 and P/2, which was in respect of jewellery. The finding of the learned Family Court is erroneous to the extent that the appellant failed to prove the fact of possession of jewellery in the hands of respondent, whereas the said finding is contrary to the records and the deposition given by the appellant. He further submits that the learned Family Court has awarded only Rs.21,000/- towards cash amount, whereas the same is to the tune of Rs.31,500/-. The finding of the learned Family Court is contrary to the principles governed under Section 27 of the Hindu Marriage Act and is also contrary to the evidence laid by the appellant. Learned counsel for the appellant also submits that the respondent admitted in his reply that he gave Honda Activa scooter to the appellant, which was also

included in 'stridhan' Therefore, the impugned order dated 12.12.2019 may be modified awarding articles specified in the application so filed by the appellant, in the interest of justice. In support of argument, learned counsel placed reliance on the decision of Hon'ble Supreme Court in the matter of **Balkrishna Ramchandra Kadam Vs. Sangeeta Balkrishna Kadam**¹.

07. On the other hand, learned counsel for respondent supported the impugned order passed by the learned Family Court.

08. Heard learned counsel for the parties and perused the material available on record.

09. Respondent-husband has stated in his reply that looking to the interest of appellant-wife, he continued her study and also purchased Honda Activa 3G for her use so that she will be happy. Ex.D-5C clearly shows the date of purchase of Honda Activa 3G as 05.02.2016, whereas the marriage was solemnized on 24.05.2013. This document also reveals the name of respondent-husband as owner. That apart, para 8 of the impugned order also reveals that the appellant-wife relinquished her right over Honda Activa 3G and the note to this effect was also made in the order sheet dated 11.12.2019.

10. The Hon'ble Apex Court, in the matter of **Balkrishna (supra)**, held in para 7 and 8, which read thus:-

1 (1997) 7 SCC 500

"7. Section 27 of the Hindu marriage Act reads thus :-

"27. Disposal of property. - In any proceeding under this Act, the court may make such provisions in the decree as it deems just and proper with respect to any property presented, at or about the time of marriage, which may belong jointly to both the husband and the wife."

8. On a plain reading of the section, it becomes obvious that the matrimonial court trying any proceedings under the Hindu marriage Act, 1955, has the jurisdiction to make such provision in the decree as it deems just and proper with respect to any property presented "at or about the time of marriage" which may belong jointly to both the husband and the wife. This section provides an alternate remedy to the wife so that she can recover the property which is covered by the section, by including it in the decree in the matrimonial proceedings, without having to take recourse to the filing of a separate civil suit and avoid further litigation. In the instant case, we find that the wife had laid claim to certain items of jewellery and in her deposition, she had mentioned the items of jewellery which she had received "at or about the time of her marriage" and, in particular, had mentioned the items of jewellery which were given to her by her father at the time of the marriage.

11. It is clear from the pleading and the documents that the Honda Activa scooter was purchased by the respondent-husband after three years of marriage and the same was given to appellant-wife only for use. It was not gifted to the

appellant-wife. Similarly, in jewellery bills (Ex.D-1C to D-4C), the name of respondent-husband finds place and all these bills are subsequent to the date of marriage i.e. from the year 2014, 2015 and 2017. The learned Family Court, after appreciating the oral and documentary evidence of both the parties, recorded its finding that the appellant-wife has not been able to prove its case for jewellery items. In our considered view, the Court below has not committed any illegality in passing order under Section 27 of the Hindu Marriage Act in respect of those articles which are not supported by proper and reliable purchase bills. Appeal is, therefore, dismissed.

Sd/-

(Prashant Kumar Mishra)

Judge

Sd/-

(Rajani Dubey)

Judge