

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Proceedings through Video Conferencing****Criminal Revision No.459 of 2021**

1. Smt. Purvi Jain (Bohra) W/o Ritesh Bohra, Aged About 28 Years R/o Laxmi Variety Center, Jawahar Market, Camp-02, Power House, Bhiali, District Durg (C.G.), Presently Residing At Plot No. 363, Ward No. 25, Near New Fish Market, Beside Deepak Sports, Camp-02, Bhiali, District - Durg Chhattisgarh.
2. Seyan Bohra S/o Ritesh Bohra, Aged About 3 Years (Minor) Through Natural Guardian Mother Smt. Purvi Jain (Bohra), R/o Laxmi Variety Center, Jawahar Market, Camp-02, Power House, Bhiali, District Durg (C.G.), Presently Residing At Plot No. 363, Ward No. 25, Near New Fish Market, Beside Deepak Sports, Camp-02, Bhiali, District - Durg Chhattisgarh.

---- Applicants**Versus**

1. Ritesh Bohra S/o Suresh Bohra, Aged About 29 Years R/o D/348, Sector 5, Tagore Nagar, Raipur, Tahsil And District Raipur Chhattisgarh.
2. Suresh Kumar Bohra S/o Late Bhanwar Lal Bohra, Aged About 58 Years R/o D/348, Sector 5, Tagore Nagar, Raipur, Tahsil And District Raipur Chhattisgarh.
3. Smt. Kanchan Bohra W/o Sureshkumar Bohra, Aged About 54 Years R/o D/348, Sector 5, Tagore Nagar, Raipur, Tahsil And District Raipur Chhattisgarh.
4. Smt. Rajkumar Kummad W/o Mukesh Kummad, Aged About 31 Years R/o D/348, Sector 5, Tagore Nagar, Raipur, Tahsil And District Raipur Chhattisgarh.
5. Smt. Vinamrata Badariya W/o Prashant Bahariya, Aged About 26 Years R/o D/348, Sector 5, Tagore Nagar, Raipur, Tahsil And District Raipur Chhattisgarh.
6. Smt. Shanti Chandaliya Aged About 66 Years. R/o D/348, Sector 5, Tagore Nagar, Raipur, Tahsil And District Raipur Chhattisgarh.

---- Respondents

 For Applicants : Shri TK Jha , Advocate
 For Respondents : Shri Abhyuday Singh, Advocate

Hon'ble Shri Justice N.K. Chandravanshi**Order On Board**

30.7.2021.

1. This criminal revision has been preferred against judgment dated 13.7.2021 passed by Additional Sessions Judge, Second Fast Track Special Judge Durg, Distt. Durg in Criminal Appeal No.126/2021, whereby the appeal preferred by the applicants against the order dated 29.6.2021 passed by Judicial Magistrate First Class, Durg, has been partly allowed.

2. The brief facts of the case are that marriage between applicant No.1 and non-applicant No.1 was solemnized in the year 2014 and they were blessed with a male child namely Seyan in the year 2015. In the year 2018, applicant No.1/wife filed an application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 before Judicial Magistrate First Class, Durg and the same is pending for consideration as Complaint Case No.947/2018 (Smt. Purvi Jain & Anr. vs. Ritesth Bohra & Ors.). During the pendency of the complaint case, non-applicant No.1/husband filed an application before the JMFC, Durg for visiting rights to meet his son and the said application was allowed vide order dated 15.01.2019 and non-applicant No.1 was permitted to visit his child Seyan for two hours on every Sunday. Thereafter, vide order dated 30.7.2019, non-applicant No.1 was also permitted to take his son Seyan on each Sunday in every week to his house while allowing an appeal filed by him before the 3rd Additional Sessions Judge, Durg. Since applicant No.1 was not cooperating with non-applicant No.1 to meet his son, applicant No.1 was directed by the JMFC Durg to comply

with the order dated 30.7.2019. Thereafter on filing application by non-applicant No.1, the learned JMFC on 29.6.2021 passed an order directing the applicant No.1 to drop their child Seyan to the house of non-applicant No.1 on every Sunday at 7.00 am and non-applicant No.1 will bring back the child to the house of applicant No.1 on the same day in the evening. The learned court also directed that in case of violation of the said order, proceedings for giving permanent custody of the child to his father will be initiated. Aggrieved by this order, applicant No.1 filed an appeal before the Additional Sessions Judge 2nd Fast Track Special Judge, Durg and the said Court vide order dated 13.7.2021 partly modified the order of the JMFC, Durg. Aggrieved by this order, applicant No.1 has filed the instant revision.

3. Learned counsel for the applicants submits that vide impugned order, learned appellate Court has deleted a part of the order passed by the JMFC, Durg which reads that “ in case of violation of the order of the trial Court, proceedings with regard to giving permanent custody of their son Seyan to his father Ritesh Bohra will be initiated”. But the learned appellate Court has not set aside the remaining part of the order passed by the Magistrate which reads that “on every Sunday at 7.00 am, applicant No.1 will drop their son Seyan to the house of non-applicant No.1 Ritesh Bohra and in the evening non-applicant No.1 Ritesh Bohra will bring back and drop Seyan in the house of applicant No.1.” Learned counsel for the applicants submits that

it is very difficult for applicant No.1, being a lady, to take her son Seyan on every Sunday to Raipur from Durg. He further submits that applicant No.1 has no objection regarding visiting rights of non-applicant No.1, but the condition imposed by the learned Judicial Magistrate First Class will create hardship because their son Seyan does not want to go to the house of non-applicant No.1 and whenever he comes back from the house of non-applicant No.1 he become sick, therefore, remaining part of the order passed by the Judicial Magistrate First Class, may be set aside.

4. Per contra, learned counsel for the non-applicants would submit that earlier non-applicant No.1/husband was permitted by the Court to take Seyan on every Sunday from 7.00 am to 7.00 pm but since applicant No.1 was creating problem, non-applicant No.1 has filed an application before the Court below to direct applicant No.1 to comply with the order, despite that applicant No.1 violated the order and created hardship for non-applicant No.1 to take their son Seyan with him to Raipur. He further submits that looking to the non-cooperation and hardship created by applicant No.1, the learned Magistrate was compelled to pass such order, which has been modified to some extent in the impugned order by the learned appellate Court. He further submits that looking to the unwillingness of applicant No.1 to comply with the order of the learned Magistrate, the learned appellate Court has maintained the said part of the impugned order which does not call for any interference by this Court.

5. I have heard learned counsel for both the parties, perused the impugned orders and other documents filed with the revision petition.

6. Perusal of the impugned order shows that Complaint Case No.947/2018 (Smt. Purvi Jain & Ors. vs. Ritesh Bohra & Ors.) is pending before the Judicial Magistrate, Durg wherein vide order date 15.01.2019, non-applicant No.1 was permitted for visiting rights to meet his son Seyan for two hours on every Sunday. Thereafter non-applicant No.1 filed an application to allow him to take Seyan one day in every week to his home. This prayer was allowed in an appeal vide order dated 30.7.2019 by 3rd Additional Sessions Judge, Durg. Since applicant No.1 was not complying with the order dated 30.7.2019, therefore, on filing of the application, vide order dated 26.3.2021, applicant No.1 was directed by the learned Judicial Magistrate First Class to comply with the order. Despite that order, applicant No.1 has not complied with order dated 30.7.2019, therefore, on an application filed by non-applicant No.1, learned JMFC has passed an order on 29. 6.2021 which has been partly modified by the appellate Court.

7. Perusal of the impugned order shows that due to non-compliance of the order dated 30.7.2019, the learned Magistrate as well as the appellate Court have passed said order. Due to creating hurdles by applicant No.1, she has been given duty to drop the child Seyan to the house of non-applicant No.1/husband in the morning and to balance it, non-applicant No.1 was also

made liable to bring back the child Seyan in the evening of the same day in the house of applicant No.1/wife. Both of them have been given equal responsibilities in respect of dropping and bringing back their child, therefore, it cannot be said that applicant No.1/wife would face difficulty or hardship in complying with the impugned order.

8. So far as the arguments advanced by learned counsel for the applicants that child Seyan is not interested to go to the house of his father and whenever he comes back from the house of his father, he become sick, is concerned, applicant No.1 can file an application in this regard before appropriate forum. But only on that ground, applicant No.1 cannot be permitted to disobey the order dated 30.7.2019.

9. In view of the above, I do not find that learned Additional Sessions Judge has committed any infirmity or illegality in passing the impugned order warranting interference of this Court.

10. Accordingly, the revision is dismissed.

Sd/-

(N.K. Chandravanshi)
JUDGE