

**IN THE COURT OF ABHAY MANDIYAL, ADDL. PRINCIPAL  
JUDGE, FAMILY COURT KINNAUR AT RAMPUR BUSHEHAR,  
DISTT. SHIMLA H.P.**

**CIS CNR No. : HPKI01002756-2022.**  
**CIS Case Type : D.V. Act Appeal.**  
**CIS Regd. No. . : 2/2023.**  
**Date of filing : 18.10.2022.**  
**Date of Decision : 22.05.2023.**

Smt. Bindu Bala, w/o Sh. Deepak Raj, r/o village Shoach, Tehsil Nirmand, Distt. Kullu, H.P, presently residing at village Thans, Post Office Arsu, Tehsil Nirmand, Distt. Kullu, H.P.

...Appellant.

***Versus..***

Sh. Deepak Raj, s/o Sh. Durga Dass, r/o village Shoach, Post Office Arsu, Tehsil Nirmand, Distt. Kullu, H.P.

.....Respondent.

**Criminal Appeal under Section 29 of the Protection of Women from Domestic Violence Act.**

For the appellant : Sh. Suresh Kumar, Advocate.

For the Respondent : Sh. Govind Negi, Advocate.

**ORDER**

1. This order shall dispose of the instant appeal u/s 29 of protection of women from domestic violence act 2005, arising out of order dated 7.9.2022 passed by Id. JMFC Anni, in case No. D.V. Act CIS Case Regd. No. 389/2022, whereby the application for grant of interim maintenance filed in the main petition under PWDV Act 2005 (hereinafter referred to be the Act in short), was allowed and the respondent has been directed to pay monitory assistance of ₹ 1500/- per month to the

applicant/petitioner from the date of filing of the application, along with prayer that the impugned order being wrong, illegal and contrary to the facts and circumstance of the case, be set aside.

2. For the convenience sake, the parties hereinafter shall be referred as the appellant and respondent.

3. Shorn of all unnecessary details brief facts of the case are as under :-

That the applicant has filed an application in the Domestic incidental report through concerned protection officer. She has moved the application under Section 23 of the Act for grant of interim maintenance on the ground that presently she is residing with her parents on being mercilessly beaten and ousted from the matrimonial house since 12.5.2021. The respondent and his mother had committed violence with the applicant in the month of December 2020, which matter was reported to the police of PS Nirmand, however, the respondent compromised the same in presence of protection officer in mediation on 11.1.2021. It is further averred that the behaviour of respondent is unlawful and inhuman and the applicant cannot reside with him. The respondent is neither maintaining nor providing any basic necessities of life to the applicant since she had been ousted from the matrimonial house and the applicant is in starvation. The respondent is rich person and having sufficient agriculture and horticulture land and apple orchard and is yielding 2.5 lacs per annum. The respondent is also regular and confirmed employee of The Kullu Transport Company (KTC) HQ Kullu and is earning handsomely and his total monthly income of ₹ 48,500/-. Besides this, the respondent has also his own house at village Shoach and a double storeyed RCC house joint with his mother at place Solan and earning good rental income from the same. The respondent

has no other liabilities as his mother is also a Govt. employee and serving as midwife in CHC Arsu and his father had died. It is further submitted that the applicant had no source of income and prayed that ₹ 10,000/- per month be granted as interim maintenance to her from the respondent.

4. The lis was hotly resisted and contested by the respondent by filing reply, in which the fact of residing the applicant in her parental house is not disputed, however, it is submitted that the applicant herself left the matrimonial house on her own without any rhyme and reason. It is denied that the mother of respondent was party in the case of alleged domestic violence committed with the applicant in December 2020. It is further denied that the applicant was ever maltreated, ousted, harassed and tortured by the respondent. Further submitted that the applicant is quarrelsome lady and use filthy language and always creates new issues to make quarrel with his family and to go to her parental house and is in the habit of filing false complaints against the respondent. The respondent further averred that he provided all basic necessities of life to the applicant as per his status. It is denied that he is serving a regular driver in KTC. It is further submitted that the respondent being the only son of his parents had other social obligations, where he has no sufficient source of income, as he had been disinherited from the property by his father and is leading a miserable life without the support of his father. Other contents are denied and prayed that application be dismissed.

5. Vide impugned order dated 07.09.2022, the Id. JMFC, Anni awarded a sum of ₹ 1500/- per month to the applicant from the respondent as interim maintenance from the date of filing of the application. It is the contention that the same was insufficient

as the lower court had acted hastily and contrary to law. The provisions of law provided for same level of alternative accommodation and adequate monetary relief to the wife. There is a prayer of adequate, fair and reasonable monetary relief consistent with standard of living of the respondent and accommodation by the petitioner. It is prayed that the appeal may kindly be allowed.

6. Aggrieved and dis-satisfied with the impugned order dated 7.9.2022, she has now been challenged it on inter-alia grounds that the trial court while passing order has committed grave illegality and irregularities and has failed to appreciate the evidence adduced on record. The Id. Trial court has not appreciated the fact that the applicant is a helpless lady having no source of income and granted 1500/- per month as interim maintenance, which is not sufficient for the survival of the applicant, whereas the respondent is an employee of a private transport company (KTC), besides having apple orchard and landed property. It is therefore prayed that the appeal may be allowed and the impugned order dated 7.9.2022 be set aside and order be passed granting the maintenance allowance to the tune of Rs. 10000/-PM along with other claim as prayed before the Id. JMFC Anni.

7. Notice of the appeal was given to the respondent and the record of lower court was also requisitioned.

8. I have heard learned counsel for the appellant, Id. counsel for the respondent and carefully gone through the record of the case file.

9. From the contentions raised, the following points arise for determination in this appeal:-

- 1) Whether the impugned order dated 7.9.2022 passed by the Ld. Trial court is legally sustainable in the eyes of law?
- 2) Final Order.

10. For the reasons to be recorded hereinafter, while discussing the points for determination, my findings on the same are as under:-

Point No.1 : Decided accordingly

Relief : The appeal is partly allowed, as per operative part of the judgment.

### **REASONS IN SUPPORT OF THE FINDINGS.**

#### **POINT NO. 1 :-**

11. Sh. Suresh Kumar, Advocate, Ld. Counsel for the appellant has vehemently argued that Ld. Trial court has not appreciated the evidence and law in right perspective and the impugned order dated 7.9.2022 passed by Id. JMFC, Anni, is liable to be set aside, which is against the facts law and evidence on record. He has also contended that the magistrate has failed to appreciate the facts and circumstances in the right perspective. It is not at all understandable as to on what basis it was concluded that a sum of ₹ 1500/- per month only was granted in favour of the applicant when there is prima-facie documentary evidence on record that the monthly income of the respondent was much more and who has sufficient sources of income also. It is therefore prayed that appeal be allowed by enhancing the amount of monetary assistance granted in favour of the appellant/wife.

12. Per contra, Sh. Govind Negi, Advocate, Id. Counsel for the respondent has supported the findings of the trial court. He contended that Id. Trial court has wrongly come to the conclusion directing the respondent to pay ₹ 1500/- per month as

he has no sufficient sources of income and no permanent job. It is prayed that the appeal be dismissed.

13. I have given my anxious considerable thoughts to the rival contentions of the parties and scrutinized the record of the case with care and caution. Thus, from the careful examination of the case of the petitioner, it is manifest that the parties are estranged spouses. As per the appellant, she had been ousted from the matrimonial home since 12.5.2021 and the matter had been reported to the authorities. She was undergoing medical treatment for various diseases suffered by her, whereas the respondent is rich person who had apple orchard besides working as an employee of Kullu Transport Company and earning ₹ 48,500/- per month. Even the mother of the respondent is Govt. employee being mid wife at CHC Arsu. The respondent had been harassing and abusing her and she has filed the present complaint praying therein for various reliefs under Sections 18,19,20 & 21 of the Act, along with interim relief. On the contrary, there is simpliciter denial on the part of respondent.

14. The moot point which is necessary for final determination in the instant appeal, is with regard to the quantum of maintenance. The marriage inter se the parties is admitted fact. Their relationship became strained with the passage of time and they are living separately. It also being no denial fact, both the parties have testified their pleadings annexed with the affidavit in support there of. In the instant case, there is absolutely no denial to the fact that the petitioner was granted interim monetary assistance of ₹ 1500/- vide order dated 7.9.2022. The fact that the respondent is an employee of Kullu Transport Company HQ Kullu has not been specifically denied. It is mentioned in the reply that he had daily of ₹ 500/-. Significantly, the respondent has not

furnished his assets and liabilities affidavit. The Id. Trial court was of the opinion that the respondent is an able bodied person besides being a skilled driver. If at all the plea of the respondent has to be accepted, then what prevented him from furnishing the assets and liabilities affidavit to prove that he had no source of income, however, it is not so. The provisions of law in this regard are social welfare legislation with the aim to prevent vagrancy in the society. The appellant being the legally wedded wife of the respondent, the latter could not avoid his liability to pay monetary assistance to her as the economic abuse has been specifically included in the provisions of law.

15. In the given facts and circumstances of the case, to my mind, the amalgam of a sum of ₹ 1500/- per month to the petitioner as interim maintenance allowance, within my purview, appears to be inadequately sanctioned in her favour. The respondent admittedly has movable and immovable property and belongs to a good family of Nirmand area. This fact is also not disputed. He is an able bodied person having both legal and pious duty to maintain his wife. Inflation is also on ever rise. Certainly the petitioner could not be put to vagrancy.

16. Section 19 of the Act is with regard to the residence order, which is as under :-

**“19. Residence orders. -** While disposing of an application under sub-section (1) of section 12, the Magistrate may, on being satisfied that domestic violence has taken place, pass a residence order -

- (a) restraining the respondent from dispossessing or in any other manner disturbing the possession of the aggrieved person from the shared household, whether or not the respondent has a legal or equitable interest in the shared household;
- (b) directing the respondent to remove himself from the shared household;
- (c) restraining the respondent or any of his relatives from entering any portion of the shared household in which the

*aggrieved person resides;*

- (d) restraining the respondent from alienating or disposing off the shared household or encumbering the same;*
- (e) restraining the respondent from renouncing his rights in the shared household except with the leave of the Magistrate; or*
- (f) directing the respondent to secure same level of alternate accommodation for the aggrieved person as enjoyed by her in the shared household or to pay rent for the same, if the circumstances so require.”*

17. Section 20 of the Act provides for monetary relief to the aggrieved person.

**“20. Monetary reliefs. -**

*(1) While disposing of an application under sub-section (1) of section 12, the Magistrate may direct the respondent to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of the domestic violence and such relief may include, but not limited to,-*

- (a) the loss of earnings;*
- (b) the medical expenses;*
- (c) the loss caused due to the destruction, damage or removal of any property from the control of the aggrieved person; and*
- (d) the maintenance for the aggrieved person as well as her children, if any, including an order under or in addition to an order of maintenance under section 125 of the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force.*

*(2) The monetary relief granted under this section shall be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved person is accustomed.*

*(3) The Magistrate shall have the power to order an appropriate lump sum payment or monthly payments of maintenance, as the nature and circumstances of the case may require.*

*(4) The Magistrate shall send a copy of the order for monetary relief made under sub-section (1) to the parties to the application and to the in charge of the police station within the local limits of whose jurisdiction the respondent resides.*

*(5) The respondent shall pay the monetary relief granted to the aggrieved person within the period specified in the order under sub-section (1).*

*(6) Upon the failure on the part of the respondent to make*



*payment in terms of the order under sub-section (1), the Magistrate may direct the employer or a debtor of the respondent, to directly pay to the aggrieved person or to deposit with the court a portion of the wages or salaries or debt due to or accrued to the credit of the respondent, which amount may be adjusted towards the monetary relief payable by the respondent.”*

18. Aggrieved person (as defined in clause (a) of Section 2 of the Act; (a) **“aggrieved person”** means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent. Clause (f) defines **“domestic relationship”** means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family. Domestic violence has also been defined in more lucid and comprehensive manner. In Section 3 of the Act, where, **Explanation (1)** of the Section further explain the **“physical abuse”** means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force.

19. Significantly, it is alleged that the petitioner is an aggrieved person and had been subjected to domestic violence under the Act. Learned trial court, had ordered to grant the interim payment of ₹ 1500/- per month as maintenance allowance. Thus, I am of the considered view that the impugned order dated 07.09.2022, qua grant of monthly interim maintenance order passed by the learned trial court below, is inadequately granted. More so, this for the reason that the petitioner wife is entitled to

with the same standard of living as to be provided to her during her matrimonial home. The provisions contained in the Act are not only penal in nature, but also it aims at securing the enforcement of duty imposed upon a person by law. Though, the level of standard of living required to be maintained is not classified in the provision. It is to be deductible from the peculiar facts and circumstances of each and every case. Thus the petitioner-wife is entitled to be maintained with the same standard of living as to be provided to her during her matrimonial home. The provision contained in the Act are not only penal in nature, but also it aims at securing the enforcement of duty imposed upon a person by law. Though, the level of standard of living required to be maintained is not classified in this provision. It is to be deductible from the peculiar facts and circumstances of each and every case.

20. Therefore, in the distinct facts and circumstances of the case, the petitioner wife is entitled for the increase of the maintenance, to be paid by the respondent. Therefore, in the mitigating and extinguishing circumstances of the case, this court is of the considered opinion that ends of justice shall meet in case the payment of maintenance is enhanced as discussed supra. Their Lordship of the Hon'ble Supreme Court in '**Chaturbhuj v. Sita Devi AIR 2008 SC 530**' held as under:-

*"5. The object of the maintenance proceedings is not to punish a person for his past neglect, but to prevent vagrancy by compelling those who can provide support to those who are unable to support themselves and who have a moral claim to support. The phrase "unable to maintain herself" in the instant case would mean that means available to the deserted wife while she was living with her husband and would not take within itself the efforts made by the wife after desertion to survive somehow. Section 125 Cr.P.C. is a measure of social justice and is specially enacted to protect women and children and as noted by this Court in **Captain Ramesh Chander Kaushal v. Mrs. Veena Kaushal and Ors.** (AIR 1978 SC 1807) falls within constitutional sweep of **Article 15(3)** reinforced by **Article 39** of the*

*Constitution of India, 1950 (in short the 'Constitution'). It is meant to achieve a social purpose. The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife. It gives effect to fundamental rights and natural duties of a man to maintain his wife, children and parents when they are unable to maintain themselves.*

21. For the foregoing reasons and distinct facts and circumstances of the case, the petitioner is entitled for enhancement in payment of interim maintenance from ₹ 1500/- to 2500/- per month from the respondent from the date of filing of the present appeal. The point is answered accordingly.

22. No other point was urged before the court.

**FINAL ORDER:**

23. As a sequel to the findings on point No. 1 above, the instant appeal is partly allowed. The impugned order dated 07.09.2022 passed by the trial court, is modified to the extent that the interim maintenance is enhanced to the petitioner from the respondent from ₹ 1500/- to ₹ 2500/- per month from the date of filing of the petition. Ordered accordingly. The appeal stands disposed off in aforesaid terms. Pending applications if any shall stand disposed of automatically.

24. The record of learned trial court along with copy of this order be returned and the appeal file of this Court after due completion be consigned to the record room.

25. Announced and signed in the open court, today this 22<sup>nd</sup> day of May, 2023.

**sd/-**

**(Abhay Mandiyal),**  
Addl. Principal Judge,  
Family Court, Kinnaur at Rampur  
Bushahr, District Shimla, H.P.

**\*Veena\***