

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 804 of 2012**

- Smt. Sumitra Mahant W/o Shri Jeewan Das Mahant Aged About 21 years
R/O Village - Gerwani, Tah. & Distt. - Raigarh C.G.

---- Applicant**Versus**

- Jeewan Das Mahant S/o Shri Ramprasad Mahant Aged About 26 Years R/O
Village - Chhatamuda, Thana - Jutmill, Tah. & Distt. - Raigarh C.G.

---- Non-applicant

For applicant	:	Mr. Roop Naik, Adv.
For non-applicant	:	Mr. Akhtar Hussain, Adv.

Hon'ble Mr. Justice Chandra Bhushan Bajpai**Order On Board****15/04/2015**

1. Applicant has filed this criminal revision under Section 19(4) of the Family Courts Act, 1984 (in brevity 'Act') against the order dated 11-7-2012 passed by the Judge, Family Court, Raigarh whereby and whereunder, learned court below dismissed the Criminal MJC No. 30/2012 (Smt. Sumitra Mahant -v- Jeewan Das Mahant) under Section 125 of the Code of Criminal Procedure (In brevity 'Code') preferred by the applicant/wife for grant of maintenance holding that the applicant/wife is not subjected to cruelty by the non-applicant/husband and the applicant is living separately without any just and sufficient reason and further that it is not proved that the applicant is unable to maintain herself.

2. As per application filed by the applicant before the Court below, marriage between the parties was solemnized in the month of March, 2001. After about two months of marriage, wife was subjected to cruelty, physical and mental torture for demand of dowry by the non-applicant. Thereafter the applicant lodged a complaint to Superintendent of Police and Police Chowki, Punjipathra. In the subsequent stage, on account of compromise between the parties, the applicant again lived for

four months with non-applicant. In this period also, she was subjected to mental and physical torture and also harassment. On 17-2-2012 anyhow the applicant escaped and lodged a report in the Jute Mill police station. As per pleading, the non-applicant is earning Rs. 7,000/- to 8,000/- per month. There is no means with the applicant to maintain herself. The applicant by filing the petition before the Court below prayed that she be awarded Rs. 3,000/- per month as maintenance. The non-applicant filed written reply before the Court below denying all the allegations made in the petition and submitted that the applicant is residing separately without sufficient reason, no cruelty, mental or physical torture was committed to her by the non-applicant. He is not able to maintain himself. The applicant is having sufficient means to maintain herself. Hence the petition for maintenance be dismissed.

3. After affording opportunity to adduce evidence to both the parties, learned court below by its order dated 11-7-2012 dismissed the petition filed by the applicant. Hence this revision.

4. In this revision the applicant has challenged the legality and propriety of the order passed by the Court below and submitted that the order impugned is bad in law and the same being against the facts on record is liable to be set aside. The Court has wrongly appreciated and misread the evidence and wrongly held that the non-applicant has not harassed and tortured the applicant. The Court below has erred in holding that without just and sufficient ground, the applicant is living separately. It is prayed in the revision that the impugned order dated 11-7-2012 be set aside and Rs. 3,000/- per month towards maintenance be awarded to the applicant.

5. The revision is opposed by the non-applicant.

6. Heard learned counsel for both the parties.

7. Learned counsel for the applicant vehemently argued that the non-applicant committed cruelty, mental and physical torture against the applicant. The fact that

she was having sufficient reason to reside separately was not considered by the court below. In para 26 of the judgment evidence is not correctly appreciated regarding inability of the applicant to maintain herself. The applicant was forcibly ousted from the house. She is having no means to maintain herself. She had already mentioned that she is unable to maintain herself in para 12 of the application. Learned counsel further submitted that this revision may be allowed and she be awarded maintenance as prayed.

8. Learned counsel for the applicant placed reliance upon the judgment of Hon'ble Supreme Court in Chaturbhuj -v- Sita Bai reported in 2008 (2) SCC 316 in which in para 6, 7 and 8, it is held that where the personal income of the wife is insufficient she can claim maintenance under Section 125 of the Code. If the wife is unable to maintain herself, maintenance may be awarded in her favour. Learned counsel submits that this case law is applicable with the facts of the present case. Hence the petition may be allowed.

9. Per contra, learned counsel for the non-applicant submitted that as per sub-section (4) of Section 125 of the Code, if without any sufficient reason, the wife refuses to live with the husband, she will not be entitled for maintenance. There is no sufficient reason to live separately from the husband. The applicant is not entitled for maintenance. Learned counsel for the non-applicant duly supported the determination of the issues by the Court below and submitted that as the applicant failed to prove that she is unable to maintain herself along with other issues the Court below rightly dismissed the petition. Therefore the revision may be dismissed.

10. In order to appreciate the arguments advanced on behalf of the respective parties, I have perused the evidence adduced by the them before the Court below.

11. The point involved in the present case is whether the applicant without any sufficient reason is not living with non-applicant. The another point to be appreciated is regarding availability of sufficient means with the husband and

whether he refused to maintain his wife and further whether the applicant is unable to maintain herself.

12. In the present case, learned Court below held for deciding the issue No. 4 that the non-applicant has sufficient means. This was not challenged by the applicant before appropriate forum and also on the basis of the evidence and discussions by the Court below in the order, I do not find any reason to take a different view for Issue No. 4.

So far as Issue No. 3 that the applicant is unable to maintain herself is concerned, though the applicant pleaded in para 12 that she is not having any source of income but so far as her evidence before the Court below is concerned, nowhere it is stated that she is unable to maintain herself. A.W. 2 Smt. Resham Bai Mahant has said nothing that the applicant is unable to maintain herself. Same is the evidence of A.W. No. 3 Khemdas. Court below while deciding this issue in para 26 and 27, held that the applicant is not unable to maintain herself. By appreciating the entire evidence, in the opinion of this Court, the above finding requires no interference.

13. So far as evidence and issue regarding cruelty is concerned, for deciding Issue No. 2, the element of cruelty is a corroborative fact. The trial Court while appreciating the entire facts held that the applicant was not subjected to cruelty and she is living separately from the non-applicant without any just and proper ground. The element of cruelty is appreciated widely by the court below and looking to the entire facts and circumstances of the case, this Court has no reason to deviate from the above finding.

14. The cited case law in Chaturbhuji (supra) where Hon'ble Supreme Court reiterated the principles of law is on different facts and is not of any help to the applicant as she has not proved that she is unable to maintain herself and also other issues are not proved as required by law by the applicant.

15. After appreciating the entire evidence and facts of the case, in the

considered opinion of this Court, the trial Court has not erred in dismissing the petition for maintenance filed by the applicant. It requires no interference.

16. Consequently, the criminal revision filed by the applicant deserves to be and is hereby dismissed.

17. No order as to costs.

Sd/

Chandra Bhushan Bajpai
Judge