

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****CRR No. 217 of 2006**

- Smt. Afsana Meman w/o. Sikander Meman, aged about 25 years, Police Chowki Urga, R/o. MQB-20 Balgi Colony, P.S. Bankimongara, Dist. Korba (CG)

---- Applicant**Versus**

- Sikander Meman, S/o Abdul Hakim aged about 25 years, R/o Main Road Bhaishma, Police Station Chowki-Urga Distt. Korba (CG)

---- Respondent

For applicant : Shri Lekhram Dhruwa, Adv. under instruction of Shri Dheeraj Kumar Wankhede, Adv.
 For Respondent : Shri F.S. Khare, Adv.

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order On Board****17/04/2015**

1. Applicant has filed this criminal revision under Section 19(4) of the Family Courts Act against the order dated 9-3-2006 passed in MJC No. 120/2005 by the Judge, Family Court, Korba whereby learned trial Court dismissed the petition filed by the applicant for awarding maintenance from the non-applicant.
2. Brief facts of the case are that the applicant filed an application under Section 125 of the Code of Criminal Procedure (In brevity 'Cr.P.C.') for maintenance before the court below and submitted that the applicant and non-applicant are legally wedded wife and husband. Their marriage was solemnized on 17-4-2003 with rituals. The applicant after 5 months was subjected to physical and mental torture and harassment for dowry. Ultimately on 31-3-2004 the non-applicant and his family members asked the applicant to go out of the house and thereafter she is living with her father with no option left. The applicant lodged a report before police. The police people asked her to approach Court for redressal of her grievances. Thereafter the applicant filed a complaint case before the JMFC, Korba which was registered on 9-5-2005 under Section 498-A of the Indian Penal Code (in brevity 'IPC'). The applicant prayed that she is living along with her father for the reason that the non-applicant does not want to keep her with him. The applicant is running one well established cycle shop and also does other jobs. The entire family earns about Rs. 27,500/- out of which Rs.

8,000/- is earned by the non-applicant alone. Hence the applicant prays that she be awarded Rs. 5,000/- per month as maintenance. It was also submitted that she is not having any means to maintain herself.

3. The non-applicant filed written statement before the Court below denying the allegations made by the applicant and submitted that the applicant on her own left his house and living separately without sufficient and proper reason. The non-applicant is ready to keep her but it is the applicant who does not want to come and live along with the non-applicant.
4. Learned Court below during hearing of the case gave opportunity to adduce evidence to both the parties. The applicant examined herself and one witness AW 2 Ku. Sakina Ansari. The non-applicant examined himself and also examined NAW 2 Jagannath Prasad and NAW 3 Neeraj Rai.
5. After providing opportunity of hearing to both the parties, learned trial Court held that the applicant has failed to prove her case. Hence the case filed on behalf of the applicant is dismissed. Against said order, the applicant preferred this criminal revision taking the ground that the applicant is unable to maintain herself and she was deserted by the non-applicant, the trial Court without appreciating the above facts erred in holding that the petition under Section 125 of the Cr.P.C. is not maintainable. The applicant proved her case and since the non-applicant is able to maintain the applicant even then the trial Court erred in holding that the petition filed by the applicant is not maintainable. The further ground taken is that demand of dowry is proved but the court below has not considered the above fact. Further on the complaint of the applicant, the court registered a case under Section 498-A of the IPC which goes to show that she was subjected to mental and physical cruelty. The trial Court erred in holding that she has not proved her case for the purpose of maintenance. By filing this revision, the applicant submitted that she may be given Rs. 5,000/- per month as maintenance from the non-applicant.
6. The revision is opposed on behalf of the non-applicant.
7. Heard learned counsel for both the parties.
8. Learned counsel for the applicant vehemently argued that since the applicant was harassed she went to her maternal house. The non-applicant was not maintaining her. She was being harassed since marriage and therefore, the petition may be allowed and maintenance of Rs. 5,000/- per month be awarded from the date of filing of the petition.
9. Per contra, learned counsel for the non-applicant opposed the revision and submitted that the applicant on her own left the house of the applicant. She was not harassed and tortured. The non-applicant attempted to take her

back to his house but she refused to come along with the non-applicant. She is voluntarily living separately without sufficient reason. The trial Court along with other assessment held in para 23 and 24 that the applicant and member of her family refused to send the applicant with non-applicant thereby the trial Court held that the applicant on her own residing in her maternal house. It is further submitted that the trial Court has not committed any illegality and propriety. Hence the revision filed may be dismissed.

10. In order to appreciate the arguments advanced on behalf of the parties, I have perused the evidence adduced by the parties.
11. Learned trial Court held while appreciating the evidence of witnesses of non-applicant NAW 2 Jagannath Prasad and NAW 3 Neeraj Rai that the applicant and her family members refused to send the applicant along with non-applicant. During cross-examination, these witnesses remained very firm. Nothing could be elicited as to discredit their evidence on the point. The trial Court also held that merely filing a complaint under Section 498-A of the IPC is not sufficient to prove the factum of cruelty. Even till date, nothing is informed or any document is submitted regarding the fate of the criminal case filed by the applicant as complainant. The trial Court also held that the applicant on her own is living in her maternal home without any sufficient cause. Hence the trial Court dismissed the petition filed under Section 125 of the Cr.P.C. The trial Court by detailed appreciation assessed the evidence and dismissed the case filed by the applicant. While going through the entire facts and circumstances of the case and evidence, I do not find any illegality, impropriety and incorrectness committed by the trial Court. In the considered opinion of this Court, there is no scope to interfere with the order of the trial Court.
12. Consequently, the revision deserves to be and is hereby dismissed as not maintainable.
13. No order as to costs.

Sd/-

Chandra Bhushan Bajpai
Judge