

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 445 of 2005**

Smt. Umavati Wife of Santosh Vishwakarma, aged about 23 years, Resident of Khursipar, Labour Colony Besides Durga Mandir, Zone III Police Station Chhawani, District Durg, Chhattisgarh.

---- Applicant

Versus

Santosh Vishwakarma, son of Late Shri Sarju Prasad, aged about 27 years, Resident of Santrabadi, Near Ujala Bhavan, Station Road, Shankar Hardware PS Mohan Nagar, Durg, District Durg, Chhattisgarh.

---- Respondent

Criminal Revision No. 543 of 2005

Santosh Vishwakarma, aged about 26 years, son of Late Sarju Prasad, Resident of Santarabadi, Near Ujala Bhavan, Station Road, Shankar Hardware District Durg, Chhattisgarh.

---- Applicant

Versus

Smt. Uma Vati, aged about 22 years, Wife of Shri Santosh Vishwakarma, Resident of Khursipar, Labour Colony Near Durga Temple, Zone No. III, Bhilai, PS Chhawani, Tahsil and District Durg, Chhattisgarh.

---- Respondent

For Applicant-Wife	: Shri T.R.Chandrakar, Advocate.
For Respondent-Husband	: Shri U.R.Koshley, Advocate.

Hon'ble Shri Deepak Gupta, Chief Justice**Order on Board****02/09/2016**

1. These two revision petitions are being disposed of by a common judgment as they both arise out of one order passed by the learned 1st Additional Principal Judge, Family Court, Durg, dated 19.09.2005 in M.J.C. No. 154 of 2005 whereby maintenance of Rs. 1000/- per month has been awarded to the Applicant-wife.
2. The undisputed facts are that the parties were married to each other according to Hindu rites on 01.05.2001. According to the wife, after sometime, relations between the parties became strained and she was forced to leave her

matrimonial home. She had filed a petition under Section 125 CrPC for grant of maintenance. The learned Trial Court held that the Respondent-husband was duty bound to provide maintenance to the wife. It also held that the wife had no source of income but awarded a sum of Rs. 1000/- per month towards maintenance. The wife aggrieved by this judgment, has filed Criminal Revision No. 445 of 2005. According to the Respondent-husband, he is not liable to pay any maintenance since the Applicant-wife had left her matrimonial home on her own accord and has filed Criminal Revision No. 543 of 2005.

3. This Court is sitting in a revisional jurisdiction and in exercise of revisional jurisdiction, this Court cannot substitute its findings for the findings of the Trial Court. The findings by the Trial Court being findings of fact insofar as they relate to the reasons why the wife had left the matrimonial home and the earning capacity of the wife are concerned, call for no interference. As far as the amount of maintenance awarded is concerned, I am constrained to observe that the learned Family Court has given no reason for assessing the maintenance at the rate of Rs. 1000/- per month except to make a bald assertion that keeping in view the income and status of the family, maintenance of Rs. 1000/- per month is awarded.

4. The wife has stepped into the witness box and stated that her husband was running a hardware shop in Durg. It was also alleged that her husband was the owner of an immovable property which had been rented out and lastly, it was submitted that from his native village in Uttar Pradesh, he was earning a huge amount. All these facts have not been proved beyond doubt but the husband only states that the shop is not his own but belongs to his brother. He has also denied that the property belongs to him. Even for the sake of argument, it is assumed that the husband is not the owner of the hardware shop, it is more than amply proved that the husband belongs to a business family which is running a hardware shop in the city of Durg. He does not belong to a poor or depressed

section of the society and his family, if not he, owns a huge amount of immovable property also. The husband is an able bodied young man and it is expected that he would be earning his own livelihood and would look after his wife. If the husband had no income as is now professed by him, why did he get married? This Court can take judicial notice of the fact that in Indian society, normally a person gets married only after he is settled and only if he is able to support not only his wife but a family.

5. Keeping in view the fact that the Respondent-husband belongs to a business family and which owns is running a hardware shop in the city of Durg, I assess the earning capacity and income of the Respondent-husband to be at least Rs. 7,000 - 8,000/- per month and accordingly hold that the Applicant-wife is entitled to maintenance at the rate of Rs. 2,500/- per month from the date of filing of this criminal revision. It is further clarified that now, the Applicant-wife may file an application under Section 127 CrPC for enhancement of the maintenance as already 10 years have elapsed and she can lead evidence with regard to income of the husband at this stage.

6. In view of above, both the revision petitions are disposed of.

Sd/-
(Deepak Gupta)
CHIEF JUSTICE