

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**FAM No. 73 of 2016**

- Smt. Venuka Chandrakar W/o Daanesh Chandrakar, Aged About 35 Years R/o C/o Mohan Chandrakar, Village Auri, Police Station Bhilai, Tahsil And District Durg, Chhattisgarh(Non-Applicant)

---- Appellant

Versus

- Daanesh Chandrakar S/o Chhabilal Chandrakar, Aged About 42 Years R/o Shiv Park Colony, Amleshwar, Police Station Amleshwar, Tahsil Patan, District Durg, Chhattisgarh(Applicant)

---- Respondent

For Appellant	Shri Malay Kumar Bhaduri, Advocate
For Respondent	Shri Mayank Chandrakar, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra
Hon'ble Shri Justice Chandra Bhushan Bajpai
Order On Board

08/07/2016

1. This is an appeal under Section 19 (1) of the Family Courts Act, 1984, challenging the order passed by the Family Court rejecting appellant's application under Section 24 of the Hindu Marriage Act, 1955 (for short 'the Act, 1955). The suit has been filed by the respondent/husband seeking divorce on the ground that the appellant (wife) is leading an adulterous life and has left the matrimonial house. It has been specifically pleaded in the plaint that on 11-7-14, the appellant suddenly left the house for which missing person report was lodged with the Police Station Anleshwar on 12-7-14. Deendayal Nagar Police, Raipur later on informed the husband that his wife had gone to Delhi along with one Mintu alias Vikrant Singh S/o Makul. After staying together for some days at Delhi, the wife came back to Raipur, however, instead of handing over the wife to the husband, the police handed her over to her brother and thereafter she is staying in her parental

house. It is also stated in the plaint that the husband has moved an application before the Chandrakar Samaj, wherein his wife refused to stay with the husband and requested for divorce and the caste Panchayat accepted her plea.

2. In the above background, when the wife moved application under Section 24 of the Act, 1955 for grant of interim maintenance, the learned Family Court has refused to grant interim maintenance on the ground that prima facie the appellant is leading an adulterous life.
3. Referring to the judgments rendered by the High Court of Madhya Pradesh in **Rekhabai Vs. Ramlal {II(1995) DMC 539}** learned counsel for the appellant would submit that at the stage of grant of interim maintenance the merits of the allegation made in the main application is not to be considered. He would submit that at this stage, the only consideration is whether the wife has independent source of income and such other incidental factors, however, the interim maintenance cannot be disallowed on the ground that the wife is living an adulterous life.
4. Per contra, learned counsel for the respondent (husband) would argue that the Family Court has not recorded any conclusive finding, but it is only a prima facie satisfaction, therefore, no interference in this appeal is called for.
5. Material available in the record would indicate that the Family Court has recorded prima facie satisfaction that the wife is leading an adulterous life. The present is not a case where bald allegations are leveled in the plaint, but it is a case where the police was informed about the matter that the wife left the matrimonial house and eloped with another person. When she came back from Delhi, she made statement to the police that she had gone to Delhi along with one Mintu Sardar. Similarly, when the respondent moved

an application before the caste Panchayat, she made a statement that she is not willing to reside with her husband. Thus, there is prima facie material to indicate that she embarrassed her husband by eloping with another person and thereafter she has refused to live with her husband.

6. In the Indian value based society, a married lady eloping with another person causes huge embarrassment to the husband. Her conduct is highly unbecoming of a married lady and moreover she later on refused to reside with her husband. Even though the matter is at the stage of grant of interim maintenance and the parties have not entered the witness box, there are material available in the form of report of missing person and her statement to the police, which prima facie concludes that she left the matrimonial house and eloped with another person and is presently residing separately out of her own free will but not on account of husband's indifference or cruelty to her.
7. In the considered opinion of this Court, the trial Court has exercised its judicial discretion in a reasonable manner while refusing interim maintenance in favour of the appellant, therefore, we find no reason to interfere with the impugned order, however, it is observed that the prima facie satisfaction recorded by the Family Court is only for the purpose of deciding application under Section 24 of the Act, 1955, therefore, the finding recorded therein shall not prejudice the case of any of the parties and the application under Section 13 of the Act, 1955 shall be decided strictly on the basis of evidence adduced by the parties.

Sd/-

Judge
Prashant Kumar Mishra

Sd/-

Judge
Chandra Bhushan Bajpai