

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 996 of 2015**

Ramkumari Dewangan W/o Shri Keshar Kumar Dewangan Aged About 24 Years Caste- Dewangan, R/o Village Chandrapur, At Present R/o Village-Tanaud, Police Station & Tahsil Shiverinarayan, District- Janjgir- Champa (Chhattisgarh).

---- Petitioner**Versus**

Keshar Kumar Dewangan S/o Late Naresh Aged About 30 Years Caste- Dewangan, R/o Chandrapur, At Present R/o Siksha Karmi Class-Iii, Government Primary School Kotia, Police Station, Tahsil- Navagarh, District- Janjgir- Champa (Chhattisgarh).

---- Respondent

For Petitioner	:	Shri UKS Chandel, Advocate.
For Respondent	:	Shri Ravindra Sharma, Advocate.

Hon'ble Shri Justice P. Sam Koshy**Order On Board****16/09/2016**

1. The present revision has been preferred by the petitioner assailing the order of Family Court, Janjgir, District Janjgir Champa in Misc. Claim Case No.175 of 2014 dated 25.08.2015 whereby the court below in a proceeding under Section 125 CrPC has rejected the claim for maintenance sought for by the petitioner-wife.
2. Assailing the said order, learned counsel appearing for the petitioner submits that the court below has not properly appreciated the evidence which have come on record. The petitioner-wife has substantially adduced evidence before the court below in respect of her being subjected to cruelty and torture on account of demand of

dowry. The court below has further erred in not appreciating the fact that the petitioner had also lodged a compliant case before the police authorities for the cruelty met upon her by the respondent-husband and a case under Section 498-A IPC has also been registered against the respondent which itself is sufficient indication of the petitioner-wife leaving the matrimonial home and staying separately.

3. It was further argued by the petitioner that the court below ought to have taken note of the fact that the petitioner had stated before the court below that she does have any income to survive and sustain herself. On the contrary, the respondent-husband was a Shiksha Karmi Grade-III under the State of Chhattisgarh and had sufficient means to maintain the family and therefore also the court below should have awarded some amount towards maintenance of the petitioner-wife. Thus, prayed for setting aside of the impugned order and to award appropriate amount of maintenance.
4. Per contra, learned counsel appearing for the respondent opposing the petition submits that the order impugned is well reasoned speaking order and does not warrant any interference of this court. According to respondent, the petitioner-wife had left the company of the respondent without any rhyme or reason nor was there any justifiable grounds for the petitioner to leave the company of the respondent. The petitioner had barely stayed at the matrimonial home for a very brief period. It was also submitted that the respondent had on many occasions tried to convince the petitioner to return to the matrimonial home and to start living with the respondent,

but it was the petitioner-wife who always took an adamant approach and decided not to stay with the respondent-husband.

5. It was further argued that even when the matter was placed for mediation by this court, the petitioner-wife had categorically refused to stay with the respondent-husband which itself shows the adamant attitude of the petitioner, and therefore, she has rightly been denied grant of maintenance and as such this petition deserves to be dismissed.
6. Having heard the counsel for the parties and on perusal of record, what is clearly reflected is the fact that the petitioner-wife has already lodged a complaint case before the Mahila Police Thana, Chandarpur on the basis of which a case under Section 498-A IPC has been initiated against the respondent-husband. It is also an admitted position that the said case under Section 498-A IPC is still pending consideration against the respondent before the trial court. It was also the complain of the petitioner that immediately from the time of marriage itself, she has being subjected to cruelty, ill treatment and torture. The respondent had also allegedly assaulted her.
7. The admitted factual position in the instant case is that, as on date indisputably, the respondent and the petitioner are the Husband and Wife and that the marriage between the two has till date not been dissolved by any court of law. Therefore, the petitioner-wife in any case enjoys the status of wife of the respondent and since the marriage and the relationship between the two survives, it is the bounden duty of the respondent to take care of the wife and to

provide sufficient means to maintain herself either at his matrimonial home or at the place where the wife is staying.

8. So far as whether there are justifiable and reasonable cause for the petitioner-wife to live separately is concerned, the fact that the petitioner has already filed a complaint case against the respondent under Section 498-A IPC and the said criminal case is still pending consideration before the Magistrate Court, and the only inference which can be drawn is that, the petitioner had been subjected to ill treatment and torture on account of demand of dowry which forced her to leave the matrimonial home. Under the said factual circumstances, it cannot be said that there was no justifiable ground for the petitioner-wife to leave the matrimonial home.
9. In the given facts and circumstances of the case, this court is of the opinion that denial of maintenance to the petitioner-wife by the court below is bad in law and the order impugned deserves to be set aside and the claim of the petitioner is liable to be allowed and entertained.
10. Taking into consideration the admitted factual position of the status of the respondent-husband as Shiksha Karmi Grade-III with the State of Chhattisgarh wherein under any circumstances the take home salary of respondent after all statutory deductions would be more than rupees 10,000/- therefore from the said take home salary, in the opinion of this court, an amount of Rs.3000/- i.e. @ Rs. 100/- per day would be a justified amount if it is ordered to be paid to the petitioner-wife as maintenance amount.
11. Thus, for the foregoing reasons, the revision petition is allowed. The

order impugned dated 25.08.2015 is set aside. It is ordered that the petitioner shall be entitled for maintenance amount of Rs.3000/- per month which shall be payable to her by the respondent-husband from the date of filing of the application under Section 125 CrPC by the petitioner. No order as to costs.

Sd/-
(P. Sam Koshy)
Judge

inder