

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRIMINAL REVISION NO. 322 OF 2016

Smt. Uma Bai, W/o Shri Hemant Singh Kanwar, aged about 30 years, R/o Village Korkoma, Post- Korkoma, Chauki- Rajgamar, Police Station- Balko Nagar, Tahsil and District- Korba, permanent address of Village Kerakachar, Post- Sendrapali (Bhaisma), Police Station- Kartala, Tahsil- Kartala, District Korba (C.G.)

... Applicant

Versus

Hemant Singh Kanwar, S/o Ramlal Kanwar, aged about 35 years, R/o Village Korkoma, Post- Korkoma, Chauki- Rajgamar, Police Station- Balko Nagar, Tahsil and District- Korba (C.G.)

... Non-applicant

For Applicant	:	Mr. Ashutosh Shukla, Advocate.
For Non-applicant	:	Mr. Sanjay Patel, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

05/09/2016

1. By way of the present revision petition, the Applicant has assailed the order dated 31.12.2015 passed by the Family Court, Korba in M.J.C. No. 152 of 2015 whereby the Family Court has rejected the claim application of the Applicant filed under Section 125 of CrPC. The Family Court has rejected the said application only on the ground that the Applicant was living in adultery and therefore she would not be entitled for maintenance under Section 125 of CrPC.

2. Learned Counsel for the Applicant submits that the finding of the Family Court that she was living in adultery has not been proved before the Court below and in the absence of any sufficient and cogent evidence the finding of the Family Court is bad in law. According to the Counsel for the Applicant, the only piece of evidence which has come against her is the statement of NAW-2 Phool Singh and NAW-3 Ramjila, who are brother and a close relative of Non-applicant/husband. That even the perusal of the

statement of these two witnesses would reveal and depict that the allegation of adultery is not established from their depositions. According to the Counsel for the Applicant, the only allegation which is reflected from their depositions is the fact that at an evening both these witnesses are said to have found the Applicant and one Patiram near their house together and that is the whole evidence for reaching to the conclusion that she was living in adultery.

3. Learned Counsel for the Applicant further submits that so as to bring home the allegation of adultery something more than mere witnessing two persons together has to be brought before the Court below. In the absence of which the finding is bad in law. He further submits that in the instant case the Applicant had been living with her husband for almost 12 years from the date of marriage which took place in the year 2013 and all these years there were no allegations whatsoever and there was no dispute also in the family. Suddenly for the reasons best known the Non-applicant/husband is said to have taken the Applicant/wife and had left her at her parental home and refused to keep her as his wife any further. Therefore, the rejection of her claim application under Section 125 of CrPC is bad in law.

4. Opposing the revision petition, Shri Sanjay Patel, learned Counsel for the Non-applicant, submits that the evidence of NAW-2 Phool Singh and NAW-3 Ramjila is sufficient to establish the fact that there were some sort of illicit relationships between the Applicant and one Patiram of the village and it stands substantiated from the statement of Non-applicant/husband also. Thus, in the light of the evidence of these two witnesses the finding of the Court below cannot be said to be bad in law or contrary to the evidence, and therefore prayed for rejection of the revision petition.

5. Having heard the rival submissions put forth on either side and on perusal of the record what clearly comes out from the evidence is that the only piece of evidence against the Applicant is the evidence of NAW-2 Phool Singh and NAW-3 Ramjila who have only deposed against the Applicant to have seen her with one Patiram together on an evening. No specific details of either the date or other particulars have been reflected in their depositions. Another aspect which cannot be brushed aside is the fact that both the said witnesses are closely related witnesses of Non-applicant/husband and therefore also there is a great element of doubt which can be inferred from the depositions of these two witnesses. The evidence which has come on behalf of Non-applicant/husband does not at any instances state the Applicant and the alleged person Patriam to have been found in a compromising position. The only allegation which is reflected from their depositions is of their been seen in conversation on an occasion which by itself cannot under any circumstances be brought within the ambit of adultery.

6. So as to make out a case of adultery something more than a conversation between two persons has to be adduced to substantially prove the allegation which in the instant case admittedly is missing. Thus, the finding of the Court below cannot be accepted so far as denial of the application for maintenance in the instant case only on that count. Another fact which is pertinent to take note of is the admission on the part of Non-applicant/husband of having taken the Applicant/wife to her parental home and left her at her parental home with a further assertion of the fact that he does not intend to stay or live with her any further and does not want to keep her at her matrimonial home.

7. Thus, for the aforesaid reasons, the impugned order and the finding arrived at by the Family Court of the Applicant living in adultery is set aside/quashed and the matter is remitted back to the Family Court for adjudicating upon the case afresh taking into consideration the evidence and pleading which has come before the Court below.

8. With the aforesaid observations, the revision petition stands allowed. However, it is made clear that the findings recorded by this Court should not have any bearing while deciding the application for divorce which is pending before the concerned Court below and which the Court below shall be deciding purely on its own merits.

Sd/-
(P. Sam Koshy)
Judge

/sharad/