

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 512 of 2011**

Ambika Prasad S/o late Kanhaiyalal aged about 30 years resident of village Kadamsara, Chhirhatola police station & Tahsil Jaithari District Anoppur, Madhya Pradesh.

---- Applicant**Versus**

1. Smt. Gomti W/o Ambika Prasad aged about 21 years,
2. Saurabh S/o Ambika Prasad aged about 1 year (minor natural guardian is his mother). Both the respondents are vilage Kadamsara, Chhirhatola, at present address – village Lalpur, Tahsil Pendra Road, District Bilaspur, Chhattisgarh.

---- Non-applicants

For the Applicant :	Shri Dharendra Mishra, Advocate.
For Non-applicants:	Shri Yogendra Chaturvedi, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**Judgment on Board****22.02.2017**

1. This revision by the applicant/husband is directed against the order passed by the Additional Sessions Judge, Pendra Road, District Bilaspur in Criminal Revision No. 32 of 2010 dated 23.7.2011 by which the order of the Judicial Magistrate First Class, Pendra Road dated 29.10.2010 disallowing the entitlement for grant of maintenance to respondent No.1 was set aside and ordered that the applicant has to pay the maintenance amount of Rs.1,000/- per month to Respondent No.1 from 30.6.2008 and onwards and upheld the order of grant of maintenance to respondent No.2/ child.

2. Respondent No.1 – Gomti Bai alongwith her minor son, respondent No.2 Saurabh filed an application under Section 125 of the Cr.P.C. stating

that she was married to the applicant in the year 2002. Soon after the marriage, she was treated with cruelty by the applicant for demand of dowry. Thereafter, on one day when respondent No.1 was talking on a mobile phone, the applicant got irritated, abused, threatened and turned her out of his house and since then she is living separately. She is unable to maintain herself and her child whereas the applicant has sufficient resources to maintain them. Accordingly, the prayer for maintenance was made.

3. The applicant admitted that respondent No.1 was his married wife. He denied the allegation of torture, cruelty and demand of dowry. It is stated that respondent No.1 acted on her free will and was habitual of leaving the applicant without any information, for which, the applicant had called a village meeting in which respondent No.1 admitted her fault. Denying the other averments, it is stated that one day, respondent No.1 was talking on mobile phone and on objection being made by the applicant, she left her matrimonial home and went to her sister's house. When the applicant asked his wife, respondent No.1 to come back then she told him that if she would be forced she will commit suicide. Thereafter, respondent No.1 went to her paternal home without informing the applicant on 28.7.2007 stating that she does want to live with her husband, she wants divorce, she does not want any legal proceedings and she does not want to recognize the applicant as her husband. For these reasons, she does not want to live with her husband/ applicant. Other contents of the application are also denied with a prayer to dismiss the application of respondent No.1.

4. The Court of Judicial Magistrate, First Class, Pendra Road, afforded opportunity for producing evidence and after hearing the arguments of both

the sides, decided the application filed by respondent No.1/ wife, by order dated 29.10.2010, by which it was held that respondent No.1 was living separately from the applicant without any sufficient cause and as such she was not entitled for maintenance and accordingly her application was rejected. However, the claim in respect of respondent No.2 was allowed and it was ordered that the applicant shall pay the maintenance of Rs.400/- per month.

5. The aforesaid order was challenged in a revision before the Additional Sessions Judge, which was decided by the impugned order dated 23.07.2011 in which it was held that respondent No.1 is living separately for which she has sufficient cause, hence her prayer was allowed and ordered that the applicant shall pay a maintenance of Rs.1,000/- per month from the date of filing of the application i.e. 5.6.2008.

6. By this revision petition, it is urged that the finding and order given by the court below is erroneous and respondent No.1 was not entitled to receive any amount towards maintenance.

7. The grounds taken in the revision petition are that the information given to the police by respondent No.1 itself demonstrates that respondent No.1 was not willing to live with the applicant. The applicant is a poor man and is an agriculturist having only three acres of agricultural land and as such he is unable to pay maintenance of Rs.1,000/- per month. Although, he is ready to comply with the order of Judicial Magistrate First Class by paying Rs.400/- per month towards the maintenance for respondent No.2. A prayer has been made to allow the revision and set aside the impugned order.

8. It is submitted by counsel for the applicant that respondent No.1 herself stated before the police that she is not willing to live with the applicant and she is interested in getting divorce which clearly shows that respondent No.1 had been the unwilling party in this matrimonial relationship. The revisional court below has wrongly appreciated the evidence on record. Respondent No.1 – Gomti Bai (AW-1) has admitted in her deposition that she lodged a report in police station Jaithari stating that she does not want to live with her husband and wants divorce and further she stated that she does not want to live with her husband/ applicant. For these reasons, the order of the court below is erroneous which should be set aside.

9. Learned counsel for Respondent No.1 submits that respondent No.1 was tortured and subjected to cruelty for demand of dowry which is clear from the evidence on record and this evidence stands unrebutted. Thus, it demonstrates that respondent No.1 was having sufficient reason to reside separately from the appellant. Hence, there is no reason to interfere with the order of the revisional court below.

10. Considering the grounds of revision and the submissions made by both the sides, the question for determination in this revision is simply that whether respondent No.1 was having sufficient reasons for living separately with the applicant. The evidence of the witnesses and the findings arrived at by the Courts below have been perused.

11. Gomti Bai (AW-1) in her examination-in-chief stated about the torture for demand of dowry. In cross-examination, she admitted that she got the

First Information Report recorded in police station Jaithari stating that she does not want to recognize the applicant as her husband and wants divorce from him. Further, she admitted that when she was staying in her paternal home the applicant came to fetch her on a condition that she would not carry mobile with her, on which she refused to leave the mobile phone and also laid a condition that if the applicant wanted that she should live with him in his house, she would go only when he permits to carry the mobile with her.

12. Sangeeta Rathore (AW-2) stated that respondent No.1 was tortured by the applicant and treated with cruelty. This was informed to her by respondent No.1 herself. In cross-examination, she denied that respondent No.1 used to talk with a boy on mobile phone. She admitted that meeting of Village Panchayat took place three times. She admitted that respondent No.1 submitted an application in police station Jaithari stating that she wants divorce. Mahajan (AW-3) is father of respondent No.1 who has stated about the torture given by the applicant to respondent No.1 and also stated about the village meeting being held for three times, but even then, the applicant did not agree to keep respondent No.1 with him. In cross-examination, he admitted that respondent No.1 was told not to go anywhere without informing the applicant by the elders in the meeting.

13. Applicant examined himself and stated that respondent No.1 never wanted to live with him and used to talk on mobile phone to which he objected for a number of times after which respondent No.1 left his house saying that she does not want to live with him and if she is forced to live she would commit suicide. Later on, she lodged a report in police station Jaithari informing that she is proceeding to take divorce from the applicant. In cross-

examination, this statement has remained unrebutted. This statement is supported by Doman Prasad (NAW-2).

14. After scrutinizing and analyzing the evidence adduced by both the parties, it is apparent that respondent No.1 herself did not want to live with the applicant and discontinued with her matrimonial life. The court of Judicial Magistrate, First Class, Pendra Road appreciated this evidence and recorded a finding to this effect that respondent No.1 is living separately from the applicant without there being any sufficient cause. The court of Additional Sessions Judge while considering this point has failed to appreciate this evidence and passed an order only on the basis of assumption. There is a clear admission by respondent No.1 herself and other witnesses produced by respondent No.1 and the evidence regarding the outcome of the village meeting, which clearly demonstrates that respondent No.1 had been an unwilling party to stay and continue with matrimonial relationship. Thus, the finding of the JMFC, Pendra Road is held to be proper which has been wrongly interfered with by the Additional Sessions Judge ordering grant of maintenance to respondent No.1/ wife. After due consideration, this revision is liable to be allowed.

15. In view of the above, this revision is allowed and the order of the Additional Sessions Judge, Pendra Road is set aside and the order passed by the Judicial Magistrate, First Class, Pendra Road is restored.

Sd/-

(Rajendra Chandra Singh Samant)
Judge