

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL REVISION NO. 621 OF 2006

Raj Kumar Bharadwaj, aged about 33 years, S/o Ghanshyam Prasad Bharadwaj, Kabir Ward, Kali Chowk, Seoni, Tahsil & District Seoni (M.P.)

... Applicant

Versus

1. Smt. Karuna Bharadwaj, aged about 27 yers, W/o Raj Kumar Bharadwaj, through Ratanlal Shrivastava, Sadar Road, Balod, District Durg (C.G.), R/o Ganjpara, near Shani Mandir, P.S. Durg, District Durg (C.G.)

2. Yash Kumar, aged about 6 months (at present about 5 years), through local guardian mother Smt. Karuna Bharadwaj, S/o Raj Kumar Bharadwaj, through Ratanlal Shrivastava, Sadar Road, Balod, District Durg (C.G.), R/o Ganjpara, near Shani Mandir, P.S. Durg, District Durg (C.G.)

... Non-applicants

For Applicant	:	Dr. Shailesh Ahuja, Advocate.
For Respondents	:	Mr. N.K. Chatterjee, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

10/01/2017

1. The present criminal revision has been preferred by the Applicant assailing the order dated 30.8.2006 passed by the Second Additional Principal Judge, Family Court, District Durg in Misc. Criminal Case No. 160 of 2005.

2. Vide impugned order dated 30.8.2006, the Court below in a proceeding under Section 125 of CrPC has allowed the application and ordered the Applicant for payment of Rs.1500/- to Non-applicant No.1 (wife of the Applicant) and Rs.500/- to Non-applicant No.2 (son of the Applicant born from Non-applicant No.1) as monthly maintenance.

3. Dr. Shailesh Ahuja, learned Counsel appearing for the Petitioner, submits that the impugned order is bad in law inasmuch as the Court below has committed an error in not properly appreciating the evidence which have come on record. He further submits that it is a case where the Non-applicant No.1 in the admitted facts of the case itself would not be entitled for payment as maintenance. It was assailed that Non-applicant No.1 has left the

matrimonial home without any cogent and strong reason and in the absence of any cogent and strong reason the Court below could not have allowed the application under Section 125 of CrPC.

4. Dr. Ahuja, further submits that it is a case where the present Applicant was always and is still interested in keeping Non-applicant No.1 as his wife but it is her adamant approach which made her leave the matrimonial home. According to Dr. Ahuja, the present Applicant cannot be blamed for the leaving of the matrimonial home by Non-applicant No.1. It has been averred by Dr. Ahuja that the adamant attitude of Non-applicant No.1 is also writ large when she was called by this Court for exploring the possibility of an amicable settlement and when she appeared before the Court for reconciliation proceeding, she emphatically refused to go and start her life with the Applicant. It was further contended that from the evidence which have come on record also it reflects that similar efforts were made in the past also, but Non-applicant No.1 always refused to go with the Applicant for staying together as husband and wife, which is a prima facie strong case in favour of the Applicant for denying her the maintenance.

5. Dr. Ahuja also refers to an order passed by the Second Additional District Judge, Seoni in Civil Suit No. 14-A/2002, wherein an application under Section 9 of the Hindu Marriage Act has been allowed and decided in favour of the present Applicant and in spite of there being a decree in his favour for restitution of conjugal rights, the Non-applicant No.1 has not cared to honour the court's order and which further strengthens the case of the Applicant that the Non-applicant No.1 has left the matrimonial home on her own without there being any cogent, strong and justified reason for the same.

6. It was also contended by Dr. Ahuja referring to the evidence which have come on record particularly that of the Non-applicant No.1, which goes to establish the fact that she in fact wanted the Applicant to leave his parental

home and to start living at her parental home. In other words, Dr. Ahuja submits that the non-applicant No.1/wife was insisting the applicant/husband to live with her leaving his parental home and start living as 'Ghar Jamai' at the parental home of Non-applicant No.1. According to him, this was the root cause for the dispute between the two and this was not acceptable to the Applicant and therefore the Non-applicant No.1 has filed the application under Section 125 of CrPC and the same could not have been allowed and the impugned order is liable to be set aside.

7. Referring to paragraph 12, 24 and 31 of the impugned order, Dr. Ahuja submits that the facts in the said paragraphs would conclude that it is the Non-applicant No.1 who has left the matrimonial home without any justified reason. He also submits that the Non-applicant No.1 has since been appointed as teacher and she has her own source of income and with which she can also maintain herself well. He thus prayed for the setting aside of the impugned order holding that the Non-applicant No.1 is not entitled for any relief.

8. Per contra, Shri N.K. Chatterjee, learned Counsel appearing for the Non-applicants, submits that it is a case where the present Applicant had subjected the Non-applicant No.1 to a great harassment and cruelty and that there was regular physical torture being inflicted by the Applicant on the Non-applicant No.1 because of which, out of fear of her life she had called upon her parent and left the matrimonial home. According to Shri Chatterjee, when she had left the matrimonial home she was already pregnant for about 6 months from the Applicant and that no pregnant lady would like to leave the matrimonial home without any justified cause and thus a strong inference is therefore to be drawn against the Applicant.

9. Shri Chatterjee, took the Court through her evidence wherein she has levelled serious allegations against the Applicant of being in habit of getting drunk daily and thereafter on returning home he would assault her and it was a

regular feature. The Non-applicant No.1 also in her statement has deposed that she wanted to leave her matrimonial home because of repeated torture at the hands of the Applicant and she had phoned her father who came along with her brother to take her at her parental home. According to her, when her parent had come to take her home, the Applicant refused to let her go and even misbehaved with her father and brother and also threatened of dire consequences. According to Non-applicant No.1, her father ultimately took shelter in the office of the Collector and it was at the instance of the Collector that she was sent to her parental home.

10. In paragraph 17 of the cross-examination of the Non-applicant No.1 she has also stated that while she was at her parental home, the Applicant used to phone her and threaten her of dire consequences. Further, in her cross-examination, she has accepted the fact that because she had fear of her life and of the child for which she did not enter appearance in the proceeding under Section 9 of the Hindu Marriage Act. It was because of fear of her life that she was not willing to stay with the Applicant at his home, whereas she was willing to stay with the Applicant anywhere in the State of Chhattisgarh. Shri Chatterjee, submits that the Applicant could not extract much from the cross-examination of the Non-applicant No.1 and that there was no reason to disbelieve the contentions put forth by the Non-applicant No.1 and therefore the order of maintenance cannot be said to be bad in law, arbitrary or in any manner illegal or infirm and thus he prayed for the rejection of the revision petition.

11. Having considered the rival contentions put forth on either side and on perusal of the record, true it is, that in the evidence of the Applicant as well as in the evidence of the Non-applicant No.1 it has come that Non-applicant No.1 has refused to live along with the Applicant. But, at the same time, when we look into the evidence which has been given by the Non-applicant No.1, she

specifically narrates the reasons and instances on account of which she was compelled to take the shelter at her parental home. In her evidence it also reflects that she was subjected to a great amount of torture and cruelty and for which she had phoned her parent to come and take her home and when her parent had come, the Applicant is said to have threatened them also of dire consequences. There is also an allegation that the Applicant did not allow the Non-applicant No.1 to move along with her father who had come to take her home. The evidence so far as the father of Non-applicant No.1 taking rescue at the office of the Collector also seems to be a probable story, as there is not much which has been extracted from the cross-examination so as to disbelieve the version of Non-applicant No.1.

12. Another vital fact which cannot be brushed aside is the fact that, the Non-applicant No.1 had left the matrimonial home when she was already pregnant and that no pregnant lady would ever like to leave the company of her husband and would leave the matrimonial home in the said circumstances. The said stage at which the Non-applicant No.1 had taken resort of leaving the matrimonial home, forces this Court to draw an inference that the reason for her to leave the matrimonial home was because of the compelling circumstances which were created by the Applicant. Further, from the evidence of Non-applicant No.1 it has also come from the cross-examination that the present Applicant also used to threaten her on phone and which could also perhaps be one of the reasons why she was reluctant to go and live at her matrimonial home, as she was under fear of her life.

13. Another factor which forces this Court to disbelieve the version of the Applicant is the fact that, the record does not show any effort being made by the Applicant to take care of Non-applicant No.2, who is the son born to the Applicant from the relationship with the Non-applicant No.1. Whatsoever the differences between the husband and wife could be, but the Applicant being

the father should have taken all necessary steps for the up-bringing and proper care of Non-applicant No.2. The Applicant has not even shown any efforts to take the Non-applicant No.2 with him for his up-bringing.

14. In view of the foregoing, this Court has no hesitation in reaching to the conclusion that the Court below has rightly passed the impugned order allowing the application under Section 125 of CrPC in favor of the Non-applicants by granting Rs.1500/- and Rs.500/- respectively.

15. The Criminal Revision thus being totally devoid of merits, the same is accordingly dismissed.

Sd/-
(P. Sam Koshy)
Judge