

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Cr.M.P. No. 278 of 2008**

Smt. Sukha Bai, W/o Ramanuj Verma, aged 50 years, R/o Kusumghat, P.S.- Bodla, Distt. Kabir Dham (C.G.), Present Address : R/o Village Jarti, P.S. & Tah. Kawardha, Distt. - Kabirdham (C.G.)

---- Applicant**Versus**

Ramanuj Verma, S/o Chaitram, Aged 55 years, R/o Kusumghat, P.S.- Bodla, Tah. - Kawardha, Distt. Kabir Dham (C.G.)

---- Non-applicant

For Applicant: Mrs. Meena Shastri, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****19/05/2017**

(1) The applicant is the wife of non-applicant. She claimed maintenance from her husband stating *inter alia* that she is unable to maintain herself; and that the non-applicant has already married to another woman. That application was rejected by the learned Chief Judicial Magistrate, Kabirdham vide order dated 01.09.2007 on the ground of delay as well as on the ground that one acre land has already been given by the non-applicant/husband to the applicant/wife for her maintenance.

(2) The applicant preferred revision there-against. Revisional Court , by its order impugned order dated 26.02.2008, upheld the order passed by the trial Magistrate, against which this petition under Section 482 of the Cr.P.C. has been filed by the applicant questioning the

same.

(3) I have heard learned counsel appearing for the parties; considered their rival submissions made herein and also gone through the record with utmost circumspection.

(4) It is not in dispute that applicant is the wife of non-applicant. It is also not in dispute that the non-applicant has already entered into second marriage in *chhod chhutti* form without giving divorce to the present applicant and, therefore, she has sufficient reason to live separately from her husband.

(5) The maintenance sought for by applicant has been denied firstly on the ground that application for grant of maintenance has been filed by the applicant/wife after the delay of 20 years from the date of second marriage by the non-applicant with another woman, which, in the opinion of this Court is not a ground at all for denying the maintenance. If the applicant/wife has filed an application for grant of maintenance after the delay of 20 years i.e. from the date of second marriage by the non-applicant/husband with another woman, it does not mean that she cannot claim maintenance as she is unable to maintain herself, therefore, ground of limitation cannot be upheld. It is accordingly set aside.

(7) The next ground for non granting application for grant of maintenance is that as the non-applicant/husband has given one acre of land to the applicant/wife for her maintenance, she is not entitled for any maintenance.

(8) Similar plea was raised before the Supreme Court in the matter

of **Gurmit Kaur Vs. Surjit Singh alias Jeet Singh**¹; that has been turned down by the Supreme Court holding that mere the fact that the wife is having two kanals of land is not a sufficient ground to disentitle her to receive maintenance. Para 8 of the report states as under:-

“8. It is contended that the appellant is having two kanals of land and that, therefore, she is not totally dependent on the respondent. This aspect of the matter was considered by the learned Magistrate and after due consideration, he awarded the sum of Rs.200 towards maintenance to the appellant and Rs.100 to the minor son. *Therefore, the mere fact that she is having two kanals of land is not a sufficient ground to disentitle her to receive maintenance.*”

(9) In view of above legal position, this court is of the opinion that impugned order passed by the trial Magistrate and upheld by the Revisional Court is liable to be and is hereby set aside. Now, the matter is remitted back to the Chief Judicial Magistrate, Kabirdham for determination of the amount of maintenance, which the applicant/wife is entitled after affording due opportunity of hearing to both the parties expeditiously preferably within a period of three months from the date of receipt of copy of this order.

(10) Accordingly, the criminal misc. petition is allowed to the extent indicated hereinabove.

(11) Record of the court below be sent back forthwith.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

1 (1996) 1 SCC 39

