

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No. 531 of 2008

1. Smt. Saroj Bai W/o Bipat Kumar, aged about 35 years.
2. Dineshwar, S/o Bipat Kumar, aged about 6 years, though his natural guardian/mother namely Smt. Saroj Bai, W/o Bipat Kumar, aged about 35 years.

Both above R/o Village Petla Police Station & Tahsil, Sitapur, District – Surguja (C.G.)

---- Applicants

versus

1. Bipat Kumar, S/o Thining aged about 38 years, R/o Village Mirjapur, post office Makkapur, Tahsil Patthalgaon, Police Station Patthalgaon, District Jashpur (C.G.)
2. Ku. Amina, D/o Bipat Kumar aged about 12 years, through her natural guardian/mother namely Smt. Saroj Bai, W/o Bipat Kumar, aged about 35 years.
3. Ku. Rabina, D/o Bipat Kumar aged about 10 years, through her natural guardian/mother namely Smt. Saroj Bai, W/o Bipat Kumar, aged about 35 years.

Both respondents No. 2 & 3 are residence of Village Petla Police Station & Tahsil, Sitapur, District – Surguja (C.G.)

---- Respondents

For Applicants	:	Shri Manoj Paranjpe, Advocate
For Respondents	:	Shri Rahul Mishra, Advocate

Hon'ble Shri Deepak Gupta, Chief Justice

Order on Board

17.01.2017

1. This petition filed by the wife is directed against the order dated 26.04.2008 passed by the Judge, Family Court, Ambikapur, District Surguja in Misc. Criminal Case No. 08/2007, whereby the application filed by the wife for grant of maintenance was partly allowed and Rs.600/- per month has been awarded as maintenance to the son of the parties, but the wife who is present applicant was held dis-entitled to maintenance on the ground that she is living in adultery.

2. Adultery is a very serious charge. When a person raises a charge of adultery against the other spouse, he/she is targeting the character of the spouse. This charge cannot be established easily. True it is, that it is very difficult to lead direct evidence of adultery and sometimes adultery may be proved through circumstantial evidence, but there must be cogent evidence before any judicial authority comes to the conclusion that the spouse is living in adultery. Once judicial finding is given that the spouse is living in adultery, the reputation of that person is lowered in the eyes of their peers and even children will not respect the parent against whom the Court has given a finding of adultery. Therefore, while giving this finding, the Court should be very cautious and careful. The Court must carefully scrutinize the evidence before giving such a finding.
3. In the present case, the wife moved an application for grant of maintenance for herself and her minor children on the ground that her husband treated her with cruelty, on the ground that her husband used to beat her and on the ground that her husband has raised aspersions with regard to her chastity and character. Her husband entered into the witness box and stated that on one occasion he had seen his wife in a compromising position with some other person (name withheld). He also states that thereafter a meeting of the Panchayat was called. The husband has not produced the records of the Panchayat. It is the wife who has produced the records of the Panchayat and the same is Ex.P-3, which is the statement of the husband and in this statement recorded on 14.10.2005, the husband admits that on 11.10.2005 he had wrongly caused aspersions on the character of the wife and that he had wrongly beaten her. This is an admission on the part of the husband that the charge of adultery raised by him was false. If the husband had himself seen his wife in a compromising position with

some other man, he would not have made this statement. This statement was witnessed by large number of villagers and has been proved on record. In view of this statement, the learned trial Court was not at all justified in coming to the conclusion that the wife is living in adultery. In fact, this statement indicates that the husband had levelled a false charge of adultery against the wife and this is by itself is sufficient reason for the wife to live separately.

4. In this view of the matter, the petition is allowed. Learned Court below held that the husband was doing business of selling milk and awarded Rs.600/- per month as maintenance to the child. I feel that the wife is also entitled to atleast double that amount i.e. Rs.1,200/- per month from the date of filing of application under Section 125 Cr.P.C. The wife and child shall also entitled to make a prayer for enhancement of maintenance by filing separate proceedings under Section 127 of the Cr.P.C. Learned counsel for the wife is directed to supply the details of the bank account of the wife to learned counsel for the respondent / husband and the respondent / husband shall deposit Rs.3000/- per month in this account i.e. Rs.600/- for the maintenance towards the son and Rs.1,200/- for the maintenance towards the wife and Rs.1,200/- as arrears towards maintenance amount till the entire arrears are paid off.
5. This petition is disposed of in the aforesaid terms.

Sd/-
(Deepak Gupta)
Chief Justice