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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No. 456 of 2007

- Madhuri Bai, aged about 26 years, wife of Shri Saheb Das Sahu, R/o Village Piplakachhar, Police Station and Tahsil Khairagarh, District Rajnandgaon, Chhattisgarh

---- Applicant

Versus

- Saheb Das, aged about 30 years, S/o Shri Ramchand Sahu, R/o Village Tekapar Khurd, Police Station and Tahsil Khairagarh, District Rajnandgaon, Chhattisgarh

---- Respondent

For the Applicant : Shri P.K.C. Tiwari, Senior Advocate along with
Shri Kripesh G. Kela, Advocate.

For the State/Respondent : Shri Rajnish Singh Baghel, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Judgment on Board

09/03/2017

1. This revision is brought against the order passed by the Additional Sessions Judge, Khairagarh, District Rajnandgaon, in Criminal Revision No.55/2006 passed on 05.07.2007 allowing revision petition and setting aside the order of maintenance in favour of petitioner by the Court below under Section 125 of Cr.P.C.
2. Petitioner and two others filed an application under Section 125 of Cr.P.C. before the Court of Additional Chief Judicial Magistrate, Khairagarh, it was

stated that petitioner was legally wedded wife of respondent and non-applicants No.2 & 3(in the order of Court below) were his siblings. Marriage of petitioner and respondent was solemnized on 21.04.1999. After some time of marriage, the petitioner was subjected to cruelty by respondent on pretext that she is suffered from night blindness and also for demand of dowry. Because of the continued torture given by the respondent the petitioner was compelled to take shelter of her paternal home along with her siblings. Respondent continuously neglected to maintain the petitioner and her siblings. Petitioner and her minor siblings were unable to maintain themselves. It was prayed before the Court below to pass order for maintenance, in favour of petitioner and her siblings.

3. Respondent admitted in his reply that petitioner was his married wife and the minors are his daughters. He denied all the other allegations regarding neglect, competency to provide maintenance and that petitioner was unable to maintain herself. Further, he has stated that he is willing to keep the petitioner and his minor daughters with him and maintain them. On these grounds, he prayed for dismissal of the application.

The Court below framed issues and afforded opportunity for adducing evidence to both the parties and finally the order was passed on 04.04.2006 by allowing the application. It was ordered that respondent shall pay maintenance of Rs.500/- to petitioner and Rs.300/- to his minor daughters. This order was challenged in revision before the Sessions Court which was decided by the impugned order in which, the finding of the Court below that petitioner was unable to maintain herself was set aside and the order of maintenance in her favour was also set aside by allowing the revision petition.

4. The grounds in this revision are these that the order passed by the

Revisional Court below is erroneous against the facts and circumstances of the case which has caused miscarriage of justice. Petitioner had proved that she was living separately on account of sufficient cause that she was subjected to harassment and cruelty by the respondent and his family members. Petitioner was not required to prove this fact beyond reasonable doubt for determination under the provision of Section 125 of Cr.P.C. because of these reasons, the order passed by the Court below is perverse, which is liable to be set aside.

5. Learned counsel for the applicant submits that the reason given for the finding that applicant is residing separately without sufficient cause, is totally erroneous. There is no requirement for purposes of matter under Section 125 of Cr.P.C. to bring proof beyond reasonable doubt. This is a quasi civil and quasi criminal case in which the findings are arrived at on the basis of preponderance of probabilities. Petitioner had sufficiently produced such evidence to establish preponderance of probabilities regarding this fact that she had sufficient cause for living separately. It is also submitted that the proposition made by respondent during the course of enquiry, under Section 125 of Cr.P.C. that he wants to keep the petitioner and her daughters with him and maintain them, is falsified by this fact that he has later on, filed a petition for divorce before the Family Court, Rajnandgaon, which has been subsequently dismissed.
6. Learned counsel for the respondent submits that the order of Revisional Court below does not suffer from any infirmity. The petitioner has never endeavored to reside with respondent since the date she left her matrimonial home. The allegations made by the petitioner against the respondent in her petition under Section 125 Cr.P.C., are void and improbable which cannot be considered, as legible and logical., hence,

findings given by the Court below that petitioner is not entitled for maintenance from respondent is a correct finding. Further, it is also submitted that respondent was compelled to file a petition for divorce, on the ground of desertion by his wife/petitioner and also on the ground of mental cruelty given by petitioner.

7. Perused the evidence before the Court below to arrive at the finding on this point whether the petitioner is living separately from the respondent on the basis of some sufficient cause?
8. Madhuri Bai AW/1 has stated that soon after marriage respondent started to treat with her cruelty by beating her very often for petty reasons. There are various other allegations in her statements that during her pregnancy, she was burnt by using a heated sickle to relieve her from in disposition without providing her any medical assistance. Further, she has stated that whenever she was ill, she was sent to her paternal home. It was also alleged by respondent that less dowry has been given and he used to give her beating on account of this as well. Further, he also used to make a demand of Rs.40,000/- to 50,000/- time and again. Various incidents have been narrated in her examination-in-chief regarding her being subjected cruelty by the respondent. In cross-examination, she admitted that no meeting of society was held on her behalf but a meeting was called by the respondent. She admitted that one report was lodged against the respondent. Her statement about being tortured and subjected to cruelty has not been rebutted in her cross-examination.
9. Dhelu Das Sahu AW/2 supported the version of Madhuri Bai AW/1 in his examination-in-chief, he is father of the petitioner. In cross examination, he has admitted that there is no dowry custom in Sahu Samaj, even then he had given sufficient gifts in accordance with his capacity. He denied all the

adverse suggestions given by the respondent side.

10. Saheb Das NAW/1 (respondent) stated in his examination-in-chief that female members of his family go for labour work to earn livelihood. His wife the petitioner refused for going on labour work and for this reason, she used to quarrel with him and also used to live in her paternal home. He has stated that petitioner has made false statement against him regarding her subjection to cruel treatment and demand of dowry. She was unhappy on being asked to go for labour work. The petitioner would not understand to his advice, for this reason, he was compelled to send to her paternal home. He further stated that nobody came from the paternal home of petitioner to send her to the resident of respondent. On the contrary, he along with other persons from village went to bring back to the petitioner but she refused to come. In cross-examination, he has denied that he used to treat petitioner with cruelty by using abusive language and assaulting her now and then. He has also denied the other suggestions made by the applicant side regarding cruel treatment given to petitioner on pretext of her treatment in village style. He admitted that on the basis of a report, lodged by petitioner one case is going on against him in the Court.
11. Ramcharan NAW/2 has stated in his examination-in-chief to support the version of respondent in cross-examination, he denied about the suggestions given regarding petitioner being subjected to cruelty by her husband and in laws.
12. The allegations made by petitioner in her petition and the evidence before the Court have been denied by the respondent in his statement and on the contrary, he has submitted that his family depended on labour work for his livelihood and petitioner was not willing to do labour work. It is apparent from the statement made of both the sides that the relation between the petitioner

and respondent are quite strained. Regarding the efforts made by the respondent to bring back the petitioner, there is evidence of only one occasion as per the evidence of respondent, when petitioner refused to come and live with respondent. There is no evidence that any other effort was ever made in this respect. This is also not denied that on account of FIR lodged by petitioner, respondent was being prosecuted during the enquiry of the application under Section 125 of Cr.P.C.. It is submitted during the course of argument, that the respondent was acquitted of charge in the prosecution case and further this submission on behalf of petitioner that respondent also moved a petition for divorce before the family Court, Rajnandgaon which has been dismissed.

It appears, that petitioner is unwilling to reside with respondent and similarly, it appears that respondent is also unwilling to keep the petitioner at his household and maintain her. This fact gives the preponderance of probability, in favour of the petitioner because of the events and incidents that have occurred between both the parties, they are exists a bitter relation between them and respondent has never made an effort to end this bitterness. This fact is not denied that allegations made for petitioner were examined by the Court and the Court has acquitted the respondent. Acquittal of respondent by itself does not disprove that the allegations made are false, hence, there had been a case of preponderance of probabilities, in favour of the petitioner because of which the finding given by the Court below seems to be erroneous which needs interference.

13. In view of above discussions, this petition is allowed and the findings given by the revisional Court below regarding setting aside of the order of maintenance passed by the Court of Additional Chief Judicial Magistrate,

Khairagarh is set aside and the order passed by the Additional Chief Judicial Magistrate in in favour of petitioner is restored.

Sd/-

(Rajendra Chandra Singh Samant)

Judge

Nisha