

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 127 of 2015

- Smt. Meenu Singh W/o Nilesh Singh Bhardwaj Aged About 28 Years D/o Shri Hemnarayan Singh Gaur, R/o Village Bhakhara, In Front Of Radhakrishana Temple, Post - Bhakhara, Tah. - Kurud, Distt. - Dhamtari C.G.

---- Applicant

Versus

- Nilesh Singh S/o Shri Rajesh Singh Bhardwaj Aged About 29 Years R/o Behind Gurudwara, Jamatpara, Thana Rajnandgaon, Distt. - Rajnandgaon C.G.

---- Respondent

For Applicant	:	Shri Samir Singh, Advocate.
For Respondent	:	Shri Vimal Tonde, Advocate under the authority of Shri Anup Majumdar, Advocate.

Hon'ble Shri Justice Pritinker Diwaker

Order On Board

04/05/2017

Challenge in this revision is to the order dated 30.1.2015 passed by Family Court, Dhamtari whereby the Court below has rejected the application as filed by the applicant under Section 125 of Cr.P.C. seeking maintenance.

02. Marriage of the applicant was solemnized with the respondent on 13.4.2012 and the couple lived together only for few months and thereafter, according to the applicant, on account she being subjected to cruelty for demand of dowry and being beaten therefor, she started living separately. On 5.10.2013 an application was filed under Section

125 of Cr.P.C. for grant of maintenance from the respondent. She has averred in the application that she was being subjected to cruelty by the respondent for demand of dowry and he also used to beat her. She has further alleged that the respondent was having illicit relation with one Anupma Gayakwad and both of them used to harass and torture her all the time and having been fed up with this persistent ill-treatment, she left for her parental house on 10.6.2013 and since then is residing at her parents house. She has stated that she is not in a position to maintain herself whereas the respondent who is a doctor by profession is having sufficient income, he owns one acre of agriculture land and also earns by running private English coaching classes. Hence she prayed for grant of maintenance @ Rs.10,000/- per month from the respondent.

03. The respondent/husband by filing his written statement denied all the adverse averments made in the application by the applicant and stated that it is the applicant who has deserted him without any just and sufficient cause and as such, she is not entitled for maintenance.

04. In support of her application, the applicant examined herself, her brother Praveen Gaur and father Hemnarayan Singh Gaur whereas in order to prove his case, the respondent examined himself, one Anupma Gayakwad and his mother Nirmala Bharadwaj.

05. The Court below by the impugned order has rejected the application of the applicant mainly on the ground that she was living separately without there being any sufficient cause and therefore, she is not entitled for maintenance. It is this order which has been assailed by the applicant in this revision.

06. Counsel for the applicant submits that the Court below has erred in law in rejecting the application by holding that the applicant is living separately without any sufficient cause. It has been submitted that a divorce petition has already been filed by the respondent prior to filing the application under Section 125 of CrPC and therefore, it cannot be said by the respondent that the applicant is living separately without any there being any justification. He submits that considering the fact that the applicant is not able to maintain herself, is dependent upon her father and brother whereas the respondent is a man of sufficient means, the Court below ought to have awarded her proper maintenance.

07. On the other hand, supporting the impugned order it has been submitted by counsel for the respondent that on the basis of evidence adduced by the parties, the Court below was fully justified in rejecting the application of the applicant and as such, there is no scope for interference in the order impugned.

08. Heard counsel for the respective parties and perused the material available on record.

09. From the evidence adduced by the applicant, it is apparent that separate living of the applicant was not without any just and sufficient cause and the same appears to be the result of persistent mental and physical harassment being meted out to her at the hands of the respondent. It has also come in evidence that the divorce petition was already filed by the respondent prior to filing of application under Section 125 of Cr.P.C. The evidence of the applicant also stands corroborated from the evidence of PW-2 Praveen Gaur & PW-3

Hemnarayan Singh. Though there are some inconsistencies in the statement of the applicant and her witnesses, but considering the overall statements of these witnesses, it is clear that the applicant was deprived of marital bliss and other reasonable comforts by the respondent for which she was legally and morally entitled and therefore, such minor inconsistencies cannot be said to so fatal as to discard her entire evidence. Even otherwise, strict rule of evidence is not applicable in maintenance proceedings and it being the quasi civil proceedings, such cases can be decided on the basis of preponderance of probabilities.

10. Thus, considering all the aspects of the case and the legal position relating to grant of maintenance, this Court is of the opinion that the trial Court was not justified in rejecting the application under Section 125 of Cr.P.C. of the applicant on the ground that she was living separately without any just and proper cause whereas she has been able to make out her case for living separately and as such, is entitled for getting maintenance from the respondent.

11. In the result, the revision petition is allowed and the impugned order is hereby set aside. The applicant is held entitled to maintenance of Rs.3,000/- per month from the respondent. She is also entitled for getting arrears of the maintenance @ Rs.3,000/- per month from the date of filing of the application.

Sd/

(Pritinker Diwaker)

Judge