

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 563 of 2007**

Smt. Phool Bai, W/o Kirtan Lodhi, Aged about 20 years, R/o Murai, Police Station & Tahsil Chhuikhadan, District Rajnandgaon (C.G.)

---- Applicant

Versus

Kirtan, S/o Mahangu Lodhi, Aged about 23 years, R/o Kuteli, Tahsil and Police Station Chhuikhadan, District Rajnandgaon (C.G.)

----Non-applicant

For Applicant	:-	Shri Abhishek Pandey, Advocate.
For Respondent	:-	Shri S.S. Bhaghel, Advocate on behalf of Shri B.D. Guru, counsel.

SB: Hon'ble Shri Justice Rajendra Chandra Singh Samant

Judgement on Board

06-03-2017

This petition is directed against the order dated 25-07-2007 passed by Additional Sessions Judge, Khairagarh, District Rajnandgaon in Criminal Revision No.47 of 2007, by which the order passed by the Court below allowing the application filed under Section 125 of the Code of Criminal Procedure (for short 'Cr.P.C') in favour of the applicant was set aside.

2. The applicant has filed an application under Section 125 of the Cr.P.C. stating that she is married wife of non-applicant. She went to live in her matrimonial home in the year 2002. After passing of one year, her in-laws started torturing and treating her cruelty for demand of dowry by abusing and assaulting her. At one point of time, she was given some food mixed with poison due to which her pregnancy of four months got aborted, then she was turned out of her matrimonial home. Ultimately, she was sent to her paternal home by the non-applicant himself. It is stated that non-applicant wilfully neglected in giving her maintenance and she was unable to maintain herself

whereas the non-applicant is a man of means from different sources of income, on this ground maintenance was prayed for.

3. The non-applicant admitted about the marriage but he denied the other allegations in the application. It was stated that the applicant herself was quarrelsome. After she left her matrimonial home, non-applicant tried to bring her back but she used to threaten him that if she is forced to go, she will consume poison and that the non-applicant and his family members will get involved in the case. The applicant is residing in her parental home by her own choice and without any sufficient cause and she is willingly residing separately. Non-applicant is a labourer and earns Rs.20 – 25/- per a day subject to the availability of labour work. He is unable to pay any maintenance, prayed for rejection of the application.

4. The application was decided by the Court of Additional Chief Judicial Magistrate, Khairagarh by order dated 09-04-2007. The application under Section 125 of the Cr.P.C. was allowed and the non-applicant was ordered to pay maintenance of Rs.400/- per month to the applicant.

5. Order dated 09-04-2007 was challenged before the Sessions Court. The Revision Petition No. 47 of 2007 was decided by the impugned order in which the revision was allowed and the order of the Court below was set aside.

6. The grounds in this revision are that the revisional Court below has erred in passing the order of setting aside the order of maintenance in favour of the applicant. There has been evidence on record establishing the entitlement of applicant for maintenance, which has been ignored by the revisional Court below. Prayer has been made for allowing this petition and passing suitable orders.

7. The revisional Court gave this finding that the applicant is residing separately from her husband non-applicant without any sufficient cause, hence, for this reason she is not entitled for maintenance. This is the only question which is needed to be examined whether the applicant is residing separately from her husband having sufficient reasons to do so. The evidence of both the parties are perused.

8. Phool Bai (Aw-1) has stated that after one year of her marriage, demand of dowry and cash was made by non-applicant and his parents for which they started treating her with cruelty. On her refusal to ask her parents for meeting the demands, she was assaulted and on one occasion, some poison was mixed in her food, by eating of that food, her pregnancy was aborted. Later on, she was driven out of her matrimonial home and she was compelled to take the shelter of her paternal home. She was again sent back by her parents to her matrimonial home, then, she was assaulted and beaten in presence of her father and this treatment continued on other occasions as well. Later on, she was sent to her paternal home against her will by force.

9. In cross-examination Phool Bai (AW-1) has denied that non-applicant along with Sarpanch came to fetch her from her paternal home. She has admitted that she gave statement before the Court of S.D.O that she does not want to go with non-applicant. She has stated that she has lodged a report regarding demand of dowry in police station of which, no papers are on record. She denied that she has come to her parental home on her own will and she was never tortured by the non-applicant and her in laws. Her statement has been supported by Jairam (AW-2), her father which has remained unrebutted. In his cross-examination, he stated that he is unable to produce any documentary proof regarding the medical treatment of the applicant and

admitted that he never lodged any report about the cruel treatment of non-applicant towards the applicant. Shyamlal (AW-3) has stated similarly in his examination-in-chief and in his cross-examination. He has stated that the applicant resided in her matrimonial home for about one year. He denied that he is giving statement under the influence of Jairam (AW-2). His statement about the knowledge of affairs between the applicant and non-applicant has remained un rebutted. Adesh Kumar (AW-4) has also supported the applicant's version about her subjection to torture for demand of dowry and there is no statement in his cross-examination contradicting this statement.

10. Kirtan (NAW-1) stated in his examination-in-chief that the applicant stayed in her matrimonial home only for 9 months and she left for her paternal home by her own will. He along with Sarpanch Heeralal, Raju and Mahesh Nirmalkar went to the place of applicant's residence several times but she refused to come every time. The applicant stated that the applicant gave statement before the SDO, Khairagarh, that she does not want to live with the non-applicant, hence she is residing separately for 3 to 4 years without any sufficient reason. He has denied in cross-examination that the applicant was subjected to torture for demand of dowry. He also denied that he assaulted the applicant in the presence of her father and that he himself went to see off the applicant in her paternal home. He has also denied other suggestions given in support of the applicant's case. Mahesh (NAW-2) supported the version of non-applicant in examination-in-chief. In cross-examination he has also denied about the cruel treatment being given to the applicant by the non-applicant's side and the suggestions given in this respect.

11. Heeralal (NAW-7) has also supported the non-applicant's statement. In cross-examination his statement has remained rebutted and he has stated that

the applicant used to leave her matrimonial home for going to paternal home of her own will now and then. She stated that a meeting was called to advise and make understand the applicant for not leaving her matrimonial home so often. He has also denied all the suggestions given in support of the applicant's case.

12. Statements of the witnesses from both the sides are in juxtaposition which is not enough or sufficient to make out a case of preponderance of probabilities in favour of the applicant. Reliance was placed on the order-sheet of proceeding before the SDM (Ex. P-3). Application under Section 98 of the Cr.P.C. was filed by the non-applicant before the Court of Executive Magistrate, in which the applicant gave her appearance. After one year, on the advise of the villagers she was again sent to her matrimonial home, but she stayed there only for two days, she was tortured again, then she left her matrimonial home and came to reside in her paternal home. Because of torture for demand of dowry, she does not want to reside in her husband's place of residence.

13. It is submitted by learned counsel for the applicant that the statement recorded by SDM itself makes it clear, that there is sufficient reason for the applicant's residing separately as she has been tortured for demand of dowry. His submission has been opposed by non-applicant's counsel.

14. After closely scrutinising the evidence of both the parties and the documents on record, it appears that the applicant has resided in her matrimonial home only for one year at the initial stage and then she left to reside in her paternal home. Her statement in the application and the evidence, that the demand of dowry and cruel treatment towards her started after passing of one year, does not inspire confidence as it appears that she left her matrimonial home after passing of one year of her marriage life. When

the applicant was again sent to live in her matrimonial home, she again came back to her paternal home after a brief stay alleging that she was subjected to cruelty for demand of dowry. No information was given to police in this respect and neither any meeting of the villagers was called by the applicant or her parents, to resolve the situation which is a circumstance against the applicant. Further, it was the non-applicant who filed an application before the Court of Executive Magistrate as an effort to bring the applicant back to her matrimonial home which also failed because of the attitude of the applicant. Considering all the circumstances, no infirmity is found that the order passed by the revisional Court below. Hence, there is no scope for interference by this Court in this petition.

15. Accordingly, the petition is dismissed.

Sd/-
(**Rajendra Chandra Singh Samant**)
Judge