

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 202 of 2017

1. Smt. Shashiprabha Pandey W/o Shri Vinay Pandey Aged About 27 Years R/o Behind Timber Market , Vijay Nagar, Bhanpuri, Police Station- Khamtarie, Raipur, District- Raipur, Chhattisgarh.
2. Raghvendra Pandey S/o Vinay Pandey Aged About 6 Years Through His Legal Guardian Her Mother Smt. Shashiprabha Pandey, R/o Behind Timber Market , Vijay Nagar, Bhanpuri, Police Station- Khamtarie, Raipur, District- Raipur, Chhattisgarh.

---- Applicants

Versus

- Vinay Pandey S/o Shri Samaylal Pandey Aged About 29 Years R/o Netaji Chowk, New Shanti Nagar, Raipur, Tahsil & District- Raipur, Chhattisgarh.

---- Non-Applicant

For Applicant : Shri Yogesh Pandey, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

21.02.2017

1. By filing this criminal revision, the applicants are assailing the order dated 27.01.2017 passed by the Principal Judge, Family Court, Raipur in Miscellaneous Criminal Case No. 522/2010, whereby the said Court below has rejected the claim application, filed under Section 125 of the Cr.P.C., of the applicant No.1 and at the same time, so far as claim of applicant No.2 is concerned, he has been awarded maintenance of Rs.3,000/-.
2. Learned counsel for the applicants submits that it is a case where the evidence adduced on the part of applicant No.1 for compelling her to

leave matrimonial home, has not been considered. So far as Ex.D-1 is concerned it has been written by her due to pressure put upon her. He further submits that it is also a case where the benefit of the stand established prevalent under Section 9 of the Hindu Marriage Act by applicant No.1 for restitution of conjugal rights. He further submits that the applicant No.1 has left her matrimonial home on account of the cruel treatment which she was subjected to by the non-applicant. During said time, she was pregnant and was suffering from other ailments, therefore, at that time, she had to take shelter at her paternal home.

3. Having heard rival contention of the applicants and on perusal of the record what is relevant is the fact of categorical admission on part of the applicant No.1 of having left the matrimonial home within a period of four months from the marriage. The record also shows admission on the part of the wife of Exs.D-1 and D-2 which were produced before the Court below. Ex.D-1 is a document which was executed in the presence of the police authorities where the applicant No.1 – wife has categorically given in writing her intention of not willing to live with non-applicant husband. Likewise, Ex.D-2 is also a document which has been written by the father of the applicant No.1- wife intimating that present applicant No.1 wife has received her entire *stridhan* which were given at the time of marriage. All these are documents which are itself sufficient to draw an inference with regard to the admission of the applicant No.1 in not staying in the matrimonial home. In addition to it, the record also shows that the present non-applicant husband has filed divorce petition and the 125 application was filed after the divorce petition was initiated. Lastly, it is also pertinent to take note of the fact that the maintenance itself was claimed after more than 8 years of leaving the matrimonial home. All these facts are going against the

applicant No.1 for assuming that there was no compelling reasons for her leaving the matrimonial home.

4. In view of the aforesaid, this Court is clearly of the view that the order under challenge requires no interference in relation to claim of maintenance filed by applicant No.1. The revision petition has no merit and is accordingly rejected.

Sd/-
(P. Sam Koshy)
JUDGE