

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgement Reserved on:07/09/2017

Judgment Delivered on 07/11/2017

CRR No. 465 of 2014

1. Smt. Indu Banjare W/o. Santosh Anjare Aged About 26 Years R/o. Through Tummanlal Kosre, Jaisthamb Chowk, Somni, Vii. & Post Somni, Tah. & Distt. Rajnandgaon (C.G.)
2. Gaurav Banjare S/o. Santosh Banjare Aged About 1 Years Minor Through Natural Gurdian Mother Smt. Indu Banjare,r/o. Through Tummanlal Kosre, Jaisthamb Chowk, Somni, Vii. & Post Somni, Tah. & Distt. Rajnandgaon (C.G.)

---- Applicants

Versus

- Santosh Kumar Banjare S/o. A.D.Banjare Aged About 35 Years R/o. Vivekanand Colony, Bazardand, Jashpur, Nagar, Upper Division Teacher, Higher Secondary School, Jashpur (C.G.)

---- Respondent

For the Applicant : Shri Shrawan Agrawal, Advocate for the applicant.

For the Respondent : Shri Neeraj Mehta, Advocate for respondent.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

C A V Judgment

07/11/2017

1. This criminal revision has been preferred against the order dated 20.3.2014 passed by the Family Court, Rajnandgaon in MCC

No.110/2011.

2. An application under Section 125 of Cr.P.C. was filed by the petitioners before the Family Court, Rajnandgaon. After completion of proceeding, impugned order has been passed, in which prayer of petitioner No.1 has been rejected and the application was allowed in part in favour of petitioner No.2, granting monthly maintenance of Rs.5,000/- per month. Hence, this petition.
3. It is submitted by learned counsel for petitioner, that it is admitted fact that petitioner No.1 and respondent are wife and husband, because of ill treatment and cruelty of respondent petitioner No.1 is compelled to reside with her brother at Rajnandgaon. Petitioner No.1 has no source of income for her maintenance. On the complaint of petitioner No.1, a case under Section 498-A of I.P.C. has been registered against the respondent in PS-Somni District-Rajnandgaon.
4. It is submitted that the learned Family Court has not appreciated the evidence on record and given a finding that petitioner is living in adultery. The statement given by medical witnesses are not sufficient to prove the allegation of adultery leveled against the petitioner No.1, hence, the impugned order deserves to be set aside.
5. Learned counsel for the respondent has opposed the grounds raised in the petition and the submission made in this respect. It

is submitted that it has been successfully proved by the respondent that petitioner was living in adultery, therefore, she is not entitled for maintenance under Section 125 of Cr.P.C.. Hence, this revision petition has no merit.

6. Heard both the parties and perused the record of MCC-110/2009 of Family Court, Rajnandgaon.
7. Respondent/non-applicant's contest was only on the ground that petitioner was living in adultery, therefore, she is not entitled for maintenance. Thus, this is only point which needs to be considered in this revision petition.
8. Petitioner-Indu Banjare in her statement before the Court has stated about the cruel treatment by respondent/non-applicant and that she was ousted from the house of the respondent. It is the statement of petitioner that since 2.9.2008 she along with petitioner No.2 was living separately and after compromise between them before the Family Court, on 16.7.2009 she came to live with respondent. She has denied that Sonography test was conducted on 10.8.2009 and 12.8.2009. She further denied about pregnancy being confirmed in the Sonography report although admits that prior to 16.7.2009, she had no association with respondent. No other witness has been examined by the petitioner/applicant before the Family Court.
9. Respondent/non-applicant Santosh Kumar Banjare apart from giving other statements has stated, that petitioner disliked him, as

her marriage was performed without her wishes and she wanted to live with her lover residing in village-Somni. She left his company on 2.11.2007. After compromise before the Family Court on 16.7.2009, petitioner No.1 came to reside with respondent/non-applicant, there had been no physical relation between them between 2.11.2007 & 16.7.2009 and during this period petitioner No.1 was staying in village-Somni. Having some doubts, he got examined his wife on 10.8.2009 in District Hospital, where Sonography test was conducted by Dr. Manju Minj, who confirmed that petitioner No.1 is carrying pregnancy of 6 weeks & 1 day. Another Sonography test was conducted by Dr. Varonika Surin on 12.8.2009 and she too confirmed that the petitioner No.1 is pregnant. It is stated by him, that on inquiry from petitioner No.1, she admitted her illicit relationship with another man of Village-Somni. In cross-examination, his statement remained unshaken.

10. Dr. Manju Minj (NAW-3) has stated before the Court that on 10.8.2009 he medically examined the petitioner No.1, she was pregnant and her pregnancy was of 6 weeks and 1 day. She has proved the report of Ex.D-16. On 12.3.2010 sonography of petitioner No.1 was done by another physician, who too has reported petitioner No.-1 as pregnant.
11. As per the statement of witnesses, petitioner No.1 came to reside with respondent on 16.7.2009. As per the statement of

respondent, it was after 3 weeks time that petitioner No.1 was subjected to Sonography test and found to be pregnant carrying pregnancy of more than 6 weeks, which has been confirmed by the doctor conducting Sonography test. Although, a report Ex.P-12 is produced on record by the petitioner No.1 which shows absence of any pregnancy but this report, is of a subsequent date i.e. 12.3.2010 and this report has not been proved by the doctor conducting this Sonography examination. Report of Ex.P-12 being a report of subsequent date cannot be admitted in evidence though formally proved. Hence, for these reasons and on the basis of the evidence discussed as aforesaid, the findings arrived at by the learned CJM needs no interference. The only ground on the basis of which this revision has been brought is without any merit.

12. Accordingly, this petition is dismissed.

Sd/-

(Rajendra Chandra Singh Samant)
Judge