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**HIGH COURT OF CHHATTISGARH, BILASPUR****Criminal Revision No. 542 of 2015**

Smt. Jagriti @ Ranu Ambilkar, aged about 27 years, wife of Navin Ambilkar, through Suresh Rao Maharkure (Nagar Panchayat Worker), near Karmel School Jhalap Chowk, Bagbahara, Tahsil Bagbahara, District Mahasamund, Chhattisgarh.

**---- Applicant****Versus**

Navin Ambilkar, aged about 31 years, son of Teekamchand Ambilkar, occupation General Store, Swami Chowk, near Chandrakar Bij Bhandar Mahasamund, Tahsil and District Mahasamund, Chhattisgarh.

**---- Respondent**


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| For the Applicant  | : | Shri Hemant Kesharwani, Advocate. |
| For the Respondent | : | Shri Vikash Pradhan, Advocate.    |

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**Hon'ble Shri Justice Rajendra Chandra Singh Samant****Order on Board****17.03.2017**

1. The applicant has brought this revision against the order dated 24.6.2015 passed in M.J.C. No. 78 of 2014 by the Family Court Judge, Mahasamund, Chhattisgarh, dismissing the application filed by the applicant under Section 125 of the Cr.P.C.
2. It is admitted that the applicant and the respondent had solemnized marriage on 1.2.2008 and the applicant is residing separately since April, 2013. The applicant moved an application under Section 125 of the Cr.P.C. stating that after solemnization of marriage, the respondent and his family members started torturing her for demand of dowry and also treated her with

cruelty as she could not bear any child. The respondent and his family members disclosed their intention about performing a second marriage of the respondent. Ultimately in April 2013, the respondent and in-laws of the applicant sent the applicant to her paternal home with a condition of bringing dowry etc. and since then the applicant is residing in her paternal home. The respondent is continuously neglecting in providing maintenance to the applicant though he is having sufficient income from lands and kirana shop whereas the applicant is unable to maintain herself. Hence, it is prayed that the maintenance be granted in favour of the applicant.

3. The respondent denied the allegations of torture, cruelty and demand of dowry etc. made by the applicant in her application. It is submitted that the applicant left her matrimonial home on 2.4.2013 leaving a note that she was going to her paternal home on her own will and she does not want to lead marital life with the respondent. The respondent, on inquiry, came to know that the applicant did not reach her paternal home, and as such, he lodged a report on 6.4.2013 in Police Station Mahasamund. It is further submitted that the applicant is having some affair with other person and the said fact has been admitted by her before the respondent. It is also submitted that the applicant is also having her own source of income by doing sewing and embroidery work. The respondent is simply a daily-wage labourer and he has no means to pay the maintenance. It is alleged that since the applicant is living in adulterous relationship with some other person, she is not entitled for maintenance. On these grounds, it is prayed that the application filed by the applicant may be dismissed.

4. Learned court below after affording opportunity to both the parties to produce the evidence and make submissions and arguments, passed the impugned order rejecting the application filed by the applicant holding that the applicant is residing separately from her husband, the respondent without any sufficient cause and that she is living in adultery.

5. The grounds in this revision are that the order passed by the court below is against the facts, circumstances and law. Learned court below did not appreciate the evidence led by the applicant in true sense. There had been sufficient evidence to establish that the applicant was subjected to cruelty by the respondent and his family members. The allegation on integrity of the applicant was not proved by the respondent. Even then, it was held that the applicant was living in adultery which is an incorrect finding and prayed that the revision be allowed and the impugned order passed by the court below be set aside by granting maintenance to the applicant.

6. Learned counsel for the applicant submits that the applicant's witnesses Jagriti (AW-1) and Kamalmehar Kurre (AW-2) have stated before the court regarding treatment of cruelty with the applicant for demand of dowry. Further, it has been stated that the respondent levelled false allegation on the character of the applicant without any proof. This statement has remained unrebutted. The only ground taken into consideration is that the applicant left for her paternal home on 2.4.2013, however, came to her paternal home after passing of 20 to 22 days. This is not sufficient to assume that the applicant had been in the company of some other person and having adulterous relationship. There is a clear view in

this respect that the occasional instances of a woman found in company of some other person cannot be considered as that she is living in adultery. The allegation of adulterous relation itself is a cruelty towards the applicant. Hence, the order of the court below needs to be interfered with.

7. Learned counsel for the respondent submits that the note Ex. D/2 itself demonstrates that the applicant was an unwilling partner in the marital relationship with the respondent, because it is mentioned in that note that she has left the house of the respondent on her free will without any intention to return. It is also submitted that the applicant was having an affair with some other person which she herself admitted before the respondent. It is further submitted that the applicant left for her paternal home on 2.4.2013, however she did not go there for 20-22 days and her absence in this period was never explained by the applicant which indicates that she was having some illicit relationship and that is sufficient to prove that the applicant is leading an adulterous life. Hence, for these reasons, the order passed by the court below does not suffer from any infirmity.

8. Considering the pleadings and the arguments submitted by both the parties, the question for determination in this revision is whether the grounds of desertion and adultery, which have been relied upon in the impugned order, have been proved sufficiently by the respondent.

9. I have heard learned counsel appearing for the parties at length and have also perused the evidence available on record to examine the legality, propriety and correctness of the impugned judgment passed by the trial court.

10. Jagriti @ Ranu Ambilkar (AW-1) in her examination-in-chief stated about demand of dowry and the details of mental and physical torture given to her. Further, she has stated that the allegation made by the respondent that she is having some illicit relationship with some other person is totally a false allegation. In cross-examination, the statement about demand of dowry and the behavior of cruelty has not been rebutted and no question has been specifically put to rebut the allegations made by the applicant in this respect. She stated that she had some dispute with the parents of the respondent because she made a call from mobile phone. She denied that a meeting was called where it was found that she was missing for 20-22 days though she admitted that the respondent has lodged a report in P.S. Mahasamund about her missing for 20-22 days. She also denied having illicit relationship with any other person.

11. Kamalmehar Kurre (AW-2), brother of the applicant, stated about the treatment of torture for demand of dowry to the applicant. According to his information, her sister was forcibly made to leave her matrimonial home in April, 2013 with a condition to come back with the dowry demanded. In cross-examination, he admitted that no report was lodged regarding the demand of dowry. He also admitted that in the meeting held in April, 2013, it was found that the applicant was missing from her matrimonial home for 20-22 days. He denied about any illicit relationship of his sister. He also denied that his sister is residing separately on her own will.

12. Naveen Ambilkar (NAW-1), the respondent herein, in his examination-in-chief, denied the allegation made by the applicant in her evidence and

stated that on 2.4.2013, the applicant herself told him that she wants to go to her paternal home and then only he sent her by train on the same day. On 3.4.2013, he found a note kept on the bed of the applicant in which she stated that she willfully left the maternal home and she does not want to lead marital life with the respondent. On enquiry being made by P.S. Mahasamund, the applicant gave information that she has of her own left the house of the respondent and she does not want to live with him. The applicant remained missing for 20-22 days which has not been explained. He alleged that the applicant is having illegal affair with some other person and for the said reason, she does not want to live with him. In cross-examination, he admitted that he had a good married life with the applicant for about three years but the applicant could not bear any child. He denied about giving cruel treatment to the applicant on account of her being unable to get a child. He also admitted that he never saw the applicant with any other person though he has stated that he heard the applicant talking to some person on mobile phone.

13. Sindhu Bai (NAW-2) stated that the applicant left for her paternal home on 2.4.2013 but she did not reach there. On the contrary, she was with the contractor with whom she had relationship. On enquiry made by the police, the applicant informed that she is living with her lover and she does not want to live with the applicant. A meeting was held with the elders of the society in which the applicant admitted about her love affair and her unwillingness to live with the respondent. In cross-examination, she admitted that she never saw the applicant with any other man.

14. Ramgopal Patel (NAW-3) has stated about his presence in the meeting and the admission made by the applicant that she was living with a contractor, namely, Aneesh during the period she was missing and she does not want to live with the respondent. In cross-examination, he admitted that he never saw the person named Aneesh.

15. On a close scrutiny of the evidence adduced by both the parties, it seems established that the applicant and the respondent had a peaceful relationship for almost three years but in the meanwhile, the applicant could not beget any child is a fact. The allegation made by the applicant is that she was being tortured for not being capable of bearing a child and that the respondent intended to go for a second marriage. This statement is not expressly denied by the respondent parties. The allegation about demand of dowry and torture is also not specifically rebutted by the respondent. It is though a fact that the applicant never lodged a report against the respondent about cruelty for demand of dowry which negates the allegation regarding demand of dowry and torture met in this respect. But the fact remains that the applicant was unable to bear a child and this had been a reason of dispute between the applicant and the respondent.

16. The allegation made by the respondent needs to be examined. The documents exhibited by the respondent, a copy of letter Ex. D/1 and Ex. D/1C are just produced on record allegedly written by the applicant. These letters were not confronted with the applicant at the time of recording of her evidence. Hence, it cannot be considered that the writing of Ex. D/1 and Ex.D/1C has been admitted by the applicant. It is also specifically has

not been stated by Naveen Ambilkar (NAW-1) that he is acquainted with handwriting of the applicant and the handwriting on letters Ex. D/1 and Ex. D/1C is specifically of the applicant. These documents cannot be taken into consideration as they have not been proved in accordance with the provisions of the Evidence Act.

17. Further the note Ex. D/2 also needs examination. This was also not confronted to the applicant, while she was cross-examined and similar reasoning is applicable for this document as well as has been given for Ex. D/1 and Ex. D/1C. It was erroneously held by the court below that it was the burden of the applicant to prove that those handwritings were not of herself, which is against the provision of burden of proof. These documents were produced by the respondent and he has relied on these documents for his defence, hence, clearly it was the burden of the respondent to specifically prove the handwriting of those documents. Without there being any proof, these documents could not have been taken into consideration.

18. The evidence as established is sufficient that because of dispute between the applicant and the respondent regarding the incapability to beget any child by the applicant is a cause. Further when the applicant left her matrimonial home no effort was made by the respondent to bring her back. On the contrary, the respondent has made allegation on the integrity of the applicant.

19. The evidence brought by the respondent to establish that the applicant is leading an adulterous life is not sufficient. Assuming that the applicant went missing for 20-22 days by itself is not a ground of presumption that she

was in company with some other person. The statement of Sindhu Bai (NAW-2) and Ramgopal Patel (NAW-3) that the applicant admitted in the meeting that she was in company with some other person has to be considered with the statement of Jagriti (AW-1) in her cross-examination where she has specifically denied making any such admission in the meeting. Hence, the statements of the respondent's witnesses have no force. Apart from that, reliance has been placed on the judgment of this High Court in the case of **Shiv Kumar Netam vs. Meena Devi Netam** reported in **(2015) CriLJ 133** wherein it is held that it is well established principle of law that living in adultery has to be interpreted as continuous adulterous conduct of the applicant, any stray instance of adulterous life, cannot be taken into account for rejecting the application.

20. Considering all the material and the evidence on record, it appears that the court below has passed the impugned order on erroneous grounds. Hence, the impugned order is against the established principles of law and thus perverse.

21. Considering all the facts and circumstances of the case and on the basis of the reasons given aforesaid, this criminal revision is allowed in part and the impugned order of the court below is set aside. The application of the applicant under Section 125 of the Cr.P.C. is allowed. It is ordered that the respondent shall pay a sum of Rs.1,500/- per month as maintenance to the applicant from the date of the order of the court below.

Sd/-

**(Rajendra Chandra Singh Samant)**  
Judge