

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 707 of 2015**

1. Lata W/o Tal Singh, Aged about 28 Years,
 2. Ku. Dipti Dahre, D/o Tal Singh Dahre, Aged about 2 Years (Minor) Through :
her Mother Smt. Lata, W/o Tal Singh, R/o Village Mundra, Police Station
Ranchirai, Civil District Balod, Revenue District Balod (Chhattisgarh)
- At Present R/o Through : Ankaluram, Qtr. No. 03 C, Street - 11, Sector-4,
Bhilai, Civil & Revenue District Durg (Chhattisgarh)

---- Applicants**Versus**

Tal Singh Dahre, S/o Guharam Dahre, Aged about 30 Years, R/o Mundra,
House No. 85, Post - Rahud, Police Station - Ranchirai, Tahsil Gundardehi, Civil
District - Balod, Revenue District Balod (Chhattisgarh)

---- Non-applicant

 For Applicant :- Shri C.K. Sahu, Advocate.
 For Non-applicant :- Shri Praveen Dhurandhar, Advocate

SB: Hon'ble Shri Justice Rajendra Chandra Singh Samant**Order on Board****27-02-2017**

This revision petition is directed against the order dated 13-07-2015 passed by Third Additional Principal Judge, Family Court, Durg in Misc. Criminal Case No.100/2014 dismissing the application of applicant No.1 under Section 125 of the Code of Criminal Procedure (for short 'Cr.P.C.').

2. The applicants have filed an application under Section 125 of the Cr.P.C. before the Court below stating that applicant No.1 is married to non-applicant and out of their wedlock, applicant No.2 was born. While residing in matrimonial home, applicant No.1 was subjected to cruelty by the non-applicant and his parents and maintenance of the applicants was neglected by the non-applicant. On 27-06-2012, the applicants were driven out from the residence of non-applicant. Applicant No.1 lodged a report in police station Ranchirai, District Balod and she is compelled to live with her parents.

Non-applicant has never made any effort to take back the applicants. The applicants are unable to maintain themselves and non-applicant is employed as Shikshakarmi, Grade-III, by which he is earning Rs. 22,000/- per month. His parents are also well to do agriculturists. On these grounds, it was prayed that maintenance be ordered in favour of the applicants.

3. Non-applicant admitted in his reply that applicant No.1 is his married wife and applicant No.2 is his child. Denying the allegations made in the application, he has stated that after the delivery of child, applicant No.1 refused to serve her father-in-law and mother-in-law and also she used to allege that they are sorcerers. He admitted as being employed as Sikshakarmi Grade-III. It is stated that applicant No.1 has deserted him and she is living in her parental house away from non-applicant without any sufficient cause. Further it is specially stated that applicant No.1 was not happy with her marriage with non-applicant and she used to force him to live separately away from his parents. Non-applicant made efforts 4 to 5 times to bring back the applicants but she refused. It is also alleged that applicant No.1 is mentally unstable as she has attempted to commit suicide number of times, regarding which non-applicant has lodged report with police. During the counselling as well applicant No.1 has made this statement, that she does not want to live with non-applicant and wants divorce. On these grounds dismissal of application was prayed for.

4. After affording opportunity of hearing to both the parties, the impugned order was passed by the Court below in which it was held that applicant No.1 is residing with her parents away from non-applicant of her own will and without any sufficient cause, thus, she is not entitled for any maintenance. The application of applicant No.2 was allowed and order was passed for payment of Rs.2000/- as maintenance in favour of applicant No.2.

5. The grounds for challenge to this order are that the learned Court below has failed to consider applicant No.1 is physically unfit. Further it was not considered that

non-applicant and his parents do not want applicant No.1 to live with them. Hence, no effort was made to bring her back. Non-applicant is a man of means, thus, it is prayed that the impugned order be set aside and non-applicant be ordered to pay maintenance to applicant No.1.

6. It is submitted by learned counsel for the applicants, that the order passed by the Court below is not based on the evidence and is against the facts and law. It has been brought in evidence by applicant No.1 that she was compelled to leave her matrimonial home because of the behaviour of cruelty by non-applicant and his parents. Thus, she has sufficient cause to live separately from the non-applicant which gives her entitlement for maintenance.

7. The only question arises for consideration in this revision is whether the finding of the trial Court, that applicant No.1 is living separately from her husband without any sufficient reason is substantiated with proof or not?

8. The evidence before the Court is perused.

9. Smt. Lata (Aw-1) has stated in her examination-in-chief that she was cruelly treated by her mother-in-law and father-in-law as well as her husband by abusing her and assaulting her alleging, that she could not cook well and she could not live well. At the time of child's birth, she was forced to go to her parental home. After child's birth she was forced to do excessive work and non-applicant neglected for her medical needs. She tried to advise her husband to live separately. It is alleged that she was also tortured for demand of dowry. Ultimately, she was driven out of her matrimonial home on 27-06-2012 and she was compelled to take shelter of her parents, after which non-applicant never attempted to take her. The applicants are unable to maintain themselves and non-applicant is a man of means being employed as Shikshakarmi, Grade-III earning Rs.22,000/- per month.

10. In cross-examination, Lata (Aw-1) has admitted that old father and mother of non-applicant used to live with non-applicant. She admitted that while giving statement before the Police, she had stated that she would go to live with her husband if he lives separately and she does not want to live with her father-in-law and mother-in-law. She has also admitted that because of these reasons she used to have quarrel and dispute with the non-applicant. Further, she has stated that there were petty reasons for quarrelling and in this matter her husband would not listen her but he would listen his father and mother.

11. Ankalu Ram (Aw-2) is father of applicant No.1 has supported the statement of Lata (Aw-1). In his cross-examination he has admitted that the reasons for quarrel had been very petty. Further he has stated that after he has lodged the report in the police station Ranchirai, on the advise of the policemen he brought his daughter from her matrimonial house.

12. Tal Singh (NAW-1) has stated and denied the allegations in deposition of the applicant witness. He has stated that applicant No.1 used to leave for her parental home without any information. She never wanted to live with his parents and wanted to live separately, this was the reason for quarrel between them. She also used to allege that parents of non-applicant were sorcerers. Applicant No.1 never liked him and she used to torture him by attempting to commit suicide. To pressurise non-applicant for living separately, she lodged a false report with the police. The means of non-applicant are not sufficient. Applicant No.1 is educated and she does the work of sewing embroidery and she earn Rs.100 – 150/- per day and she is capable of maintaining herself. In cross-examination, he has denied that his parents used to torture the applicants. He has denied that he never attempted to bring back his wife and child. He has stated that after counselling in Court in January, 2014, he had been to bring back the applicant but the applicant refused.

13. The Court below has taken into consideration, the admission of Lata (Aw-1) that she refused to live with the parents of non-applicant and serve them and for this reason alone she left her matrimonial home which is a desertion without sufficient cause. Though it is admitted in her cross-examination that she wanted to live with her husband separately from her in laws, there is no rebuttal of her statement in examination-in-chief that her father-in-law and mother-in-law used to treat her with cruelty. This statement should have been specifically rebutted in cross-examination to connect her statement that she wanted to live separately. The above statement being unrebutted, her own will for living separately cannot be said to have been without any sufficient cause. Her statement is supported by the deposition of Ankalu Ram (AW-2). The police report lodged by applicant No.1 and her statement before the police as well disclose the reason why she wanted to live separately from her in laws, hence, the finding of the Court below in this respect is not based on proper appreciation of the evidence of applicant No.1 which is liable to be set aside. Hence, it is found that the rejection of application of applicant No.1 by the Court below is not well founded. On the contrary, it is found that there had been sufficient reason for applicant No.1 to live separately from her matrimonial home.

14. The earning capacity of applicant to maintain herself is not proved by the non-applicant by producing cogent evidence in this respect apart from making a simple statement before this Court. Thus, this can be taken into consideration that the applicant is not able to maintain herself. Further it is admitted that non-applicant is an employee as Sikshakarmi Grade-III and drawing salary of Rs.12,101/- as per document (Ex.P-5) on record. The salary slip of February, 2015 (Ex. D-4) has been produced by non-applicant according to which net salary of non-applicant in February, 2015 was Rs.10,114/- which shows the non-applicant has means and is capable to maintain applicant No.1 who is unable to maintain herself. On these grounds, the revision petition is allowed. The impugned order relating to applicant No.1 regarding rejection of

her prayer under Section 125 of the Cr.P.C is set aside. Non-applicant shall pay Rs.2000/- per month to applicant No.1 by way of maintenance from the date of passing of the order by the Court below.

15. Accordingly, the instant revision is disposed of.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Kvr