

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No.146 of 2016**

Smt. Maheshwari, W/o Krishna Kumar Rajwade, aged about 21 years, Occupation Housewife, R/o Chhindiya (Piparpara), Police Station Patna, Tahsil Baikunthpur, District Koriya, Chhattisgarh

---- Applicant

versus

Krishna Kumar, S/o Bhaiyalal Rajwade, aged about 28 years, Occupation D.J. Sound Service and Agriculturist, R/o Village Odgi (Jhumka Road), Police Station and Tahsil Baikunthpur, District Koriya, Chhattisgarh

--- Respondent

For Applicant	:	Shri Ashok Kumar Shukla, Advocate
For Respondent	:	Shri Dashrath Kushwaha, Advocate

Hon'ble Shri Justice Arvind Singh Chandel

Order on Board

1.8.2018

1. The instant revision has been preferred by the wife against the order dated 21.12.2015 passed by the Family Court, Baikunthpur, District Koriya in M.Cr.C. No.180 of 2014, whereby the Family Court has rejected the application under Section 125 of the Code of Criminal Procedure moved by the Applicant/wife on the ground that she herself is not willing to reside with the Respondent/husband and is living separately from him without sufficient cause.
2. Marriage between the parties took place on 11.5.2011. Thereafter, both lived together. After passage of some time, the Applicant/wife fell ill at her matrimonial house. At that time, her parents were informed about it and thereafter her relatives took her back with them. After treatment and recovery from the ailment, when she again went back to her matrimonial house, she found that the

behaviour of her husband and in-laws had changed and they started ill-treating her. In the month of June, 2012, the Respondent/husband gave her physical assault and threw her out of his house. She went to her maternal house. When her father visited her matrimonial house, he was also misbehaved by the Respondent/husband. Since then, she is residing separately at her maternal house. She is unable to maintain her and the Respondent/husband has sufficient means to maintain her.

3. The Respondent/husband pleaded that the Applicant/wife, without informing him, had run away and she has made one Sona, son of Jagdeo as her second husband and is living with him as an adulterous life. He is still ready to keep her with him. It was also pleaded that the wife had filed a petition under Section 13 of the Hindu Marriage Act, 1955 for divorce in which she had made an allegation on the Respondent/husband of his being impotent and even thereafter he is ready to keep her with him.
4. After examining both the parties and taking evidence of their witnesses, the Family Court has rejected the application of the Applicant/wife moved under Section 125 of the Code of Criminal Procedure on the ground that she is living separately from the Respondent/husband without any sufficient cause.
5. I have heard Learned Counsel appearing for the parties and perused the record with due care.
6. There is no dispute on the fact that the marriage between the parties was performed on 11.5.2011 and the wife is living

separately from the husband since July, 2012. The Applicant Smt. Maheshwari, in her Court statement, has stated that the husband used to beat her after consuming liquor and he also used to expel her out of his house. She has further stated that in the month of July, 2012 also, he came house after consuming liquor and beat her and thereafter expelled her out of his house. Since then, she is residing at her maternal house. She has further stated that a village meeting was called in which the Respondent/husband had alleged that she had gone to other caste. In paragraph 9 of her cross-examination, she has admitted the fact that for taking divorce, in the petition therefor, she had taken a ground that her husband is impotent. The Respondent/husband has admitted the fact that the Applicant/wife had filed the petition for divorce, therefore, he had got him examined through a doctor and had filed a medical certificate (Ex.D-3) in the petition moved by the Applicant/wife under Section 125 of the Code of Criminal Procedure. But, the Applicant/wife refused to go with him levelling allegation that he used to consume liquor and beat her. The Respondent/husband has also stated in his Court statement that the Applicant/wife herself had gone out of his house and had started residing with some other person.

7. From perusal of the evidence led by both the parties, it is clear that though the Respondent/husband had levelled an allegation on the wife that she is leading an adulterous life, he has not been able to establish the said fact. Though the Applicant/wife has refused to live with the Respondent/husband, her refusal is on the ground that the husband is used to consume liquor and beat her. Thus, the finding of the Trial Court that the wife is residing separately from

the husband without sufficient cause and is residing separately at her own will is not proper. Since the Respondent/husband has levelled an allegation of adultery against the Applicant/wife and has not been able to prove this allegation, this is also a cause for her to reside separately from him. Therefore, the finding of the Trial Court is not sustainable.

8. Since the Applicant is wife of the Respondent and is residing separately from him with sufficient cause, she is unable to maintain her and the husband has sufficient means to maintain her, taking into consideration the social status of both the parties and the financial status of the husband, I am of the view that grant of maintenance of Rs.1,500/- per month to the Applicant/wife would be just and proper. Ordered accordingly. This maintenance shall be payable with effect from today.
9. Consequently, the revision is allowed in the aforesaid terms.
10. Record of the Court below be sent back along with a copy of this order for information and necessary action.

Sd/-
(Arvind Singh Chandel)
Judge