

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 217 of 2013**

1. Smt. Mayna Bai, W/o Hridayram Yadav, aged about 28 years,
 2. Ku. Asha Yadav, D/o Hridayram Yadav, aged about 10 years,
 3. Rupesh Kumar, S/o Hridayram Yadav, aged about 03 years,
- Applicant Nos. 2 & 3 are minor through Natural Guardian mother Smt. Mayna Bai
- All are R/o Village Chongi Khapri, Police Station Deokar, Tahsil and District- Durg (C.G.).

----Applicants**Versus**

Hridayram Yadav, S/o Bhilauram Yadav, aged about 30 years, R/o Village Kashitola, Police Station Chuikhadan, Tahsil Chuikhadan, District- Rajnandgaon (C.G.).

---- Respondent

For Applicant	:	Mr. Praveen K. Dhurandhar, Advocate
For Respondent	:	Mr. Abhishek Sharma, Advocate

Hon'ble Shri Justice Arvind Singh Chandel
Order on Board

23/10/2018

1. This revision has been preferred against the order dated 29/01/2013 passed by the 3rd Additional Principal Judge, Family Court, Durg (C.G.) in Miscellaneous Criminal Case No. 187/2012, whereby an application under Section 125 Cr.P.C has been rejected on behalf of applicant No.1 i.e. wife of the respondent, however, monthly maintenance of Rs. 600/- and Rs. 400/- has been granted in favour of applicant Nos. 2 and 3, respectively.
2. There is no dispute on the point that applicant No. 1 is legally wedded wife of the respondent/husband and applicant Nos. 2 & 3 are legitimate child of the respondent/husband. The marriage between applicant No.1

and the respondent was solemnized before 13 years back and out of their wedlock, applicant Nos. 2 & 3 got birth. As pleaded by the applicants that after 8 years of marriage, behaviour of the respondent/husband and his family members changed and they started harassing the applicant No.1/wife mentally and physically. When the wife was seriously ill, her husband left her along with the children to the hose of her parents and later on refused to bring them with him. He demanded dowry also. A report was lodged by the applicant No. 1/wife in this regard. On the basis of which, a charge-sheet for the offence punishable under Section 498-A was submitted by the police against the respondent. Applicant No. 1, being unable to maintain herself and respondent has sufficient mean to maintain herself, filed an application under Section 125 of the Cr.P.C.

3. In his reply, the husband/respondent pleaded that applicant No.1 is residing separately without any reasonable cause. Therefore, she is not entitled to get interim maintenance from him. He further pleaded that he is ready to keep them with him. The wife herself left his house and refused to return.
4. After recording the evidence of both the parties, the learned Family Court rejected the application on behalf of applicant No. 1 on the ground that the wife/applicant No.1 is residing separately without reasonable ground. Therefore, she is not entitled to get any interim maintenance from the respondent. However, the Family Court granted maintenance of Rs. 600/- and Rs. 400/- in favour of applicant Nos. 2 & 3, respectively. Thus, this revision.

5. I have heard counsel for the parties and perused the record minutely.
6. Applicant No. 1 examined herself as Applicant Witness No.1. She also examined her father, Keju as Applicant Witness No.2. The husband/respondent himself examined as Non-Applicant Witness No.1, Girdhar as Non-Applicant Witness No.2, Sukhdev as Non-Applicant Witness No.3 and Milan as Non-Applicant Witness No.4.
7. In para 10 of his cross-examination, the husband/respondent has categorically admitted the fact that he obtained a decree of divorce from the Court of Khairagarh against his wife i.e. Applicant No.1. This fact has also been admitted by the other witness of the Applicant No.1. Thus, it is clear that present Applicant No.1 is a divorced wife of the respondent/husband. There is nothing on record on the basis of which, it can be presumed that Applicant No.1 after taking divorce got re-marry.
8. Explanation b of Section 125 (1) of the Cr.P.C reads as under:-
 - (b) *“Wife” includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.*
9. Therefore, in light of above Applicant No.1 is a divorced wife of the respondent/husband and did not remarry, she is entitled to get maintenance from her husband i.e. the respondent herein.
10. With regard to maintenance amount, the respondent himself has admitted the fact in para 12 of his cross-examination that he is working as Labour and getting Rs. 200/- daily. From the evidence also, it is clear that he owned some agricultural land and he does not have other responsibility. In these circumstances, maintenance of Rs. 600/- and Rs. 400/- granted in favour of applicant Nos. 2 & 3 are on lower side.

11. Looking to the financial status and earning capacity of the respondent/husband, and social status of both the parties the order of monthly maintenance dated 29/01/2013 passed by the Family Court, Durg is modified to the extent that now the respondent/husband namely Hridayram Yadav shall pay Rs. 1000/- and Rs. 1000/- monthly maintenance towards applicant Nos. 2 & 3, instead of Rs. 600/- and Rs. 400/-, respectively. He shall also pay monthly maintenance of Rs. 1500/- to applicant No.1/wife. This modification in the monthly maintenance shall be effective from today.
12. In the result, the Criminal Revision is allowed to the extent indicated above.

Sd/-
(Arvind Singh Chandel)
Judge