

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No.175 of 2018

Mohammad Israil, aged about 28 years (at present aged about 34 years), son of Shri Ismile Khan, resident of behind Mosque, Sanjay Nagar, Police Station Tikrapara, Raipur, District Raipur, Chhattisgarh

---- Applicant

versus

Smt. Salma Begum, aged about 25 years, wife of Israil, daughter of late Hafiz Khan, resident of Gausiya Chowk, Sanjay Nagar, Police Station Tikrapara, Raipur, District Raipur, Chhattisgarh

--- Respondent

For Applicant	:	Shri Kapil Maini, Advocate
For Respondent	:	Shri Sanjay Agrawal, Advocate

Hon'ble Shri Justice Arvind Singh Chandel

Order on Board

20.8.2018

1. With the consent of Learned Counsel appearing for the parties, the matter is heard finally.
2. This revision has been preferred by the husband against the wife being aggrieved by the impugned order dated 27.1.2018 passed by the Family Court, Raipur in M.J.C. No.254 of 2011 allowing the application under Section 125 of the Cr.P.C. preferred by the Respondent/wife and granting her monthly maintenance of Rs.4,000/- and further ordering the Applicant/husband to pay/refund the amount of *stridhan* of Rs.1,50,000/- within one month from the date of the impugned order.
3. Learned Counsel appearing for the Applicant/husband submits that the Respondent/wife is residing separately from the

Applicant/husband without sufficient cause. Earlier the Applicant was convicted under Section 498A of the IPC, but in appeal, he has been acquitted of the charge. Thus, it is clear that the Respondent/wife has no reasonable cause to reside separately from the Applicant/husband. He further submits that in the proceeding under Section 125 of the Cr.P.C., refund of the amount of *stridhan* is not permissible. Thus, the order of the Family Court is against the law. He further submits that looking to the financial status of the Applicant, the grant of monthly maintenance of Rs.4,000/- in favour of the Respondent/wife is on higher side.

4. Learned Counsel appearing for the Respondent/wife admits the fact that in the proceeding under Section 125 of the Cr.P.C., order of refund of the amount of *stridhan* is not permissible in law. Therefore, he prays that the Respondent/wife may be permitted to move an appropriate application before the competent Court of jurisdiction for refund of her *stridhan*. He further submits that since the Applicant/husband has already admitted the fact that he has already given divorce to the Respondent/wife and presently the wife has not re-married, therefore, she has reasonable ground to live separately from the Applicant. Thus, the Family Court has rightly granted the maintenance in favour of the Respondent/wife.
5. I have heard Learned Counsel appearing for the parties and perused the record with due care.
6. Though in appeal the Applicant has been acquitted of the charge under Section 498A of the IPC, he himself has admitted in paragraph 11 of his statement that he has already given divorce to the Respondent/wife. Thus, from his admission, it is clear that

presently the Respondent is his divorced wife and till she does not re-marry, she is entitled to get maintenance from the Applicant and since the divorce has taken place between them, she is living separately from him with a reasonable cause. The provision relating to grant of maintenance to a wife is contained in Section 125(1)(a) of the Code of Criminal Procedure, which runs thus:

“125. Order for maintenance of wives, children and parents.—(1) if any person having sufficient means neglects or refuses to maintain—

(a) his wife, unable to maintain herself, or

xxx xxx xxx xxx

*Explanation.—*For the purposes of this Chapter,—

xxx xxx xxx xxx

(b) “wife” includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.”

7. From the evidence adduced by the parties, it is also clear that the actual monthly earning of the Applicant has not been proved. In these circumstances, looking to the social status of the parties and the earning capacity of the Applicant, the grant of monthly maintenance of Rs.4,000/- in favour of the Respondent appears to be on higher side and the same deserves to be reduced suitably. Therefore, the maintenance is reduced to Rs.3,500/- per month payable with effect from the date of the impugned order of the Family Court, i.e., 27.1.2018.

8. With regard to refund of the *stridhan*, as prayed by Learned

Counsel for the Respondent, liberty is granted in favour of the Respondent to move an appropriate application before the competent Court of jurisdiction in accordance with law.

9. In the result, the revision is disposed of in the aforesaid terms.
10. Record of the Court below be sent back along with a copy of this order forthwith for information and necessary compliance.

Sd/-

(Arvind Singh Chandel)
JUDGE