

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No.190 of 2018

1. Smt. Laxmin, W/o Rambharos, aged about 35 years, Caste Binjhwar,
 2. Kumari Laki, D/o Rambharos, aged about 3 years, through her natural guardian mother Smt. Laxmin, W/o Rambharos, aged about 35 years,
- Both residents of Behind Sabji Mandi, Ward No.22, Janjgir, District Janjgir-Champa, Chhattisgarh, at present, R/o Care of Ramswaroop, Village Balpur, P.S. Champa, District Janjgir-Champa, Chhattisgarh

---- Applicants

versus

Rambharos, S/o Sunder Lal, aged about 40 years, Caste Binjhwar, Resident of Behind Sabji Mandi, Ward No.22, Janjgir, District Janjgir-Champa, Chhattisgarh, at present, R/o Mahantpara Sheorinarayan, P.S. Sheorinarayan, District Janjgir-Champa, Chhattisgarh

--- Respondent

For Applicants	:	Shri F.S. Khare, Advocate
For Respondent	:	Shri Vivek Singhal, Advocate

Hon'ble Shri Justice Arvind Singh Chandel

Order on Board

25.7.2018

1. With the consent of Learned Counsel appearing for the parties, the matter is heard finally.
2. The instant revision has been preferred against the order dated 27.11.2017 passed by the Family Court, Janjgir, District Janjgir-Champa in M.Cr.C. No.11 of 2017, whereby the Family Court has rejected the application under Section 125 of the Cr.P.C. so far as it related to grant of maintenance to Applicant No.1 and has granted maintenance only in favour of Applicant No.2/minor daughter of the Respondent.

3. Both the Applicants filed an application under Section 125 of the Cr.P.C. for grant of maintenance stating *inter alia* that the marriage of Applicant No.1 with the Respondent took place 15-16 years back. Just after few days of the marriage, the Respondent started subjecting Applicant No.1/wife to cruelty and harassment. Out of their wedlock, Applicant No.2 took birth, but despite that, the cruelty and harassment continued. Thereafter, on 6.12.2016, the Respondent thrown out the Applicants from his house. They have no source of income and the Respondent is able to maintain them. In his reply, the Respondent admitted the fact that Applicant No.1 and Applicant No.2 are his wife and daughter, respectively. He denied all the allegations made against him and pleaded that Applicant No.1/wife herself had beaten him and ousted him out of his house. Whenever he returned home, she did not allow him to enter his house. She has snatched his *thela* of *gupchup* and now he only works as a labour.
4. After recording evidence, the Family Court, vide the impugned order, has rejected the application of Applicant No.1/wife on the ground that she is residing separately from the Respondent/husband without any reasonable cause and has granted monthly maintenance of Rs.1,000/- in favour of Applicant No.2 only. Hence, this revision by the Applicants.
5. Learned Counsel appearing for the Applicants submits that though in her cross-examination, Applicant No.1/wife has stated that she is residing separately from the Respondent/husband at her own will, she is residing separately from him due to his ill behaviour and harassment given to her. In her examination-in-chief, she has

categorically stated about the harassment of the Respondent/husband which was not rebutted by him. Therefore, the Family Court ought to have accepted that there is a reasonable cause for Applicant No.1/wife to reside separately from the Respondent/husband. In support of his contention, he placed reliance on **AIR 2015 SC 554 (Sunita Kachwaha v. Anil Kachwaha)** and **JT 2002 (3) SC 409 (Laxmi Bai Patel v. Shyam Kumar Patel)**. He further submits that the maintenance granted in favour of Applicant No.2 is on lower side and the same deserves to be enhanced suitably.

6. Learned Counsel appearing for the Respondent submits that Applicant No.1/wife herself has admitted that she does not want to live with the Respondent/husband and is living separately from him at her own will. Therefore, the Family Court has rightly rejected the application of Applicant No.1/wife. He further submits that looking to the financial status of the Respondent, the grant of maintenance in favour of Applicant No.2 is just and proper.
7. I have heard Learned Counsel appearing for the parties and perused the record with due care.
8. Sub-section (4) of Section 125 of the Code of Criminal Procedure runs thus:

“125. Order for maintenance of wives, children and parents.— xxx xxx xxx

(4) No wife shall be entitled to receive an allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be, from her husband under this section if she is living in adultery, or if, without any sufficient reason,

she refuses to live with her husband, or if they are living separately by mutual consent.”

9. In **Laxmi Bai Patel case** (supra), it has been observed thus:

“6. Therefore, the question that arises for consideration is whether on the facts and circumstances it can be said that the case made out by the petitioner before the High Court was an exceptional one in which allowing the order passed by the learned magistrate, which was confirmed by the learned 4th additional sessions judge in revision to stand, would result in abuse of the process of the court and lead to failure of justice. To put it differently, does the statements made by the wife that she had left the matrimonial home voluntarily and that she was earning Rs.50/- per day by agricultural operations, disentitle her to receive maintenance from her husband? It is our considered view that such statements without anything more would not be sufficient to deny maintenance to the wife from her husband. It is to be kept in mind that it is the responsibility of the husband to maintain his wife and wife has the right to claim maintenance so long as she stays away from the matrimonial home under compelling circumstances. The wife's right to claim maintenance under section 125 Cr.P.C. can be denied only in the circumstances provided under sub-section (4) of the said section. On the facts and circumstances of the case as found by the courts below the said sub-section is not attracted. Therefore, the High Court was clearly in error on upsetting the order passed by the learned judicial magistrate first class granting maintenance @ Rs.250/- per month to the wife which was confirmed in revision by the 4th additional sessions judge. In the result, the appeal is allowed, the order dated 2.8.2000 of the High Court in miscellaneous criminal case no.2472 of 1999 is set aside and the order dated 27.1.1998 passed by the learned judicial magistrate first class, Jabalpur in misc. criminal case no.188 of 1997 which was confirmed by the order dated 19.2.1999 of the 4th upper additional sessions judge, Jabalpur in criminal revision no.42 of 1998 is restored.”

10. In the light of above, on examination of the evidence on record in

the instant case, I find that though Applicant No.1/wife has admitted and stated the fact that she does not want to live with the Respondent/husband and she herself has left the Respondent, she herself has stated the reason behind this that the conduct of the Respondent/husband was not well with her. In her examination-in-chief also, at paragraphs 3 and 4, she has categorically stated that just after the marriage, she was subjected to cruelty and harassment by the Respondent/husband and his family members and on 6.12.2016, the Respondent thrown them out of his house. The above statement of Applicant No.1/wife has not been rebutted during her cross-examination. Therefore, even if she has admitted that she is living separately from the Respondent at her own will and she does not want to live with him, the reason behind this is ill-treatment and misconduct of the Respondent with her and the same is thus established. Therefore, Applicant No.1/wife has sufficient cause to live separately from the Respondent/husband. In these circumstances, the finding of the Family Court that Applicant No.1/wife is residing separately from the Respondent at her own will is not acceptable.

11. Since Applicant No.1 is wife of the Respondent and is living separately from him with sufficient cause and is unable to maintain her and as observed by the Family Court, the Respondent/husband has sufficient means to maintain the Applicants, Applicant No.1/wife is also entitled to get maintenance from the Respondent/husband. Looking to the social status of the parties and financial status of the Respondent, Applicant No.1/wife is granted monthly maintenance of Rs.2,000/- payable from today. The grant of maintenance of Rs.1,000/- per month in favour of

Applicant No.2/minor daughter is just and proper.

- 12.** In the result, the revision is allowed to the extent indicated above.

Sd/-

(Arvind Singh Chandel)
JUDGE