

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No.757 of 2017

Order Reserved on : 3.7.2018

Order Passed on : 3.10.2018

Gurudas Mal Hirwani, S/o Late Laxman Das Hirwani, aged about 45 years, R/o Behind Gurunanak School, Kachhi Kholi, Baba Hardasram Nagar, Sindhi Camp Akola, Tahsil and District Akola, M.S.

---- Applicant

versus

Smt. Sheela Hirwani, W/o Gurudas Mal Hirwani, D/o Ishwar Lal Bajaj, aged about 42 years, R/o Shindi Colony, Jarhabhata, Bilaspur, Tahsil and District Bilaspur, Chhattisgarh

--- Respondent

For Applicant	:	Dr. Shailesh Ahuja, Advocate
For Respondent	:	Shri U.K.S. Chandel, Advocate

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. ORDER

1. The instant revision has been preferred by the husband against the order dated 16.5.2017 passed by the Family Court, Bilaspur in M.Cr.C. No.215 of 2013, whereby the Family Court has granted maintenance of Rs.12,000/- per month in favour of the Respondent/wife.
2. Case of the Respondent/wife is that she was married to the Applicant at Akola (Maharashtra) according to the Hindu rites and rituals on 13.12.2009. After the marriage, she started living with the husband at Akola (Maharashtra). She was being taunted for bringing lesser dowry and for bringing poor quality of articles. She was also treated with physical and mental cruelty by the husband and his family members. The husband was not taking interest in

making physical relationship with her. When her cousin came to know about these things, he took her back with him in the month of December, 2010. For about 1½ months, she stayed at the house of her *mousi* (aunt) and thereafter she went to the house of her parents at Bilaspur in the month of February, 2011. Since then, she is residing at the house of her parents at Bilaspur and she is dependent upon them. She is unable to maintain her. The husband owns and runs a bakery in the name of Anand Confectionery Stores at Akola (Maharashtra). He has also many branches of that confectionery stores. He earns about Rs.1,00,000/- per month from this business. She has made a demand of Rs.15,000/- per month as maintenance.

3. The Applicant/husband, in his reply, has denied the allegations levelled against him and pleaded that the Respondent/wife did not want to live in the joint family and was forcing him for leaving the joint family and reside separately. She used to refuse him to make physical relationship with her. In December, 2010, she herself went back from his house along with her brother. Since then, she is residing at her maternal house. He tried to bring her back, but she refused to come with him. He has filed an application under Section 9 of the Hindu Marriage Act at Akola (Maharashtra). The stores being run in the name of Anand Confectionery is owned by his brother.
4. On the basis of said pleadings, the Family Court framed issues and after taking evidence on record, vide the impugned order dated 16.5.2017, has granted maintenance of Rs.12,000/- per month in favour of the Respondent/wife. Hence, this revision by the husband.

5. Learned Counsel appearing for the Applicant/husband submitted that the Respondent/wife is residing separately from the husband at her own will, therefore, she is not entitled to get any maintenance from him. He further submitted that she is capable to maintain her and the said Anand Confectionery Stores is not owned by the Applicant/husband. It is owned by the brother of the Applicant. Therefore, the impugned order is not sustainable.
6. Per contra, Learned Counsel appearing for the Respondent/wife submitted that from the evidence on record it is clear that the Respondent/wife was subjected to cruelty. She is residing with her parents since 2010. The Applicant/husband never tried to bring her back. The application under Section 9 of the Hindu Marriage Act filed by the Applicant has already been rejected. He further submitted that Anand Confectionery Stores is owned by the Applicant himself and he has admitted this fact in the legal notice (Ex.P1) and also in the complaint (Ex.P4) made by him to the police. Thus, it is clear that the said stores is owned by the Applicant himself. Therefore, the Applicant has sufficient means to maintain the Respondent and the Family Court has rightly granted maintenance of Rs.12,000/- per month in favour of the Respondent.
7. I have heard Learned Counsel appearing for the parties and perused the record with due care.
8. The Respondent/wife examined herself and one witness Vikas Nagwani in her favour. The Applicant examined himself only. Both the husband and the wife have made statements under Order 18 Rule 4 of the Code of Civil Procedure on affidavit commensurate to

their pleadings.

- 9.** From the evidence adduced by the parties, it is clear that the marriage between the parties was solemnised on 13.12.2009 and in December, 2010, cousin of the Respondent/wife took her back with him and since then she is living at her maternal house. As stated by her, she was being treated with cruelty and her brother had taken her back after he came to know about this. She has admitted the fact that in December, 2010, her brother had taken her back and since then she is living at her maternal house. The Applicant/husband has not explained the reason why the Respondent/wife left her matrimonial house and returned her maternal house. Though the Applicant has stated that he had called a panchayat meeting of Sindhi Community, what talks took place in the said meeting and who were present in the meeting, these details have not been given by him nor has he examined any witness in this regard. The Applicant has also admitted the fact that the application under Section 9 of the Hindu Marriage Act which was filed by him was allowed, but the said order passed in his favour was later on set aside. Apart from this, he has not examined any witness from which it could be established that he ever tried to bring the Respondent back to his house. Thus, from the evidence, it is clear that the Respondent has sufficient reason to live separately from the Applicant. Therefore, the finding arrived at by the Family Court in this regard is in accordance with law.
- 10.** With regard to quantum of the maintenance, as pleaded by the Respondent/wife, the Applicant/husband owns Anand Confectionery Stores at Akola (Maharashtra) and earns Rs.1,00,000/- per month. In his Court statement, the

Applicant/husband has stated that Anand Confectionery Stores is owned by his brother, namely, Ramesh Laxman Das. Though as per the registration certificate (Ex.D1), owner of the said stores is Ramesh Laxman Das, the Applicant/husband has admitted the fact that the said registration certificate (Ex.D1) has been issued for the period from 2016 to 2019. From perusal of the legal notice (Ex.P1) and the police complaint (Ex.P4), it reveals that in both the documents, the Applicant/husband has stated him to be the owner of Anand Confectionery Stores. In these circumstances, if it is the plea of the Applicant that the said stores is owned and run by his brother Ramesh Laxman Das, statement of Ramesh Laxman Das in support thereof is essential. Likewise, the Applicant has stated that he works under Kanhaiyalal Rangwani. But, in support of this, he has not examined Kanhaiyalal Rangwani or any other witness. Therefore, this fact is also not established. Looking to the evidence on record, I find that the Family Court has rightly arrived at the conclusion that Anand Confectionery Stores is owned and run by the Applicant himself and, therefore, the grant of maintenance of Rs.12,000/- per month in favour of the Respondent/wife is just and proper.

11. Resultantly, I find no merit in the revision. It is, therefore, dismissed.
12. Record of the Family Court be sent back along with a copy of this order forthwith for information and necessary compliance.

Sd/-

(Arvind Singh Chandel)
JUDGE