

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No.983 of 2017

Order Reserved on : 26.7.2018

Order Passed on : 24.10.2018

Devendra Dewangan, S/o Mohanlal Dewangan, aged about 34 years,
R/o House No.C-13, Nehru Nagar, Bilaspur, Tahsil Bilaspur, District
Bilaspur, Chhattisgarh

---- Applicant

versus

1. Smt. Sushma Dewangan, W/o Devendra Dewangan, aged about 31 years,
2. Kumari Taniya Dewangan, D/o Devendra Dewangan, aged about 14 months,

Respondent No.2 is minor through her natural guardian mother Smt. Sushma Dewangan, W/o Devendra Dewangan, aged about 31 years,
Both are R/o Behind Royal School, Behind Saw Mill, Chandra Nagar, Kohaka, Bhilai, District Durg, Chhattisgarh

--- Respondents

For Applicant	:	Shri Manoj Paranjpe with Shri Bharat Sharma, Advocates
For Respondents	:	Ms. Shipra Biswas, Advocate

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. ORDER

1. This revision is directed against the order dated 19.7.2017 passed by the 1st Additional Principal Judge, Family Court, Durg in Miscellaneous Criminal Case No.272 of 2015, whereby the application under Section 125 of the Code of Criminal Procedure preferred by the Respondents has been allowed and the Respondents have been granted monthly maintenance of total Rs.3,000/-.

2. Facts of the case, in brief, are that the Respondents filed an application under Section 125 of the Code of Criminal Procedure for grant of maintenance. The application was filed on the allegations *inter alia* that Respondent No.1 was married to the Applicant on 24.2.2012. Out of their wedlock, on 28.12.2013, Respondent No.2/daughter took birth. It was pleaded that after one month of the marriage, the Applicant/husband and his family members started subjecting Respondent No.1/wife to torture for bringing dowry. It was further pleaded that on 5.2.2014, the Applicant and his family members obtained signature of Respondent No.1 by force on a stamp paper and left her out of her matrimonial house along with her daughter/Respondent No.2. Since then, she is residing separately from the husband at the house of her parents along with her daughter/Respondent No.2. It was also pleaded that they are unable to maintain them. The Applicant earns Rs.15,000/- per month by having computer supply work at different places.
3. The Applicant filed reply and denied all the allegations. It was pleaded by him that Respondent No.1/wife has left his house at her own will without any sufficient reason. She has also sufficient source of income. She is capable to maintain her and the daughter/Respondent No.2. She is working in a private hospital as a nurse and getting Rs.7,000/- per month from there. However, he is working in a private institution as a computer teacher and earns Rs.3,800/- per month only.
4. After taking evidence of both the parties, vide the impugned order dated 19.7.2017, the Family Court has allowed the application under Section 125 of the Code of Criminal Procedure and granted

monthly maintenance of total Rs.3,000/- in favour of the Respondents. Hence, this revision.

5. Learned Counsel appearing for the Applicant submitted that Respondent No.1/wife herself left the matrimonial house without sufficient reason, but the Family Court has not appreciated this fact. He further submitted that on 5.2.2014, Respondent No.1 herself left the house of the Applicant and she herself executed an agreement also. Thereafter, the Applicant preferred an application for obtaining a decree of divorce from Respondent No.1. Vide order dated 2.1.2017 passed in Civil Suit No.167-A of 2016, the Family Court granted a decree of divorce in favour of the Applicant/husband on the ground of cruelty subjected to him by Respondent No.1/wife, but the Family Court has also not appreciated this very fact. Therefore, the Family Court has perversely recorded its finding without appreciating the evidence adduced by the Applicant/husband.
6. Learned Counsel appearing for the Respondents submitted that though there are signatures of Respondent No.1/wife on the agreement dated 5.2.2014 (Ex.P7), from the evidence on record it is clear that the signatures were not put by Respondent No.1/wife willfully and the same were obtained from her under pressure. Therefore, a report was also made by Respondent No.1 in this regard and thus, Respondent No.1 herself left the matrimonial house is not established. From the evidence on record, it is also clear that she has sufficient cause to reside separately from the Applicant. She further submits that though a decree of divorce has been obtained by the Applicant/husband, the said decree has not attained finality as the same is sub-judice before this Court. Since,

the present status of Respondent No.1 is of a divorced wife of the Applicant, on this very ground, she is entitled to live separately from him. Therefore, the Family Court has rightly granted the maintenance in favour of both the Respondents.

7. I have heard Learned Counsel appearing for the parties and perused the record minutely.
8. Respondent No.1/wife examined herself as Applicant Witness No.1, her father Domar Dewangan as Applicant Witness No.2 and the Applicant/husband examined himself as Non-Applicant Witness No.1 and his father Mohanlal as Non-Applicant Witness No.2.
9. A bare perusal of the agreement dated 5.2.2014 (Ex.P7) shows that it is mentioned therein that on 28.12.2013, Respondent No.2/daughter took birth. Thereafter, on 5.2.2014, the agreement in question was executed on which signatures of Respondent No.1/wife are put. In the said agreement, it is stated by Respondent No.1/wife that she is not willing to live with the Applicant/husband, he has not tortured her in any manner and she is going away along with his father at her own will. First, if this agreement is considered to be true, it does not appear to be natural that a wife will leave house of her husband within 2 months of birth of her child. Respondent No.1/wife, in her Court statement, has denied the fact that she put her signatures on the said agreement willfully. Rather, she has stated that she put her signatures on the agreement under pressure. She also lodged reports vide Ex.P1 and P2. The agreement (Ex.P7) was written by Kotwar Milapdas, but he and other witnesses, whose signatures are put on the agreement, have not been examined before the

Court. In these circumstances, it is suspicious that Respondent No.1/wife would have executed the said agreement (Ex.P7) at her own will. Secondly, after execution of the said agreement (Ex.P7), the Applicant/husband has not filed any application under Section 9 of the Hindu Marriage Act. Instead, he directly filed a suit for divorce under Section 13 of the Hindu Marriage Act on the ground of cruelty allegedly subjected to him by Respondent No.1/wife. If, as contained in the agreement (Ex.P7), Respondent No.1/wife had left her matrimonial house at her own will, the suit for divorce would have been filed jointly by both the Applicant and Respondent No.1 with mutual consent. Looking to the above evidence on record, it is clear that though in the agreement (Ex.P7) there are signatures of Respondent No.1/wife, she had signed the said agreement willfully is suspicious. Therefore, Respondent No.1/wife herself left her matrimonial house at her own will is not established.

10. From the averments of the parties, it is also clear that during pendency of the application under Section 125 of the Code of Criminal Procedure moved by the Respondents herein, vide order dated 2.1.2017, the decree of divorce has been granted by the Family Court in favour of the Applicant/husband. Thus, it is clear that presently, Respondent No.1/wife is a divorced wife of the Applicant. From the evidence, it is also clear that Respondent No.1/wife herself left her matrimonial house at her own will is not established and, therefore, Respondent No.1, being a divorced wife of the Applicant, she will be entitled to get maintenance from the Applicant/husband till she does not remarry.

11. With regard to quantum of the maintenance, the Applicant/husband, in his cross-examination, at paragraph 11, has

admitted the fact that he earns Rs.15,000 to 20,000/- per month from the work of computer. Therefore, looking to his said monthly income, the grant of monthly maintenance of total Rs.3,000/- in favour of both the Respondents cannot be said to be on higher side. In my considered opinion, looking to the income of the Applicant, it is just and proper.

12. Consequently, I find no merit in the revision. It is, therefore, dismissed.
13. 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