

HIGH COURT OF CHHATTISGARH, BILASPUR

Cr.R. No. 742 of 2006

- Laxmi Bai, W/o Bajhroo caste- Kavar, Aged 35 years, R/o Kedar, Ring Road, Police Station- Ambikapur, District- Sarguja, C.G.

---- Petitioner

Versus

- Bajhroo Singh, S/o Ram Prasad, Caste-Kavar, aged 40 years, occupation- Service (Peon), District Court Ambikapur, District- Sarguja, C.G.

---- Respondent

For Petitioner	:	Mr. Pawan Shrivastava (Amicus Curie) Advocate.
For respondent	:	Mr. Pushkar Sinha (Amicus Curie), Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant
Order on Board

29-11-2019

Heard.

1. This petition has been brought challenging the correctness and legality and propriety of order dated 15.11.2006 passed by the learned Family Court in Miscellaneous Criminal Case No.394 of 2005 by dismissing the application of the applicant praying for grant of monthly maintenance.
2. It is submitted by the learned Mr. Pawan Shrivastava (amicus curie) appearing for the applicant that in the impugned order, the learned Family Court has very clearly held that applicant is the married wife of the respondent and she is living separately for which there is sufficient cause. Her application has been rejected only on one ground that the applicant has failed to prove that she is unable to maintain herself. It is further submitted that from application under Section 125 Cr.P.C. has been filed on ground that the applicant is unable to maintain herself. Therefore, any omission made by her in her statement before the Court by itself cannot be made a ground to reject her application. The respondent has also, in his evidence and while cross-examining the

witnesses of applicant, not made any statement or put any question to show that the applicant is capable of maintaining herself. Therefore, this petition be allowed.

3. Learned Mr. Pushkar Sinha (amicus curie) appearing for the respondent submits that there is a very clear mention in the provision under Section 125 of Cr.P.C. that the entitlement for grant of maintenance to person is based on the inability to maintain himself or herself and this provision is specific under Section 125(1)(b) of Cr.P.C. Therefore, in case, there is omission of statement by the applicant herself in her evidence that should be viewed as deliberate and there was no requirement for the respondent to bring in any other evidence in this respect because the fact is established by itself, therefore, revision be dismissed.
4. The only point for consideration before this Court is whether the applicant has proved in accordance with Section 125(1)(b) of Cr.P.C. that she is unable to maintain herself.
5. Perused the record of the learned Family Court Laxmi Kumari (A.W.-1) has stated about her marriage and about the income of her husband and also she is claiming that she prays for maintenance of Rs.2,000/- to Rs.3000/- per month, but nowhere in her examination in chief, she has stated that she is unable to maintain herself, on the other hand, she has stated that she is living separately from her husband since 4 to 5 years and in this period of living how she was maintained, this has not been explained. No question has been put in her cross-examination regarding her own income. The other examined witnesses have also not stated anything regarding the inability of the applicant to maintain herself. Similarly in the statement of witnesses examined by respondent side also, there is no mention regarding the inability of applicant to maintain herself. Therefore, there being no specific evidence presented from the applicant side to show that she was unable to maintain herself, there

was no burden on the past of respondent]to rebut anything. Therefore, I do not find any fault in the impugned order regarding its legality, correctness or propriety. Therefore, this revision is dismissed.

6. Accordingly, the petition stands disposed off.

Monika

Sd/-
(Rajendra Chandra Singh Samant)
Judge