

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 34 of 2019**

- Tumendra Kumar, S/o Hublal Sahu, aged about 26 years, R/o. Village Machandur, District Durg (C.G.)

---- Applicant

Versus

1. Smt. Manju (Rukhma), W/o. Tumendra Kumar, D/o. Ramlal Sahu, aged about 24 years,
2. Ku. Nitika Sahu, D/o. Smt. Manju (Rukhma), aged about 7 years, being a minor is represented through her natural guardian mother namely Smt. Manju (Rukhma)

Both the above respondents are R/o. Ward No. 1, Nayapara, Durg, District Durg (C.G.)

---- Respondents

For Applicant	:	Mr. Prasoon Agrawal, Adv.
For Respondent	:	None, though served.

Hon'ble Smt. Justice Rajani Dubey**Order on Board****04.07.2019**

1. The applicant herein is the husband of Respondent No. 1 and father of Respondent No. 2. He has preferred this revision against the order dated 03.12.2018 passed by Third Additional Principal Judge, Family Court, Durg, in Miscellaneous Criminal Case No. 1266/2017, whereby the Family Court allowed the application of respondents (wife and daughter) under Section 125 Cr.P.C and directed the applicant to pay sum of Rs. 1,500/- to respondent No.1 (wife) and Rs. 500/- to respondent No. 2. (daughter) per month for maintenance to the respondents, total in Rs. 2,000/-.

2. It is not in dispute that the applicant and the respondent

No. 1 got married on 26.04.2016 and out of their wedlock a female child was born.

3. In this application, respondent (wife) alleged that after marriage, the applicant started torturing her both mentally and physically on the ground that the appellant was not satisfied with the dowry brought by her. From 09.09.2016, she and her husband started living separately. Respondent No.1 has stated that as she is not in a position to maintain herself and her daughter, so, she may be given Rs. 5000/- per month towards the maintenance.

5. In reply, the applicant stated that neither he had demanded any dowry nor he tortured and misbehaved with her. On 16.08.2017, his wife with his daughter left the house willingly without justifiable cause and the applicant was still willing to live with her.

6. Learned Family Court, by its order dated 03.12.2018 allowed the application of respondents and directed the applicant to pay sum of Rs. 1500/- to respondent No. 1 and Rs. 500/- to Respondent No. 2.

7. Learned counsel for the applicant submits that the learned Court below has failed to appreciate the statements of the witnesses available on record in its true perspective, which have resulted the erroneous findings and consequent judgment. The Court below committed grave error in holding that the respondents have proved its case beyond reasonable doubts. The Court below ought to have appreciated the financial position of the applicant. He works as a daily wage labour and earns Rs. 200/- for 15 to 20 days in a month. The learned Court below has failed to appreciate that respondent No.1 has herself not supported her own case and admitted that all the allegations on the applicant are baseless. Respondent No. 1 was living

separately from the applicant without any reason. She has willfully left the house and admitted the fact that applicant has not forced her.

8. Heard learned counsel for the applicant and perused the material on record including the impugned order.

9. Before the Family Court, respondent No. 1 had examined two witnesses. One is herself (PW-1) and second her father (PW-2). Apart from examining himself as non-applicant witness No.1, the applicant examined two other witnesses to prove that he had never treated the respondent with cruelty as also prove that he wants to live with his wife and attempt was made to bring her back.

10. There is no evidence to prove that the appellant ever demanded dowry from the parents of the respondent before marriage or soon after marriage. Even Shiv Prashad Sahu (PW-2), father of the Respondent No. 1, did not state that he had ever been demanded dowry before or after the marriage. He also submitted that he never complaint in his society against his son-in-law. But he complaint at police station. The respondent No.1 asserted that she has made several complaints but she, on the other hand, admits that she moved complaints only after leaving her matrimonial house.

11. Section 125 of Cr. P.C. is reproduced as below:

If any person having sufficient means neglects or refuses to maintain-

- (a) His wife, unable to maintain herself, or
- (b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or
- (c) his legitimate or illegitimate child (not being a

married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or

(d) His father or mother, unable to maintain himself or herself,

a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for maintenance of his wife or such child, father or mother, at such monthly rate, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct:

Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means:

Provided further that the Magistrate may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this sub-section, order such person to make a monthly allowance for the interim maintenance of his wife or such child, father or mother, and the expenses of such proceeding which the Magistrate considers reasonable, and to pay the same to such person as the Magistrate may from time to time direct:

Provided also that an application for the monthly allowance for the interim maintenance and expenses of proceeding under the second proviso shall, as far as possible, be disposed of within sixty days from the date

of the service of notice of the application to such person.

12. in the impugned order, the issue of residing separately with sufficient cause is missing in light of **2003 (11 SCC 303) & 2016 (SCC Online 6368)**. It is clear that non-applicant/wife is residing separately without any sufficient reason. Hence, she is not entitled for maintenance under Section 125 of Cr.P.C. However, respondent No. 2 being seven years old daughter of applicant and residing with her mother so, considering the facts & circumstances of the case, she is entitled to get maintenance from his father.

13. Accordingly, the revision is partly allowed to the extent indicated herein below :-

(I). The impugned order dated 03.12.2018 of the Court below is rejected in respect of Smt. Manju (Rukhma) (respondent No. 1) and order that respondent No. 1 is not entitled to maintenance.

(II). The impugned order dated 03.12.2018 of the Court below is modified in respect of Ku. Nitika Sahu (respondent No. 2) and ordered that respondent No. 2 is entitled to receive Rs. 1500/- per month instead of Rs. 500/- per month.

Sd/-
(Rajani Dubey)
JUDGE