

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No.508 of 2014

Order Reserved on : 26.10.2018

Order Passed on : 23.1.2019

1. Smt. Dhanbai Khare, aged about 20 years, wife of Dinesh Khare, resident of Silyari Bhatha, P.S. Urga, Tahsil and Civil and Revenue District Korba, Chhattisgarh
2. Minor Mayank, aged about 02 years, son of Dinesh Khare, through mother Smt. Dhanbai Khare, aged about 20 years, wife of Dinesh Khare, resident of Silyari Bhatha, P.S. Urga, Tahsil and Civil and Revenue District Korba, Chhattisgarh

---- Applicants

versus

Dinesh Khare, aged about 31 years, son of Shri Suklal, Caste Satnami, Resident of Village Davarmal, P.S. Urga, Tahsil and Civil and Revenue District Korba, Chhattisgarh

--- Respondent

For Applicants	:	Ms. Seema Singh, Advocate
For Respondent	:	Smt. Indira Tripathi, Advocate

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. ORDER

1. This revision has been preferred by the Applicants against the order dated 30.6.2014 passed by the Family Court, Korba in M.J.C. No.79 of 2013, whereby the Family Court has rejected the application under Section 125 of the Code of Criminal Procedure with regard to Applicant No.1/wife and granted monthly maintenance of Rs.1,500/- in favour of Applicant No.2/son.

2. Facts of the case, in brief, are that marriage between Applicant No.1 and the Respondent was solemnised on 5.7.2011. Out of their wedlock, Applicant No.2 took birth on 4.4.2012. Allegedly, after the marriage, the Respondent used to abuse Applicant No.1/wife in drunken condition, make demand for motorcycle, commit *marpeet* with her and give her mental and physical torture. On 14.3.2013, he ousted her out of his house after beating her and since then she is residing at her paternal house along with her son/Applicant No.2. She is unable to maintain herself and her son. The Respondent works as a Shiksha Karmi and earns salary of Rs.18,000/- to 20,000/- per month.
3. In his reply, the Respondent denied the allegation made against him and pleaded that Applicant No.1/wife herself left his house without any reasonable cause and is residing separately from him. He never made demand for any motorcycle nor did he ever torture her. It was further pleaded by him that earlier also she had left him and gone away. On 24.9.2012, a social meeting was convened in which she had admitted her guilt and returned to her matrimonial house. He had also arranged a separate accommodation for her living, but even thereafter he did not find any change in her behaviour. Thereafter, without any reason, she again left him and went away. When she did not return, he filed a petition for divorce. Thereafter, she lodged a false report of demand for dowry. Since she is residing separately from him without any sufficient cause, she is not entitled to get any maintenance. The Respondent further pleaded that though he is working as a Shiksha Karmi, he is getting salary of only Rs.10,000/- per month. He also bears responsibility of his parents.

4. Before the Family Court, Applicant No.1/wife examined herself as Applicant Witness No.1 and also examined her father Ramshankar as Applicant Witness No.2 and Shammelal as Applicant Witness No.3. The Respondent examined himself as Respondent Witness No.1, Roopchandra as Respondent Witness No.2 and Shuklal as Respondent Witness No.3.
5. The Family Court, after taking evidence, vide the impugned order dated 30.6.2014, rejected the application under Section 125 of the Cr.P.C. with regard to Applicant No.1/wife on the ground that she is residing separately from the Respondent/husband without any reasonable cause, but granted monthly maintenance of Rs.1,500/- in favour of Applicant No.2/son. Hence, the instant revision.
6. Learned Counsel appearing for the Applicants submitted that there is sufficient evidence on record on the basis of which it is clearly established that Applicant No.1/wife has sufficient cause to reside separately from the Respondent/husband. Despite that, her application for maintenance has been rejected by the Family Court. She further submitted that looking to the financial status of the Respondent, the grant of monthly maintenance of Rs.1,500/- in favour of Applicant No.2/son is on much lower side.
7. Learned Counsel appearing for the Respondent supported the impugned order.
8. I have heard Learned Counsel appearing for the parties and perused the record with due care.

9. It is not in dispute that Applicant No.1 is legally wedded wife of the Respondent and Applicant No.2 is their legitimate child. As pleaded and deposed by Applicant No.1/wife, she is residing separately from the Respondent/husband since 14.3.2013. In her cross-examination, in paragraph 5, Applicant No.1 has admitted the fact that the Respondent had called a social meeting along with villagers and on being inculcated in the meeting she had gone with the Respondent to reside with him. In paragraph 6 also, she has admitted that she resided with the Respondent for about 3 months and thereafter the Respondent arranged a separate house for her away from his parents and she resided with him in that separate house. In paragraph 7 of her cross-examination, she has further admitted that after her going to her paternal house, the Respondent submitted an application before the Parivar Paramarsh Kendra for compromise. She has further admitted that during the counselling in the said Paramarsh Kendra, she had refused to reside with the Respondent. During her cross-examination, a proposal was made by the Respondent that he wants to keep her with him, but, at that time also, she refused to reside with him. Her witness Shammelal (Applicant Witness No.3) has also admitted that a social meeting was convened at the house of Applicant No.1 in which she was inculcated to live happily at her matrimonial house. This witness has also admitted that the Respondent had kept Applicant No.1 well and it came to the knowledge that Applicant No.1 did not want to live with her in-laws and wanted to live with the Respondent in a separate house. Earlier, it has been observed that Applicant No.1 and the Respondent were residing separately in a separate house away from the parents of the Respondent.

- 10.** From the evidence on record, it is clear that Applicant No.1 herself does not want to reside with her in-laws and on being asked by her the Respondent resided with her in a separate house away from his parents. It is also clear that a social meeting was convened in the house of Applicant No.1, where also Applicant No.1 was inculcated to live happily at her matrimonial house. The Respondent had also submitted an application before the Parivar Paramarsh Kendra, but Applicant No.1 had again refused to live with him. The Respondent also offered in the Court to Applicant No.1 for her living with him, but she again refused. Applicant No.1 has not stated any reasonable ground of her refusal to live with the Respondent/husband. Thus, the finding of the Family Court that Applicant No.1/wife is residing separately from the Respondent/husband without any reasonable cause is just and proper. The Family Court has rightly rejected the claim of maintenance of Applicant No.1/wife.
- 11.** With regard to Applicant No.2/son, the Family Court has granted maintenance of Rs.1,500/- per month. As per salary-slip (Ex.P3) of the Respondent, in the month of March, 2014, after deduction, he had received Rs.11,184/- as salary. He works as a Shiksha Karmi Grade-III. Parents of the Respondent are also dependent upon him. Looking to the above facts and circumstances and considering the income of the Respondent, the grant of monthly maintenance of Rs.1,500/- in favour of Applicant No.2/son is on lower side. Therefore, the monthly maintenance of Applicant No.2/son is enhanced from Rs.1,500/- to Rs.3,000/- per month payable with effect from today.

12. In the aforestated premises, the instant revision is allowed in part to the extent indicated above.
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