

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No.27 of 2018

Order Reserved on : 12.11.2018

Order Passed on : 28.1.2019

Kamlesh, son of Babu Lal Chandrakar, aged about 35 years, R/o Harna Bandha, Muktidham, Durg, Tahsil and Police Station Durg, District Durg, Chhattisgarh

---- Applicant

versus

Parwati, wife of Kamlesh Chandrakar, aged about 32 years, R/o Baigapara, Durg, Tahsil and District Durg, Chhattisgarh

--- Respondent

and

Criminal Revision No.379 of 2018

Smt. Parwati, wife of Kamlesh Chandrakar, aged about 32 years, R/o Baigapara, Durg, Tahsil and District Durg, Chhattisgarh

---- Applicant

versus

Kamlesh Babulal Chandrakar, age 35 years, R/o Harnabandha Muktidham, Durg, Tahsil and Police Station Durg, District Durg, Chhattisgarh

--- Respondent

For husband Kamlesh	:	Shri Praveen Dhurandhar, Advocate
For wife Smt. Parwati	:	Shri Arvind Dubey, Advocate

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. ORDER

1. Since both the revisions arise out of the common order dated 30.11.2017, they are disposed of together by this common order.
2. The instant revisions have been preferred against the order dated

30.11.2017 passed by the 1st Additional Principal Judge, Family Court, Durg in Miscellaneous Criminal Case No.75 of 2015.

3. Initially, vide order dated 29.6.2000 passed in M.Cr.C. No.309 of 1998, the Family Court granted monthly maintenance of Rs.350/- to Smt. Parwati arrayed above as Applicant in Criminal Revision No.379 of 2018 and Respondent in Criminal Revision No.27 of 2018 and that of Rs.350/- to her minor son. Thereafter, Smt. Parwati filed an application under Section 127 of the Code of Criminal Procedure for enhancement of the amount of maintenance which was registered as M.Cr.C. No.348 of 2012 in which the parties have been entered into a compromise on 14.2.2013 and on the basis of the compromise, monthly maintenance was enhanced from Rs.350/- to Rs.2,000/- in favour of Smt. Parwati and from Rs.350/- to Rs.1,000/- in favour of her minor son. Thereafter, Kamlesh, who is husband of Smt. Parwati and is arrayed above as the Respondent in Criminal Revision No.379 of 2018 and the Applicant in Criminal Revision No.27 of 2018 filed an application, being M.Cr.C. No.75 of 2015 under Section 127 of the Code of Criminal Procedure praying that the orders passed in M.Cr.Cs. No.309 of 1998 and 348 of 2012 be set aside on the ground that the same have been passed without appreciating the facts on record. He is suffering from mental disorder and the compromise had been done by putting pressure on him. It was further pleaded that his wife Smt. Parwati has sufficient source to earn as she has one house situated at Rajiv Nagar and has given the said house on rent by which she is earning Rs.10,000/- per month as rent and apart from that she is getting Rs.6,000/- per month as pension. It was further alleged

that the wife is living in adultery, therefore, she is not entitled for any maintenance. In her reply, Smt. Parwati denied the averments made by husband Kamlesh.

4. The Family Court, after recording evidence and appreciating the evidence led by the parties, allowed in part the application filed by husband Kamlesh vide the impugned order dated 30.11.2017 and reduced the amount of monthly maintenance from Rs.2,000/- to Rs.1,000/- for wife Smt. Parwati.
5. Against the impugned order dated 30.11.2017, Criminal Revision No.379 of 2018 has been preferred by wife Smt. Parwati on the ground that husband Kamlesh could not bring his case within the parameters laid down under Section 125(4) of the Code of Criminal Procedure. Hence, she is entitled for maintenance. It has also been urged that without reasonable ground, the Family Court has reduced the amount of her maintenance.
6. Criminal Revision No.27 of 2018 has been filed by husband Kamlesh on the ground that the impugned order dated 30.11.2017 suffers from impropriety, perversity, incorrectness and is, therefore, not sustainable in the eyes of law. While allowing the application under Section 127 of the Cr.P.C. the Family Court ought to have set aside the order by which the maintenance was granted to wife Smt. Parwati. The Family Court erred in holding that in the application under Section 127 of the Cr.P.C. the grant of maintenance cannot be set aside.
7. I have heard Learned Counsel appearing for the parties and

perused the record with due care.

8. Before the Family Court, the husband examined himself as Applicant Witness No.1 and Shatrughan Patel as Applicant Witness No.2. The wife examined herself as Respondent Witness No.1.
9. The first ground raised by the husband before the Family Court was that he is a patient of mental disorder and *mirgi* (epilepsy) and due to that he is unable to work and, therefore, he is unable to pay the maintenance. In this regard, the husband has submitted his statement under Order 18 Rule 4 of the Code of Civil Procedure wherein it has been stated by him that at the time when the compromise was made he was suffering from mental disorder and still he is suffering from mental disorder. It has also been stated by him that his signatures were obtained on the compromise petition by putting pressure on him. But, he has not submitted any medical document on the basis of which it could be established that he is a patient of mental disorder. If he is a patient of mental disorder and is unable to understand his good or bad, how did he make the statement under Order 18 Rule 4 of the Code of Civil Procedure on affidavit. Thus, it is clear that he is suffering from mental disorder has not been established by him. Though from the medical document and admission made by the wife, it is clear that he is suffering from the disease of *mirgi* (epilepsy), but there is nothing on record on the basis of which it could be inferred that the husband is unable to work due to suffering from the disease of epilepsy.

- 10.** The second ground taken by the husband was that the wife has a house from which she is getting rent of Rs.10,000/- per month. From the document (Ex.P2), which is a self assessment of property tax made by the wife, shows that she owns a house at Rajiv Nagar, Ward No.2, Durg. In column No.5 of the said document, it is declared that it is her residential house. From the above, it is clear that the house is owned by the wife in which she herself is living. There is nothing on record on the basis of which it is established that she has given the said house on rent or she is getting any rent from that house.
- 11.** The third ground taken by the husband was that the wife is living in adultery and, therefore, she is not entitled to get any maintenance. The wife has admitted the fact that she made a report against the husband and his family members on the basis of which a case under Section 498A of the IPC was prosecuted in which her statement was recorded which is Ex.P13. She has also admitted the fact that she also made a statement (Ex.P33). From bare perusal of her statements (Ex.P13 and P33), it is clear that the wife has admitted the fact that she had lived with one Yashwant Soni at Bilaspur, Korba and Mungeli for a total period of about 6 to 7 months. This fact is admitted by her in the present case also. She has also admitted that she had also carried a pregnancy from Yashwant Soni during living with him. She has categorically denied that she is still in relation with Yashwant Soni. From her present statement and her previous statements (Ex.P13 and P33), it is only established that in the year 2000 she had led an adulterous life with Yashwant Soni. At present, she is leading an adulterous life, there is no evidence on record to establish the same.

12. In **1987 Cri.L.J. 655 (Smt. Rachita Rout v. Basanta Kumar Rout)**, it was observed by the Orissa High Court in paragraph 6 as under:

“6. The expression “if she is living in adultery” undoubtedly connotes a course of adulterous conduct more or less continuous. An occasional lapse would not be a sufficient reason for refusing maintenance within the ambit of sub-s. (4). Therefore, a Magistrate has to probe and find out whether at or about the time of the application, there has been an adulterous conduct on the part of the wife. Further, there must be clear proof of adultery. A suspicion nurtured by the husband will not disentitle the wife to receive the maintenance under the Code. It is true that direct evidence of adultery can seldom be given, but at the same time there must be some evidence to prove the allegations of adultery and a mere bazar gossip would not prove adultery. Since sub-s. (4) is in the nature of an exception to the main section, it is for the husband claiming protection under the said provision to show that the said sub-section is applicable, that is to say, the husband must establish that the wife is living in adultery. Within the aforesaid parameter, let me now examine whether the conclusion of the learned Magistrate in this regard can be sustained in law or not.”

13. In **AIR 2009 (NOC) 212 (Gauhati) (Md. Abdul Sattar v. The State of Assam)**, it was observed thus:

“A bare reading of the provisions of Section 125(4) makes it more transparent that a husband has no obligation to maintain his wife if she is living in adultery. The expression “if she is living in adultery” occurring in S. 125(4) conveys present continuous tense. That is to say, a wife disentitles herself from receiving maintenance from her husband only during the period, when she lives in adultery. When she does not live in adultery, or when she ceases to live in adultery, even if she had lived in adultery in the past, the husband cannot refuse to maintain her on the ground that she had, in the past, lived in adultery. When the wife ceases to live in adultery, the husband cannot say that since she had lived in

an adulterous relation with a man in the past, she is not entitled to receive maintenance from her husband, even though she has ceased to live in adultery. In the case at hand, even if the second party had lived in adultery, the fact remains that according to the evidence on record, she has been presently living, admittedly, with her parents and has no surviving ties with her abductor or paramour, as the case may be. In such circumstances, the present petitioner, as husband of the opposite party, was liable to maintain her, particularly when the opposite party does not admittedly, have any independent source of livelihood and she is dependent for her sustenance on her parents.”

14. In the case in hand also, it is only established that in the year 2000, the wife was leading an adulterous life with Yashwant Soni, but at the time of decision of the application under Section 125 of the Cr.P.C., the husband did not take this ground. At the time of deciding the application under Section 127 of the Cr.P.C. filed by the wife also, the husband did not raise this ground. After passing of the order on the application under Section 125 of the Cr.P.C, the wife is leading an adulterous life, there is no evidence on record to this effect. Therefore, she is still entitled to get maintenance from the husband.
15. From the above discussion, it is clear that the husband is suffering from epilepsy and/or mental disorder, there is no evidence on record to this effect. Due to suffering from a disease he is unable to work, there is also no evidence on record to this effect. The husband has been unable to establish that the wife has given her house on rent and is getting rent of Rs.10,000/- per month from that house. The wife is still leading an adulterous life is also not established by the husband. Therefore, no change is established in the circumstances as a result of which the maintenance granted

to the wife could be reduced.

16. Consequently, Criminal Revision No.27 of 2018 preferred by the husband is dismissed. Criminal Revision No.379 of 2018 moved by the wife is allowed and the impugned order dated 30.11.2017 which relates to reduction of monthly maintenance of the wife from Rs.2,000/- to Rs.1,000/- is set aside.
17. 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