

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No.941 of 2017

Order Reserved on : 4.2.2019

Order Passed on : 22.4.2019

Lavkumar Patel, S/o Shri Sevak Lal Patel, aged about 33 years, R/o Village Madhopali, Post Lambar, Police Station Saraipali, Tahsil Basna, District Mahasamund, Chhattisgarh

---- Applicant

versus

Smt. Nidra Patel, W/o Lavkumar Patel, aged about 28 years, R/o Banjari Mahila Swasthya Training Centre, Sundar Nagar, Raipur, Tahsil and District Raipur, Chhattisgarh

--- Respondent

and

Criminal Revision No.67 of 2018

Smt. Nidra Patel, W/o Shri Lavkumar Patel, aged about 30 years, R/o Banjari Woman Health Worker Training Centre, Sundar Nagar, Raipur, Tahsil and District Raipur, Chhattisgarh

---- Applicant

versus

Lavkumar Patel, S/o Shri Sevak Lal Patel, aged about 35 years, R/o Village Madhopali, Post Lamber, Police Station Saraipali, Tahsil Basna, District Mahasamund, Chhattisgarh

--- Respondent

For Lavkumar Patel	:	Shri Anil Gulati, Advocate
For Smt. Nidra Patel	:	Shri Utkal Pradhan, Advocate

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. ORDER

1. Since both the revisions arise out of a common order, they are disposed of together by this common order.
2. The revisions have been preferred against the order dated 22.8.2017 passed by the Family Court, Raipur in M.J.C. No.639 of 2015, whereby the application filed by Smt. Nidra Patel against

Lavkumar Patel has been allowed and she has been granted monthly maintenance of Rs.4,500/-.

3. It is admitted that Lavkumar Patel and Smt. Nidra Patel are legally wedded couple. Their marriage was solemnised on 5.5.2005. Out of their wedlock, a daughter, namely, Neelam took birth on 9.9.2006 and a son, namely, Dharmendra took birth on 1.12.2008. it is not in dispute that both the children are presently residing with their father Lavkumar Patel.
4. Wife Smt. Nidra Patel preferred an application against husband Lavkumar Patel before the Family Court under Section 125 Cr.P.C. on the ground that after the marriage without any reason the husband used to level false allegation on her and used to beat her. On 15.7.2014, in the night, father of the wife was called. On 16.7.2014, her father came along with some villagers. Even after being inculcated to the husband, he did not understand and on being asked by the husband, her father took her along with him. Since then she is residing separately and presently studying at Raipur. She is unable to maintain herself. The husband works as a Shiksha Karmi Grade-2 and gets monthly salary of Rs.26,890/-. He also owns 8 acres of agricultural land at Village Madhopali and from the said land he earns about Rs.10 Lakhs per year.
5. The husband denied the allegations made by the wife against him. It is pleaded by him that the wife is residing separately without any reasonable cause. She herself has left his house leaving the children without there being any reasonable cause. After the marriage, he got the studies of the wife completed and thereafter got her appointed as an LIC Agent. Thereafter, he got her

appointed as a teacher in a private school. He also purchased a plot in her name. The allegations made against him are false. After her leaving his house, he visited her many times to bring her back, but she refused to come with him. He also sent a legal notice, but she did not reply. A social meeting also took place, but even thereafter, she did not return to his house. He also filed an application under Section 9 of the Hindu Marriage Act in which also she refused to come to his house. Since he wants to keep her with him but she does not want to live with him and is residing separately without any reasonable cause, she is not entitled to get any maintenance.

6. In their support, both the wife and the husband examined themselves and filed certain documents. After recording their evidence and hearing arguments on their behalf, the Family Court, vide the impugned order dated 22.8.2017, allowed the application of the wife and granted her monthly maintenance of Rs.4,500/-.
7. Criminal Revision No.941 of 2017 has been preferred by husband Lavkumar Patel on the ground that the Family Court has failed to appreciate that he had filed an application under Section 9 of the Hindu Marriage Act in which a decree was passed in his favour but despite that decree the wife is voluntarily residing separately from him without any reasonable cause. Since the wife is residing separately without any reasonable cause, she is not entitled to get any maintenance.
8. Criminal Revision No.67 of 2018 has been preferred by wife Smt. Nidra Patel for enhancement in the maintenance amount on the ground that considering the social and financial status of the

parties, earning capacity of the husband, the grant of monthly maintenance of Rs.4,500/- is on lower side.

9. I have heard Learned Counsel appearing for the parties and perused the record with due care.
10. Both the wife and the husband have deposed before the Family Court according to their pleadings. It is not in dispute that both the children are presently residing with their father Lavkumar Patel. As pleaded and stated by the wife, she is residing separately since 16.7.2014. As stated by the husband, he had called the father of the wife and sent her along with him. The wife has also stated that earlier also the husband used to harass her. In her cross-examination, she has admitted the fact that after the marriage, the husband had got her appeared in the examination of 12th standard. He had also got her appointed as an LIC Agent. Thereafter, he had also got her appointed as a teacher in a private school. He has also purchased a plot in her name. In her cross-examination, the wife has admitted the fact that she never made any complaint at anywhere against the husband about beating and harassment. She has also admitted the fact that on 26.12.2014 and thereafter on 13.1.2015, social meetings had taken place. In the meeting held on 13.1.2015, a compromise had arrived at between them. At that time, she was asked to go with the husband, but she did not go with him because she had fallen ill. After recovery of her health why did she not go with the husband, she has not explained anything in this regard. She has also admitted the fact that the husband had filed an application under Section 9 of the Hindu Marriage Act in which a decree has been passed against her, but even thereafter, she does not want to live with the husband. In

paragraph 11 also, she has categorically stated that in the present circumstances, she does not want to go to her matrimonial house, but why does she not want to go to her matrimonial house, has not been explained by her.

11. From the above, it is well established that since 16.7.2014 the wife is residing separately from the husband. Before that, the husband ill-treated her or beat her ever, no report or complaint in this regard has been made by the wife at anywhere. Contrary to this, it is established that after the marriage, the husband got the education of the wife enhanced further. He also got her employed in different jobs and also purchased a plot in her name. From the admission made by the wife, after separation, on 26.12.2014 and 13.1.2015, the husband had called social meetings in which she was asked to go along with the husband, but she did not go with him due to her falling ill. But, after recovery of her health, why did she not go along with the husband, has not been explained by her. If she wanted to live with the husband after recovery of her health, she could go along with him, but she did not do so. From the evidence on record, it is established that even after passing of a decree under Section 9 of the Hindu Marriage Act against her and in favour of the husband, she did not go with the husband. As stated by the wife, even after passing of the said decree, she does not want to live with the husband, but for what reason she does not want to live with the husband has not been explained by her. The husband in his statement has stated that some obscene SMSs were coming on the mobile phone of the wife from some persons. Thereafter, a meeting of both the families had taken place in which she has stated that she will never repeat her mistake. Thereafter,

she stopped sleeping with the husband. Thereafter, she called her father and returned to her paternal house. On the above statement of the husband, the Family Court arrived at a conclusion that the wife has sufficient cause to reside separately from the husband because he suspects on her character. But, in her examination-in-chief, she has nowhere stated even a single word that her husband ever doubted her character due to which she is residing separately from him. Therefore, the finding of the Family Court that the wife is residing separately from the husband because he used to doubt on her character is not sustainable. Thus, it is clear that the finding of the Family Court is not in accordance with the evidence on record and is held to be perverse. It is held that the wife has no sufficient reason to reside separately from the husband. Therefore, she is not entitled to get any maintenance.

12. Consequently, Criminal Revision No.941 of 2017 filed by husband Lavkumar Patel is allowed and Criminal Revision No.67 of 2018 filed by wife Smt. Nidra Patel is dismissed. The finding of the Family Court is quashed. The wife is not entitled to get any maintenance.
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