

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 305 of 2017

Smt. Rakhi Gayakvad W/o Vikas Patel Aged About 29 Years R/o House No. C/192, Near Bali- Bal Garden And Shiv Mandir Yadunandan Nagar Bilaspur, Police Station Sirgitti District Bilaspur, Chhattisgarh.

---- Applicant

Versus

Vikas Patel S/o Girvar Patel Aged About 33 Years Profession Advocate, R/o Village Bariya Police Station Rajpur District Balrampur, Chhattisgarh, Presently R/o D.C. Road Ambikapur, Police Station Ambikapur, District Sarguja, Chhattisgarh

---- Respondent

For Applicant	: Mr. Suresh Kumar Pandey, Advocate
For the Respondent	: Mr. Vijay K. Deshmukh, Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

13-11-2019

1. This revision petition has been brought challenging the order dated 17.1.2017 passed by the Additional Principal Judge, Family Court, Bilaspur by which the application under Section 125 of the Cr.P.C. filed by the applicant was dismissed.
2. The applicant had filed an application under Section 125 of the Cr.P.C. stating that subsequent to her marriage with respondent – Vikas Patel, she was subjected to cruel treatment by the respondent and other in-laws for demand of dowry. The cruel treatment and torture continued in which, the applicant was not allowed to go to her parental house and various allegations were also made against the applicant by the respondent. Because of the torture given, the applicant compelled to leave her matrimonial home and then she has filed an application for grant of maintenance.
3. Respondent denied the statement made in the application. In his reply, he has stated that the applicant has not allowed him to consummate the

marriage. It is alleged that the applicant used to receive messages and calls from other persons and she herself used to misbehave with the respondent. Society meeting was also held in which, the applicant had very clearly mentioned that she does not want to live with the respondent, therefore, both the parties were advised to obtain divorce from the Court. Hence, the entitlement of the applicant for grant of maintenance was denied.

4. Learned Family Court in the impugned order has held that the applicant is unable to maintain herself; and it is also proved that non-applicant has sufficient resources. It has also been held not proved that the respondent has denied or neglected to maintain the applicant and that the applicant is residing separately from the respondent because of sufficient reason. On the basis of these findings, the application filed by the applicant was rejected.
5. It is submitted by counsel for the applicant that the learned Family Court has committed error in holding that the respondent has neglected to maintain the applicant is not proved, whereas, it is not disputed that the respondent is not paying any maintenance to the applicant. The reasons given for residing separately by the applicant in the impugned order are totally baseless and without any evidence. The recording of some phone calls and the transcript produced before the Court have not been proved in accordance with law. Therefore, that could not have been read as evidence and relied upon by the Family Court. The applicant is residing separately because of the hostile behavior of the respondent and his cruel treatment which is sufficient reason for living her separately and that is also entitlement for grant of maintenance. Hence, the application should have been allowed and a prayer has been made to interfere with the impugned order.

6. Learned counsel appearing for the respondent submits that the respondent/ non-applicant had very clearly established before the Court by furnishing the compact disc of the recorded conversation of the applicant with other persons. The transcript produced in the respondent evidence will clearly show that the conversation of the applicant with other persons was of very intimate level, therefore, it is a clear case under Section 125(4) of the Cr.P.C. which dis-entitles the applicant for grant of maintenance. Hence, no error has been committed by learned Family Court and the revision petition may be dismissed.
7. Heard counsel for both the parties and perused the documents.
8. The only ground on which the applicant has been held dis-entitled by the trial Court is the evidence brought by the respondent showing that the applicant used to engage in conversation with some persons. The compact disc has been produced by the respondent which is not marked as any document and the transcript that has been exhibited in defence is also not certified by any person. Neither there is any such statement made by the respondent to certify the truth of the recording in compact disc nor the transcripts of the said conversation.
9. The compact disc can be received as an electronic evidence subject to certification under Section 65(B) of the Indian Evidence Act and without any such certification such evidence cannot be allowed or read in any proceedings before the Court. It is very much clear that there is no such certification as it is required under Section 65(B) of the Indian Evidence Act and also for the reason that the transcript too has no certification and there is no other witness to identify the voice in the CD produced. Therefore, this evidence could not have been allowed by the learned Family Court and further, relied upon for coming to a conclusion for simple reason that the electronic evidence and the transcript without the

requisite certification under law is no evidence at all.

10. Even if the contention of the respondent is taken as it is that the applicant used to have conversation with some other persons that does not become a ground under sub-section (4) of Section 125 of the Cr.P.C. The ground taken by the respondent is that the applicant living in adultery. The word 'adultery' has a different meaning, which means voluntary sexual intercourse by a married person with a person who is not his/ her spouse. Hence, the evidence of adultery was totally absent in this case. Therefore, the ground under Section 125(4) of the Cr.P.C. is not at all made out in any sense. Hence, the finding of the learned Family Court on this point is totally erroneous and against the provisions of law which needs to be interfered with.

11. Applicant – Smt. Rakhi Gayakvad herself has given a statement about the cruel treatment of the respondent and demand of dowry which has been supported by the other witnesses, namely, Prabha Gayakvad, who is her mother and Ravi Sonwani who is her uncle whereas, the respondent has not made any statement denying the statement of the applicant regarding the cruel treatment and torture and also the demand of dowry. The only evidence led by him is that the applicant is a woman of compromised integrity and his statement is full of allegations of this kind.

12. In cross-examination, the respondent has admitted that the applicant never told about her boy friends and he is not the person who made the recordings of the phone calls. Therefore, in his whole statement, there is no denial to the cruel treatment given by him to the applicant. Similar is the statement of the other witnesses of the respondent, namely, Giriwar Patel and Shakuntala Patel. Therefore, the statement of the applicant's side which has not been denied, very clearly establishes that

the misbehavior and the cruel treatment given by the respondent to the applicant is itself sufficient reason due to which the applicant is compelled to reside separately which again is adverse finding against the respondent.

13. Learned Family Court has failed to appreciate the evidence in this respect and draw conclusion accordingly. However, this is not a case where the applicant and the respondent are living separately on the basis of some mutual consent. Therefore, there is no ground under Section 125 (4) of the Cr.P.C on the basis of which, the applicant should have been denied for the relief prayed in the application filed by her.

14. On the basis of the findings recorded here-in-above, I am of the opinion that the impugned order has been passed without proper appreciation of the evidence, without proper application of law and also the order passed is incorrect. Therefore, the impugned order is not sustainable and the revision petition is allowed. The impugned order is set aside. It is held that the applicant is entitled for grant of maintenance.

15. As the respondent is a practicing Advocate and a man of means, it is ordered that the respondent shall pay a monthly maintenance of Rs.5,000/- to the applicant from the date of filing of application under Section 125 of the Cr.P.C. The interim maintenance, if any, has been paid to the applicant on the basis of the order of interim maintenance, that shall be adjusted in the arrears of payment to be made by the respondent to the applicant.

16. Accordingly, this revision petition is disposed of.

Sd/-

(Rajendra Chandra Singh Samant)
Judge