

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 755 of 2016

Order Reserved on : 18.07.2019

Order Delivered on : 27.08.2019

- Smt. Rekhabai, Aged About 24 Years, W/o Dilip Kumar Dhobi, At Present R/o Tahsil And Thana Malkharoda, Distt. Janjgir - Champa, Chhattisgarh

---- Applicant

Versus

- Dilip Kumar, Aged About 26 Years, S/o Ganpatlal Dhobi R/o Village Kosampali, Thana Baradwar, Distt. Janjgir Champa At Present R/o Balgi Colony, Qtr. No. D 275 Durga Chowk Thana Bankimongra, Distt. Korba, Chhattisgarh

---- Respondent

For Applicant	:	Shri Shalvik Tiwari, Adv.
For Respondents	:	Shri Hemant Kumar Patel, Adv.

Hon'ble Smt. Justice Rajani Dubey

CAV ORDER

The applicant has preferred this revision against the order dated 10.06.2016 passed by the Link Family Court, Sakti, District – Janjgir-Champa, in Miscellaneous Criminal Case No. 62/2015, dismissing the application filed by the applicant under Section 125 of the Cr.P.C.

2. Facts of the case, in brief, are that on 05.08.2015, the applicant filed an application under Section 125 of the Cr.P.C. seeking maintenance from the non-applicant/Respondent. The case of the applicant is that her marriage was solemnized with the non-applicant/Respondent on 17.06.2012. After some days, she was being

subjected to cruelty. According to her non-applicant had deserted her without sufficient reason and he is not even making any arrangements for her maintenance. She has alleged that annual income of the non-applicant from agriculture comes to Rs.1,50,000/- and Rs.500/- per day from the coal mines, where he works, therefore, she is entitled to get maintenance of Rs.5000/- per month from the respondent. In support of her contention, she has examined herself and two witnesses namely Pardeshi Ram(AW-2) and Mahesh Ram(AW-3).

3. In reply, the Respondent denied all the allegations levelled against him and pleaded that after marriage, the applicant did not like him and she always used to quarrel with him, and after that she went to her parental house without there being any reasonable cause. The applicant herself did not want to live with him and executed a document "*Vivah Vicched Nama*" on 29.12.2014. The non-applicant filed an application under Section 9 of the Hindu Marriage Act, but, the applicant filed an application under Section 12 of the Domestic Violence Act against the respondent/non-applicant and he was paying Rs.1500/- per month to the applicant, in that case.

4. Before the Family Court both the parties have adduced their respective evidence. After recording their submissions, the Family Court vide impugned order dated 10.06.2016, dismissed the application filed by the applicant. Hence, this revision.

5. Learned Counsel for the applicant submits that before trial Court this is an admitted fact that the applicant and non-applicant had married to each other, but without considering the case properly and without application of mind the learned trial Court rejected the claim of

the applicant. He further submits that from the evidence of the applicant and her witnesses, it is clear that because of illegal harassment, act and conduct of the respondent husband, the applicant/wife living separately. The applicant having no source of income, but the learned trial Court totally overlooked the evidence and rejected the claim on unsustainable ground. He also submits that the object of Section 125 of the Cr.P.C. is to protect and safeguard the interest of women, who has been divorced by husband and refused to give maintenance. The section being the beneficial law and a measure of social justice enacted to protect women and children. The object is to compel a man to perform the moral obligation. It is next submitted that the order of the learned Court below is totally against the object and scope of the provision of section, therefore, it is liable to be set aside. Learned Counsel for the applicant has placed reliance upon **Santoshi Jaiswal Vs. Rakesh Jaiswal*** (order dated 17/10/2016), passed by High Court of Judicature at Bombay, Bench at Aurangabad in Criminal Writ Petition No.862/2013.

6. Learned counsel for the Respondent has supported the impugned order.

7. I have heard counsel for the parties and perused the record to assess the correctness of the impugned order.

8. From perusal of the record, it would appear that decree of restitution of conjugal rights was passed by the Family Court in favour of the respondent.

9. The learned trial Court decided issue No.1 against the applicant, which reads thus:-

* (2014) 4 CGLJ 640

“1. *Whether the applicant has reasonable cause to live separately from the non-applicant?*”

The trial Court found that the decree of restitution of conjugal rights has been passed in favour of the respondent.

10. This Court in **Santoshi (Supra)** held that there is no such bar u/s 125 of Cr.P.C. to grant maintenance to a wife against whom decree for conjugal rights has been passed and there is no express provision in the Cr.P.C.

11. The application for grant of maintenance under Section 125 of the Cr.P.C. cannot be resisted by husband merely on the ground that he has obtained a decree of restitution of conjugal rights against wife under Section 9. The respondent/husband shall have to satisfy the Court, after obtaining such decree, that he has taken effective steps for getting such decree satisfied in the sense that he has made genuine, honest and sincere efforts to bring the wife back.

12. In her evidence, the applicant/wife points out that she was being subjected to cruelty by the respondent/husband. In view of this, the applicant/wife has sufficient and reasonable cause to live separately. The other issues decided in favour of applicant is that applicant is unable to maintain herself. The respondent/husband has agricultural land and he has sufficient income. The learned trial Court, in Para 37, has held that respondent is capable to maintain his wife.

13. In view of the above, the impugned order is liable to be set aside and it is ordered accordingly.

14. The next question which arises for consideration by this Court as to what should be the quantum of maintenance to be granted. It has come in the evidence that the respondent/husband is working as a

labourer, therefore, it can be presumed that his daily income must be between Rs.100/- to Rs.150/- per day, Rs.3,000/- to Rs.4,000/- per month and now the Collector wages rate is about Rs.9000/- per month. Looking to the present price index of the essential commodities and keeping in view the income of the respondent/husband as also the living standard of the parties, the applicant is entitled to get maintenance of Rs.2500/- per month.

15. Accordingly, it is ordered that the respondent shall pay Rs.2500/- per month to the applicant as maintenance from the date of passing this order. That apart, she would also be entitled to receive Rs.2000/- from respondent husband towards cost of litigation.

16. This revision is allowed to the extent indicated herein-above.

(Rajani Dubey)
Judge

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