

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No.134 of 2018

Order Reserved on : 29.11.2018

Order Passed on : 18.2.2019

Kamleshwar Singh, S/o Indrajeet Singh, aged about 33 years,
Employee – 911/91 FD REGT, R/o 91 FD REGT C/o 56 APO Pin –
925791, presently at Bikaner (Raj.)

---- Applicant

versus

1. Smt. Mithlesh Singh, W/o Kamleshwar Singh, aged about 27 years,
2. Tushar Singh, S/o Kamleshwar Singh, aged about 5 years,
3. Mayank Singh, S/o Kamleshwar Singh, aged about 1 year,

Respondents No.2 & 3 through natural guardian mother Smt. Mithlesh
Singh/Respondent No.1

All R/o Present Address : House No.234, Near Pump House, Vikas
Para, Ward No.14, Ram Nagar, Muktidham, Bhilai, Tahsil and District
Durg, Chhattisgarh

--- Respondents

For Applicant	:	Shri Anshuman Shrivastava, Advocate
For Respondents	:	Shri Jitendra Gupta, Advocate

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. ORDER

1. The instant revision has been preferred against the order dated 23.9.2017 passed by the Family Court, Durg in Miscellaneous Criminal Case No.255 of 2016, whereby the application preferred by the Respondents under Section 125 of the Code of Criminal Procedure for grant of monthly maintenance has been allowed and each of them has been granted monthly maintenance of Rs.5,000/-, total Rs.15,000/- by the Family Court.
2. It is not in dispute that Respondent No.1 is legally wedded wife of

the Applicant and both Respondents No.2 and 3 are their legitimate children. Marriage between the Applicant and Respondent No.1 was solemnised on 30.4.2006. It was the pleading of Respondent No.1 before the Family Court that after the marriage she resided with the Applicant at his work place at Faridkot, thereafter at Allahabad and thereafter at Bikaner. In the year 2016, the Applicant took Respondent No.1 to Village Gujhwa for attending marriage ceremony of his brother and after leaving her there he returned alone. At that time, Respondent No.1 was pregnant. On 24.11.2016, Respondent No.3 took birth at Bhilai. Respondent No.2 took birth on 24.8.2012. Since the birth of Respondent No.3 the Respondents are residing with the parents of the Applicant at Bhilai. After leaving the wife and children, the Applicant did not come back to take them with him nor has he arranged any maintenance for them. Being a woman, Respondent No.1 is unable to maintain herself. The Applicant is working in Army as a Lance Nayak and is getting monthly salary of Rs.35,000/- after deductions.

3. The Applicant, in his reply, admitted the fact that he had gone to his work place after leaving Respondent No.1/wife during his attending marriage ceremony of his brother at Village Gujhwa. He has also admitted the fact that he is working in Army as a Lance Nayak. He denied rest of the allegations levelled against him by Respondent No.1.
4. Before the Family Court, both the husband and the wife examined themselves only. After recording their statements, the Family Court, vide the impugned order dated 23.9.2017, has allowed the application and has granted monthly maintenance of Rs.5,000/- to

each of the Respondents, i.e., total Rs.15,000/-.

5. It was submitted by Learned Counsel appearing for the Applicant that in the year 2012, while remaining posted at Jammu and Kashmir, the Applicant got injured and as a result of which he had suffered several injuries and consequently he was placed under the category of 40% disability. He further submitted that for the above-mentioned reason, the Applicant is to retire by the end of December, 2018. After all deductions, the Applicant is getting only Rs.17,000/- to Rs.18,000/- per month. Therefore, the maintenance granted in favour of the Respondents by the Family Court is exorbitant. He further submitted that Respondent No.1 is residing separately from the Applicant without any sufficient cause. Therefore, she is not entitled to get any maintenance from the Applicant.
6. Learned Counsel appearing for the Respondents supported the impugned order.
7. I have heard Learned Counsel appearing for the parties and perused the record with due care.
8. It is not in dispute that Respondent No.1 is legally wedded wife of the Applicant and Respondents No.2 and 3 are their legitimate children and the Respondents are residing with the parents of the Applicant at Bhilai since the year 2016. From the admission made by the Applicant himself, it is also clear that he himself had left Respondent No.1/wife and gone alone to his work place to join his duties. Though the Applicant, in his affidavit submitted under Order 18 Rule 4 of the Code of Civil Procedure has stated that he alone had returned after leaving his wife/Respondent No.1 and thereafter

Respondent No.1 refused to go with him and she also refuses to go with him wherever his posting is done, Respondent No.1/wife has denied this fact in her cross-examination. She has further stated that the Applicant was making phone calls to her and was abusing her during the telephonic calls. The Applicant/husband has also admitted the fact that whenever during his leave periods he visits Bhilai, he stays in any of the lodges at Bhilai. Thus, it is clear that the Applicant does not have cordial relation with his parents also. There is nothing on record to show that the Applicant ever tried to keep back Respondent No.1/wife with him by making social or legal attempts. Therefore, the finding of the Family Court that Respondent No.1/wife is residing separately from the Applicant with sufficient cause is just and proper.

9. The Applicant, in his cross-examination, has also admitted the fact that he is working in Army and is getting monthly salary of Rs.35,000/-. As stated by Respondent No.1, she is unable to maintain herself. Looking to the financial and earning capacity of the Applicant, grant of monthly maintenance of Rs.5,000/- to each of the Respondents, i.e., total Rs.15,000/- by the Family Court is just and proper.
10. As a consequence of the aforesaid discussion, the instant revision is dismissed.
11. 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