

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**Criminal Revision No.751 of 2017**

Order Reserved on : 25.10.2018

Order Passed on : 23.1.2019

1. Smt. Chhaya Kurre, aged about 35 years, wife of Khelawan Kurre,
2. Ku. Tanuja @ Toran Kurre, aged about 17 years, daughter of Khelawan Kurre, minor represented through mother Smt. Chhaya Kurre,

Both are residents of Satnam Chowk, Village Serikhedi, Post Mandir Hassaud, Tahsil and District Raipur, Chhattisgarh

**---- Applicants**

**versus**

Khelawan Kurre, aged about 40 years, son of late Rameshwar Kurre, resident of Village Bhilai, P.S. and Tahsil Arang, District Raipur, Chhattisgarh

**--- Respondent**

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| For Applicants | : | Ms. Savita Tiwari, Advocate                                              |
| For Respondent | : | Shri Bishnu Muni, Advocate on<br>behalf of Shri D.N. Prajapati, Advocate |

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**Hon'ble Shri Justice Arvind Singh Chandel**

**C.A.V. ORDER**

1. This revision has been preferred by the Applicants against the order dated 5.7.2017 passed by the Family Court, Raipur in Criminal M.J.C. No.79 of 2016, whereby the Family Court has rejected the application under Section 125 of the Code of Criminal Procedure with regard to Applicant No.1 and granted monthly maintenance of Rs.2,000/- in favour of Applicant No.2.

2. Facts of the case, in brief, are that marriage between Applicant No.1 and the Respondent was solemnised 20 years before passing of the impugned order. Out of their wedlock, Applicant No.2/daughter took birth. She is mentally retarded by birth. After her birth, the Respondent started subjecting Applicant No.1 to cruelty and harassment. Thereafter, beating the Applicants, he expelled them out of his house and since then both the Applicants are residing at the paternal house of Applicant No.1. Applicant No.2 is being taken care of by Applicant No.1. Earlier, father of Applicant No.1 was bearing expenses of both the Applicants and was maintaining them. After the death of father of Applicant No.1, the Applicants have no means to maintain themselves. The Respondent owns 5 acres of agricultural land and earns Rs.3,00,000/- to Rs.4,00,000/- per year.
3. The Respondent denied the allegations levelled upon him. It was pleaded by him that without any reasonable cause Applicant No.1, along with Applicant No.2, is residing separately from him. He tried many times to take her back, but she refused to come back. He is a daily wager and the application under Section 125 of the Cr.P.C. has been filed against him just to harass him after 20 years of the marriage.
4. In her support, Applicant No.1 examined herself as Applicant Witness No.1 and also examined Gulabdas Tandon, a resident of her village as Applicant Witness No.2. The Respondent examined himself as Respondent Witness No.1 and also examined Rishi Kumar Kurre as Respondent Witness No.2.
5. After recording evidence, the Family Court, vide the impugned

order dated 5.7.2017, has rejected the application for maintenance with regard to Applicant No.1 on the ground that she filed the application after 17-18 years of her marriage and she has not properly explained any reason for the delay in filing the said application and, therefore, she is not entitled to get any maintenance, but, in respect of Applicant No.2, the Family Court has granted monthly maintenance of Rs.2,000/-.

6. Learned Counsel appearing for the Applicants submitted that from the record it is clear that earlier Applicant No.1 was being maintained by her father, therefore, at that time, she did not prefer any application for her maintenance. She preferred the application for maintenance after the death of her father. Thus, delay in filing the application for maintenance is properly explained by Applicant No.1. She further submitted that from the record it is also clear that without taking any divorce from Applicant No.1, the Respondent has presently performed second marriage and is residing with his second wife. Therefore, Applicant No.1 has sufficient cause to live separately from the Respondent. But, the Family Court did not appreciate this evidence. She further submitted that looking to the financial status of the Respondent and also looking to the medical expenditure being incurred for Applicant No.2, grant of monthly maintenance of Rs.2,000/- in favour of Applicant No.2 is on lower side and the same deserves to be enhanced suitably.
7. Learned Counsel appearing for the Respondent supported the impugned order.
8. I have heard Learned Counsel appearing for the parties and

perused the record with due care,

9. It is not in dispute that Applicant No.1 is the legally wedded wife of the Respondent and Applicant No.2 is their legitimate child. Marriage between Applicant No.1 and the Respondent took place 20 years prior to passing of the impugned order. From perusal of the disability certificate (Ex.P5), it is also clear that Applicant No.2 is mentally retarded and as per the permanent disability certificate (Ex.P5), she has been shown to be disable to the extent of 45%. Thus, it is clear that though presently Applicant No.2 is aged about 17 years, due to her mental retardation, she is unable to maintain herself. Therefore, she has rightly been granted maintenance by the Family Court.
10. With regard to Applicant No.1, it is also not in dispute that she is married wife of the Respondent and is residing separately from him for the last 17-18 years. In her examination-in-chief, she has categorically stated that the Respondent used to commit *marpeet* with her and he has expelled her out of his house after beating her. Though she filed the application under Section 125 of the Cr.P.C. after 17-18 years of separation, she has categorically stated that she was earlier being maintained by her father and after the death of her father she is unable to maintain herself. Her above statement is not rebutted during her cross-examination. Thus, she has properly explained the delay in filing the application under Section 125 of the Cr.P.C. Apart from this, Applicant No.1, in her statement, in paragraph 14, has categorically stated that the Respondent has kept other woman as his wife and he has two children also from that woman. The above statement is also not rebutted by the Respondent. Thus, it is clear that the Respondent

is presently living with other spouse. Therefore, this is also one of the reasons for Applicant No.1 to reside separately from the Respondent. Therefore, it is clear that without considering these facts, the Family Court has rejected the application of Applicant No.1 for grant of maintenance to her. Since she is residing separately with sufficient cause and she is presently unable to maintain herself, she is also entitled to get maintenance from the Respondent.

11. From the evidence adduced by the parties, it is clear that both the parties are residents of same village. The Respondent owns about 3 – 3½ acres of agricultural land. Other than the agricultural land, he has any other source of income is not established.
12. Looking to the social and financial status of both the parties and also considering that the Respondent has kept another woman as his wife and he has also two children from that woman, grant of Rs.2,000/- per month as maintenance to Applicant No.1/wife payable with effect from today would be just and proper. Ordered accordingly. The monthly maintenance of Rs.2,000/- granted by the Family Court to Applicant No.2/daughter is just and proper.
13. Consequently, the revision is allowed to the extent indicated above.
14. 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**