

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 958 of 2015**

1. Smt. Sunita Yadav, aged about 27 years W/o Jagannath Yadav,
 2. Ku. Anshi, aged about 3 years, D/o Jagannath Yadav, minor represented through legal guardian mother Smt. Sunita Yadav,
- Both are resident of Naya Baradwar, Ward No. 9, Tahsil Sakti, District Janjgir-Champa (C.G.).

--- Applicants**Versus**

Jagannath Prasad, aged about 32 years S/o Ghurwaram, Occupation Service, R/o Nandaurkala, Tahsil Sakti, District Janjgir-Champa (C.G.)

---- Respondent

For Applicants	:	Mr. Kamlesh Kumar Pandey, Advocate
For Respondents	:	Mr. Dharmesh Shrivastava, Advocate

Hon'ble Shri Justice Arvind Singh Chandel

Order on Board**21/01/2019**

1. This revision has been preferred against order dated 05/10/2015 passed in Miscellaneous Criminal Case No. 46/2012 by the Family Court, Link Court at Sakti, District Court, Janjgir-Champa (C.G.) whereby the Family Court has rejected the application submitted under Section 125 Cr.P.C in respect of Applicant No. 1 on the ground that she is residing separately without any reasonable cause, and allowed the application with regard to Applicant No. 2 and granted monthly maintenance of Rs. 1500/- in her favour.

2. Facts of the case are that the marriage between Applicant No. 1 (henceforth 'the Wife') and the Respondent (henceforth 'the Husband') was solemnized on 22/04/2008. At that time, the Husband was posted at Raigarh. After marriage, the Husband went to Raigarh at his working place and left his Wife at his village. The Wife got pregnant and Applicant No. 2 got birth at parental house of the Wife. After birth of Applicant No. 2, the Husband and his family members started ill and cruel treatment to Applicant No. 1. They also used to tease her in the name of delivery of baby girl. One day, the Husband badly beaten the Wife and expelled her from his house. Thereafter, an application under Section 9 of the Hindu Marriage Act was filed by the Wife, but inspite of that the Husband did not take the Wife with him. Since then, the Wife is residing separately. The Wife has no source of income and she is unable to maintain herself as well as to Applicant No. 2. It was further pleaded that the Husband is working as Constable in GRPF and gets monthly salary of Rs. 25000/-. He is also having agricultural land and earns Rs. 20000/- per month thereby, therefore, they prayed for monthly maintenance.
3. The Husband in his reply denied all the allegations made against him. It was pleaded by him that the Wife was not caring his old parents. She used to create pressure upon him to reside together at Raigarh. It was also pleaded that the Wife herself left his house and living separately without any reasonable cause, therefore, she is not entitled to get any maintenance.
4. Before the Family Court, the Wife examined herself as Applicant

Witness No. 1 and also examined her witnesses namely Tiharu Ram, Jairam Yadav, Pratap Kishore Mishra as Applicant Witness Nos. 2, 3 & 4, respectively. The Husband examined himself as Non-Applicant Witness No. 1 and also examined his witnesses namely Hazari Prasad, Leela Bai, V.K. Dewangan, Azad Yadav and Sahni Ram as Non-Applicant Witnesses Nos. 2, 3, 4, 5 & 6. Both the parties have submitted certain documents before the Family Court.

5. After recording the evidence and hearing their submission, the Family Court rejected the application on behalf of the Wife on the ground that she is living separately without any reasonable cause and also on the ground that she is working stitching work and is capable to maintain herself. However, the Family Court allowed the application in favour of Applicant No. 2 and granted monthly maintenance of Rs. 1500/-. Thus, this revision.
6. Counsel for the Applicants submits that the Family Court has failed to appreciate that the Husband and his family members assaulted the Wife and also used to tease her in the name of delivery of baby girl. The Wife was also expelled from the house. In these circumstances, she has sufficient cause to reside separately. It is further submitted that an application under Section 9 of the Hindu Marriage act has also been preferred by the Wife, which itself shows that she still wants to reside with the Husband, but the learned Family Court has not appreciated this fact. It is further submitted that without any sufficient evidence, the learned Family Court arrived at conclusion that the Wife is engaged in the work of stitching and getting sufficient income. It is

further submitted that the Husband is constable and getting more than 25000/- monthly salary, therefore, the maintenance awarded to Applicant No. 2 is also on lower side, which should be suitable enhanced.

7. Counsel for the Respondent supported the impugned order.
8. I have heard counsel for both the parties and perused the record.
9. There is no dispute on the point that Applicant No. 1 is legally wedded wife of the Respondent and out of their wedlock, Applicant No. 2 got birth. From the evidence adduced by the parties, it is clear that after the marriage, the Respondent resided at his working place i.e. Raigarh and he left the Wife at his village with his parents. During cross-examination of the Wife, it was categorically suggested by the Husband that he wants to keep his wife at his village. Thus, it is clear that the Respondent is adamant to keep his wife at his village. The Wife has categorically stated that she wants to live with his husband at his working place. Being a wife, it is a right of her to live with her husband. Applicant Witness No. 3 Jairam Yadav has stated that the Wife had some trouble at her matrimonial house, then her father took her with him. Even, during cross-examination of the Husband, he admitted this fact that the father of the Wife had taken away the Wife with him. From the evidence adduced by the parties, it is also clear that the Wife had preferred an application under Section 9 of the Hindu Marriage Act for restitution of conjugal right, though the said application has been rejected, there is nothing on record which shows that the Husband taken any legal steps to bring his wife back at his

home. From the evidence, it seems that the Husband wants to keep his wife at his village. However, being a wife, Applicant No. 1/Wife has right to live with her husband at his working place. Therefore, in my considered opinion, the Wife has sufficient cause to reside separately.

10. The learned Family Court observed that the Wife is engaged in the work of stitching and getting monthly income of Rs. 6000/-. This observation of the Family Court is only on the basis of presumption as the Husband had filed a photograph in which the Wife has been shown as working stitching work. Therefore, only on the basis of a photograph the Family Court has reached to the conclusion that the Wife works stitching work and earns Rs. 200/- daily, but there is no evidence in this regard that whether the Wife is working stitching work and earning how much amount from that work. Only on the basis of photograph, it cannot be presumed that she is working stitching work as professionally, therefore, the finding of the Family Court in this regard is not in accordance with law and in my considered opinion, the Wife is entitled to get maintenance from her husband.
11. As per salary slip Ex.P-2, the monthly payment of the Husband is Rs. 30800/-. Looking to this, Rs. 1500/- as monthly maintenance granted in favour of Applicant is also on lower side and the same should be enhanced.
12. Considering all the aspects of the matter and considering the social, financial and earning capacity of the Husband, it is ordered that the Applicant shall now pay Rs. 3500/- to Applicant No. 1 as monthly maintenance and Rs. 2500/- to applicant No. 2 as monthly

maintenance from today.

13. Accordingly, the revision is allowed to the extent indicated above.

Sd/-
(Arvind Singh Chandel)
Judge

Rahul