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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No.218 of 2018

Order Reserved on : 12.12.2018

Order Passed on : 5.3.2019

Sanjay Sonwani, S/o Jagdish Prasad, aged about 28 years, Caste Harijan, resident of Katora, P.S. and Post Patna, District Korea, Chhattisgarh

---- Applicant

versus

Uma Sonwani, W/o Sanjay Sonwani, aged about 24 years, Caste Harijan, resident of Village Kotaktal, P.S. Patna, Post Mahora, Tahsil Baikunthpur, District Korea, Chhattisgarh

--- Respondent

For Applicant	:	Shri Sunil Tripathi, Advocate
For Respondent	:	Shri Pragalbha Sharma, Advocate

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. ORDER

1. The instant revision has been preferred by the husband against the order dated 29.1.2018 passed by the Family Court, Baikunthpur, District Korea in M.Cr.C. No.135 of 2015, whereby the Family Court has allowed the application of the wife for grant of maintenance and granted her monthly maintenance of Rs.2,500/-.
2. It is not in dispute that the Applicant and the Respondent are husband and wife and their marriage was solemnised on 20.5.2010. The wife moved an application before the Family Court under Section 125 of the Code of Criminal Procedure alleging that on account of non-fulfillment of demand of dowry, father of the husband instigated the husband to beat her. Thereafter, in the year 2011, on the date of festival of Karma, the husband brutally beat her and thrown her out of his house. She lodged a report against

the husband and his family members for an offence punishable under Sections 498A, 323, 294, 506B read with Section 34 of the Indian Penal Code, but the husband did not take care of the report and he also performed second marriage with Rani, daughter of one Bhanwarlal, who is a resident of Village Telaimuda. It is the further case of the wife/Respondent that she is illiterate and unable to maintain herself and the husband/Applicant owns an agricultural land and is a fit and capable person to maintain her.

3. In his reply, the husband/Applicant denied the entire allegations made against him. It is pleaded by him that the wife/Respondent is a modern woman. Since the date of marriage itself, she never cooperated with the Applicant and his family members. Just after the marriage, she left his house. He filed an application before the S.D.M., Baikunthpur to call the wife/Respondent, but after appearing before the S.D.M., she herself did not agree to live with him. It is further pleaded by him that he also submitted an application under Section 9 of the Hindu Marriage Act for restitution of conjugal rights, but the wife/Respondent again refused to participate in the said proceedings. It is further pleaded by him that a false and fabricated report was lodged by her. After trial, he and his family members have been acquitted of all the charges. It is further pleaded that he has not performed any second marriage, but only to create a ground against him such a false allegation of second marriage has been levelled against him.
4. In her support, the wife examined herself as Applicant Witness No.1 and also examined her father Radheram as Applicant Witness No.2. The husband examined himself as Respondent

Witness No.1 and also examined 2 other witnesses, namely, Birsai as Respondent Witness No.2 and Phoolchand as Respondent Witness No.3. Both the husband and the wife also submitted certain documents in their support.

5. After recording evidence, the Family Court granted monthly maintenance of Rs.2,500/- in favour of the wife. Hence, this revision by the husband.
6. Learned Counsel appearing for the Applicant/husband submitted that the impugned order dated 29.1.2018 is not only illegal but also perverse, arbitrary and against the law and the same is contrary to the evidence available on record also. He further submitted that there is sufficient evidence available on record which show that the wife/Respondent is residing separately from the husband/Applicant without any reasonable cause and on the other hand the husband/Applicant had been continuously trying to keep her back with him, but ignoring this fact and the evidence available in this regard, the Family Court wrongly granted the maintenance in favour of the wife.
7. Learned Counsel appearing for the Respondent/wife supported the impugned order.
8. I have heard Learned Counsel appearing for the parties and perused the record with due care.
9. It is pleaded and stated by the Applicant/husband that the Respondent/wife is residing separately from him from the date of festival of Karma of the year 2011. The Applicant/husband has

deposed before the Family Court that after the marriage, the Respondent/wife resided with him happily for a period of one month. Thereafter, without telling him, she called her brother and returned along with him. When he went to her maternal house to take her back, she refused to come back with him. Thereafter, he along with his relatives again went to her maternal house to take her back, but after quarreling, he was sent back. Thereafter, he made a report in Police Station Patna. Thereafter also, he submitted an application before the S.D.M. On a search warrant being issued, the wife/Respondent appeared before the Court of S.D.M. and on being inculcated, she came with him. He has further deposed that thereafter also, she used to stay with him for about 2-4 days only and used to return to her maternal house. Finally, on 9.9.2011, i.e., on the date of festival of Karma, she, without telling him, deliberately returned along with her brother.

- 10.** In her cross-examination, the Respondent/wife has admitted the fact that in the year 2010, when she had come to her maternal house, at that time, the Applicant/husband had come to her to take her back, but she did not go with him. She has also admitted the fact that thereafter the Applicant/husband had lodged a report in the police station and had also filed an application in the Court of S.D.M. to take her back with him. She has also admitted the fact that after her return to her maternal house since the date of festival of Karma of the year 2011, she had not gone back to her matrimonial house. She has also admitted that on the date of Karma festival of the year 2011, she had returned to her maternal house along with her brother. As stated by the Applicant/husband, the Karma festival fell on 9.9.2011. From a perusal of the FIR

(Ex.P1), it reveals that on 16.1.2012, the Respondent/wife had lodged the FIR with regard to demand of dowry. Thus, it is clear that for about 3 months since the date of Karma festival, when she had returned to her maternal house, she did not lodge any report against the Applicant for demand of dowry. By the judgment of the Judicial Magistrate First Class dated 31.8.2015 (Ex.D1), the Applicant/husband and his family members have been acquitted of all the charges. The Respondent/wife, in her cross-examination, in paragraphs 10 and 11, has also admitted the fact that in the year 2011, when she returned to her maternal house, thereafter she neither called any social meeting nor did she make any complaint in their social community. She has also admitted the fact that her family members also never went to the house of her husband/Applicant to compromise the matter. Rather, the Applicant/husband visited her maternal house many times for taking her back. Father of the Respondent/wife, i.e., Applicant Witness No.2 Radheram has also admitted the fact that when her daughter (the Respondent) returned her maternal house, at that time, he called the Applicant/husband and his father. At that time, the Applicant/husband had visited his house, but, on being inculcated, he did not agree and did not take the Respondent back with him. But, there is no statement given by this witness that they ever made any effort for settling the issue between the Applicant and the Respondent nor did they ever visit the house of the husband/Applicant.

11. From the above evidence, it is clear that the marriage between the parties was performed in the year 2010. After solemnisation of the marriage, disputes started taking place between them. When the

Respondent/wife went to her maternal house, the Applicant/husband made all efforts to take her back. Thereafter, he also moved to the Court of S.D.M. for bringing her back with him and as a result thereof the Respondent/wife came with the Applicant/husband to his house, but thereafter again, on the date of Karma festival of the year 2011, she returned to her maternal house along with her brother. Since then, for about 3-4 months, she did not make any report in the police station. Later on, she made a report of demand of dowry in which the Applicant/husband and his family members have been acquitted of all the charges. From the evidence available on record, it is also clear that the Respondent/wife or her family members never called any social meeting nor was any complaint made by any of them in this regard in their social community nor was any effort made on their part to settle the issue. On the other hand, the Applicant/husband visited the maternal house of the Respondent/wife to take her back, but she did not go back with him. Thus, from the evidence available on record, it is clear that the Respondent/wife has no sufficient cause to live separately from the Applicant/husband. Therefore, the finding of the Family Court that the Respondent/wife is residing separately from the Applicant/husband with sufficient cause is not in accordance with the evidence available on record and thus the said finding is held to be illegal and perverse. Since the Respondent/wife is residing separately from the Applicant/husband without any reasonable cause, she is not entitled to get any maintenance.

12. Consequently, the instant revision is allowed. The impugned order dated 29.1.2018 is set aside.

- 13.** 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