

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 491 of 2010

Judgment reserved on : 05.04.2019

Judgment delivered on : 17.05.2019

Smt.Someshwari, W/o Tejbahadur Singh, aged about 25 years, Occup. House Hold Domestic Work, R/o Vill. Gourbaheri, Tah. Tamnar, District - Raigarh, C.G.

---- Applicant

Versus

Tejbahadur Singh, S/o Niranjan, aged about 27 years, Occup. Agriculturist R/o Vill. Kharkhatta, Tahsil - Pathalgaon, District – Jashpur, C.G.

---- Respondent

For Applicant	:	Shri Sunit Sahu, Adv.
For Respondent	:	None

Hon'ble Smt. Justice Rajani Dubey

C.A.V. Judgment

The present revision arises out of the impugned judgment of conviction and order of sentence dated 05.04.2010 passed in MJC No.66/2008 whereby the learned trial Court has rejected the application under Section 125 of the Cr.P.C. by the applicant.

2. Before trial Court this is an admitted fact that respondent(husband) and applicant(wife) were married on 29.04.2007, notice was sent to applicant for meeting of society dated 16.02.2008, Rs.5000/- fine was imposed on applicant party. On 01.02.2008, applicant was gone to her parental house (Maika), the meeting of society was called on 21.02.2008. Before learned trial Court applicant (wife) filed an application for grant of maintenance.

3. As pleaded by the applicant/Wife, the marriage of applicant and respondent are governed by Hindu Law and Customs. After two months of the marriage, applicant's in-laws and husband started torturing her, saying that she had brought insufficient dowry. When she was at her in-laws house they would abuse and harass her. In the month of February 2008, she returned back to her father's house to save her life. Now she is residing with her brothers. She is unable to maintain herself. Non-applicant(husband) is earning Rs.1,00,000/- yearly, so she has prayed Rs.3,000/- per month from respondent(husband) as maintenance.

4. The respondent (husband) submits in his reply that applicant was making undue pressure on him to leave his family members and resides separately. On 01.02.2008, applicant went to her parental house without knowledge of respondent and his family members. Applicant (wife) left the house of the respondent, therefore, she has no right to get any maintenance. It is also pleaded that applicant has ancestral land, and therefore, she can maintain herself.

5. Before the Family Court the Applicant/Wife examined herself and other witnesses(AW-1), Tekram Sidar (AW-2), Bharat Sidar (AW-3), Lalit Singh Sidar (AW-4). The respondent examined Indrajeet Sidar(NAW-1), Parmeshwar Singh Sidar(NAW-2), Jaylal Singh Sidar(NAW-3), Chintamani(NAW-4), Tulsiram Sidar(NAW-5), Lalit Kumar (NAW-6), Udelat Diwan(NAW-7) and Tejbahadur(NAW-8).

6. After appreciating the evidence on record, the learned Family Court has rejected the application under Section 125, Cr. P.C. on the ground that the applicant(wife) is residing separately from the husband without any reasonable cause and not unable to maintain herself.

Hence, this revision.

7. Learned counsel appearing for the applicant submits that learned Family Court has erred in rejecting the application under Section 125 of the CRPC. The marriage is admitted between the parties and the non-applicant as a husband of the applicant is duty bound to maintain his wife. The Applicant/Wife tried hard for restitution of conjugal rights, but on all the times denial was on the part of the Respondent/husband. The learned Family Court has failed to consider the fact that applicant has sufficient reason to reside separately due to harassment as well as cruelty by the husband and inlaws.

8. On the date of argument no one appeared on behalf of respondent/husband.

9. I have heard the Learned Counsel for the applicant and perused the record .

10. Under Section 125 of Cr.PC applicant has to prove these points

- Whether applicant is living separately from her husband (non-applicant) due to sufficient ground?
- Whether the applicant is unable to maintain herself?
- Whether non-applicant has sufficient means?

11. Under section 125 Cr. P.C., it is necessary to prove that applicant /wife is unable to earn her livelihood, but in this case AW-3/Bharat Sidar, his brother has stated in his evidence that they have 40-50 acres of land. He has not stated that his sister has no share in the land. Learned trial court has rightly pointed out that applicant and her witnesses have not stated that applicant/wife is unable to maintain herself.

12. I find no merit in the instant revision. It is therefore, dismissed.

13. Record of the Court below be sent back along with a copy of this order forthwith for information and necessary compliance.

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(Rajani Dubey)
Judge