

HIGH COURT OF CHHATTISGARH, BILASPUR**Order reserved on - 25.07.2019****Order delivered on - 20.09.2019****CRR No. 367 of 2018**

- Gaurav Wadhwa, S/o Shri Pradeep Kumar Wadhwa, aged about 34 years, R/o "Wadhwa Sadan", Opposite Mangalik Bhawan, Neemach (MP)

---- Applicant**Versus**

- Smt. Parminder Kaur alias Ruchi Wadhwa, W/o Gaurav wadhwa, aged about 34 years, R/o Flat No. A-1 Ashok Tower, Shankernagar, Raipur, District Raipur (C.G.)

---- Respondent

For Applicant	:	Mr. Pawan Kesharwani, Adv.
For Respondent	:	Mr. Pragalbh Sharma, Adv.

Hon'ble Smt. Justice Rajani Dubey**C.A.V. Order****20.09.2019**

1. The applicant/husband has preferred this revision against the order dated 29.11.2017, passed by the First Additional Principal Judge, Family Court, Raipur C.G. in M.J.C. No. 53/2016 whereby the Family Court awarded a sum of Rs. 20,000/- per month towards the maintenance to the respondent (wife).

2. This is not in dispute that applicant and respondent are legally married as husband and wife on 19.04.2007.

3. Respondent/wife had filed application under Section 125 Cr.P.C on the ground that after marriage she was residing with the applicant at Neemach, where applicant's parents & brother were also residing with them. Before marriage, applicant's mother came to Raipur and demanded a luxury car from respondent's family as a gift. Respondent's parents assured applicant's mother but, before marriage, respondent's father died and respondent's uncle administered her marriage. An accent car was given to the applicant as a gift but

applicant and his family members were not happy with the same. Applicant and his family members started torturing respondent both physically and mentally. It was further alleged that during pregnancy applicant and his family members did not take care of her. Since 2015, respondent has been living with her parents. She filed complaint under Section 498 of IPC against the applicant. Respondent/wife is unable to maintain herself even, on the other hand, applicant has sufficient means to earn money, therefore, she demanded 25,000/- per month towards maintenance.

4. In his reply, applicant denied all allegations levelled by the respondents and contended that no such demand of car was made by applicant or his family members, rather the car was given to the respondent (wife) by respondent's family members as a gift, which was used by her. Applicant and his family members never harassed to the respondent. It was further contended that after marriage, respondent used to get annoyed on trivial issues and use very obscene language while talking with her in-laws. In order to maintain a good matrimonial relationship, applicant always made a first move and tried to sort out things with the respondent. He further added that respondent is well educated lady, running boutique shop and earning good amount. Also, she has degree in MBA. Respondent's decision not to live with the applicant was her own. Applicant does not have any business and he is doing small job.

5. During the proceeding before the trial Court, the respondent/wife examined herself and the applicant/husband examined two witnesses including himself. The learned Family Court, after appreciating oral and documentary evidence of both the parties allowed the application filed under Section 125 of Cr.P.C. by the respondent/wife, granted 20,000/- per month as maintenance to respondent. Hence, this revision.

6. Learned counsel for the applicant submits that the learned Court below failed to consider the fact that applicant does not have enough source of income for giving maintenance to the respondent and, on the other hand, respondent concealed the fact that she is running a

boutique business. He further added that, learned Court below has failed to appreciate the fact that respondent has a degree in MBA and she is running boutique business wherefrom she is earning 43,000/- per month, which is sufficient to bring up her son. Thus, order passed by the Court below is liable to be set-aside. In support of his submission, Learned counsel for the applicant placed reliance on ***Lalit Bhola v. Nidhi Bhola & Another [ILR (2013) II Delhi 1067]***, ***Shehnaz Arvind Mudbhatkal V. Arvind Ramkrishna Mudbhatkal (211 SCC Online Bom 1245)*** & ***Rupali Gupta v. Rajat Gupta [2016 Law Suit (Del)] 5143***.

7. On the other hand, supporting the impugned judgment, learned counsel for the respondent submits that respondent legally married with applicant and she has right to live with dignity and, findings of the lower Court is neither perverse nor erroneous. Learned counsel for the respondent placed reliance on the decision of Supreme Court in the matter of ***Shamima Farooqui v. Shahid Khan reported in [(2015) 5 Supreme court Cases 705]***

8. Heard learned counsel for the parties and perused the material on record including the impugned order.

9. Before the Family Court, respondent/wife filed Ex. P/1, copy of police complaint raising certain allegations. Applicant/husband also admitted in his cross-examination, in para 29 that respondent had filed police complaint. Non-rebuttal of factum of complaint lodged by the respondent/wife against applicant/husband leads to only inference that applicant might not have been allowed to enter his wife the house of applicant, and therefore, she left the house of applicant/husband. Learned trial Court finds that applicant tortured his wife both physically and mentally and, that is why, she is living in her parental house. This finding of trial Court is based on oral and documentary evidence of the parties. Thus, this Court is of the opinion that the finding of the trial Court is neither perverse nor erroneous and the same is based on proper appreciation of evidence of record.

10. Learned counsel for the applicant submits that respondent is well

educated lady and she has a degree in MBA and in view of order passed in ***Rupali Gupta (supra)***, she is not entitled to get any maintenance amount from her husband. The applicant did not file any document before the trial Court which can prove the factum of income of respondent/wife and, therefore, the case law relied upon by learned counsel for the applicant is of no help to him. Learned trial Court, in para 22 to 32, categorically described the living standard of applicant and decided to award Rs. 20,000/- per month as maintenance.

11. In ***Shamima Farooqui v. Shahid Khan*** reported in ***[(2015) 5 Supreme court Cases 705]***, Hon'ble Supreme Court in para 15 held as under:-

“15. While determining the quantum of maintenance, this Court in *Jasbir Kaur Sehgal v. District Judge, Dehradun* has held as follows: (SCC p. 12, para 8)

“8. The Court has to consider the status of the parties, their respective needs, the capacity of the husband to pay having regard to his reasonable expenses for his own maintenance and of those he is obliged under the law and statutory but involuntary payments or deductions. The amount of maintenance fixed for the wife should be such as she can live in reasonable comfort considering her status and the mode of life she was used to when she lived with her husband and also that she does not feel handicapped in the prosecution of her case. At the same time, the amount so fixed cannot be excessive or extortionate.”

16. Grant of maintenance to wife has been perceived as a measure of social justice by this Court. In *Chaturbhuj v. Sita Bai*, it has been ruled that: (SCC p. 320, para 6)

“6. Section 125 Cr.P.C. is a measure of social justice and is specially enacted to protect women and children and as noted by this Court in *Capt. Ramesh Chander Kaushal v. Veena Kaushal* falls within the constitutional sweep of article 15(3) reinforced by Article 39 of the Constitution of India. It is meant to achieve a social purpose. The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife. It gives effect to fundamental rights and natural duties of a man to maintain his wife, children and parents when they are unable to maintain themselves. The aforesaid position was highlighted in *Savitaben Somabai Bhatiya v. State of Gujarat*. “

17. This being the position in law, it is the obligation of the husband to maintain his wife. He cannot be permitted to plead that he is unable to maintain the wife due to financial constraints as long as he is capable of earning.

12. The learned Family Court awarded Rs. 20,000/- per month as maintenance, which is neither said to be a meagre nor on excessive, therefore, in view of above, this Court is of the considered opinion that the order dated 29.11.2017 passed by the Court below being fully justified, do not call for any interference in revision petition.

11. Accordingly, this revision has no substance and it is hereby dismissed.

Sd/-
(Rajani Dubey)
JUDGE

Vijay Sahu