

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 385 of 2009**

- Smt. Pooja Sahu W/o. Loknath Sahu, Aged about 28 years
- Himanshu S/o. Loknath Sahu, Aged about 4 years
- Ku.Bharti Sahu, D/o. Loknath Sahu, Aged about 3 years

Applicants No. 2 And 3 Through Minor's Guardian Mother, All are R/o Nehru Chowk, Camp-1, Bhilai, district Durg. Present address Near Bus Stand Gunderdehi, P.S. And Tahsil-Gunderdehi, Distt.-Durg, C.G.

---- Applicant**Versus**

- Loknath Sahu @ Roshan Sahu S/o Bhagwat Sahu, R/o Near Sinha Tent House, Nehru Chowk, Camp-I, Bhilai, P.S. Chhawani, Tahsil And Distt.-Durg, C.G.

---- Respondent

For Applicant	: Shri C.P.Soni, Advocate
For Respondent/State	: Shri Anand Shukla, Advocate

Hon'ble Smt. Justice Rajani Dubey**Order On Board****23/09/2019**

Applicant has filed this revision against the order dated 23.06.09 passed by the Second Additional Principal Judge, Family Court, Durg in Miscellaneous Case No. 66/2007 whereby the learned trial court rejected the application on behalf of applicant No.1 but has allowed the application on behalf of applicants No.2 & 3 by awarding maintenance of Rs.800/- and 700/- (total Rs. 1500/-).

2. Facts of the case in brief are that before the Family Court, Durg, applicants (wife and children) preferred application for grant of maintenance under Section 125 Cr.P.C. with the averrment that marriage of applicant No.1 and the non-applicant was solemnized on 29.5.1999 and out of their wedlock they are having two children. It is stated that immediately after 4-5 months of marriage, non-applicant started abusing and assaulting the applicant No.1/wife as a result of which she went to her maternal house. It is further stated that a letter was sent to the non-applicant/husband wherein the applicant No.1 has threatened him of death. Thereafter, non-applicant ousted the applicants from his house on 17.12.2003. Applicant No.1 lodged FIR against the non-applicant but no action was taken against him. The applicants are residing separately and are not able to maintain themselves, so it was demanded by the applicants as Rs.3,000/- each per month as maintenance from the husband.

3. In his reply, non-applicant/husband denied all the allegations as alleged against him. It was pleaded by him that the applicant was having illicit relation with one Sheebu and even after marriage she asked the non-applicant to reside in her maternal house. It is further stated that the non-applicant had once caught the applicant No.1 and Seebu in a compromised and objectionable situation by her in-laws and neighbours. Thereafter, notice was sent by the non-applicant and a complaint was filed at police station Drug. At the time of counseling, applicant No.1 admitted her guilt and returned to her matrimonial house. However, again she repeated the act and therefore non-applicant filed a case for divorce and therefore this application was filed by the applicants on fake and false grounds.

4. After recording the evidence and hearing the submissions, learned Family Court, Durg vide order dated 26.3.2009 dismissed the application of the applicant No.1 and granting maintenance to applicants No.2 & 3 by awarding a sum of Rs. 800/- and 700/- (totalling to Rs. 1500/-) per month. Hence, this revision.

5. Counsel for the applicants submits that the learned Family Court has erred in rejecting the claim of the applicant No.1 for maintenance and the impugned order passed by the Family Court is contrary to the facts and evidence available on record. He submits that the court below has erred in reaching to a conclusion that applicant No.1 is residing separately in her maternal house without any sufficient reason. He submits that the Family Court has failed to consider that the allegation of adultery is serious in nature and therefore it should be proved beyond all reasonable doubts. In the present case, the non-applicant could not prove this allegation but the trial court has taken into consideration this issue at the time of reaching to the conclusion that the applicant No.1 is residing in her matrimonial house willfully without sufficient reason. He further submits that the award of maintenance granted to the applicants No.2 and 3 is on the lower side looking to the present cost of living and the price hike.

6. On the other hand, counsel for the non-applicant supported the impugned order.

7. Heard counsel for the parties and perused the material available on record.

8. It is not disputed that the marriage between the applicant No.1 and non-applicant was solemnized on 29.05.99 and out of their wedlock they are having two children. The trial court in para 6 to 11 have appreciated oral and documentary evidence and found that the applicant No.1 is living separately of her own without sufficient reason. This finding is based on proper appreciation of evidence. This Court finds no illegality or perversity in the order impugned rejecting the maintenance on behalf of applicant No.1 and allowing the maintenance of award to applicants No. 2 and 3 for a sum of Rs. 800/- and 700/- per month. To prevent vagrancy and destitution, amount of maintenance should be reasonable and it cannot be said as excessive in the days of high price of essential goods. In such circumstances, an amount of Rs.2000/-, 2,000/- (Totalling to Rupees four thousand) to the applicants No.2 and 3 (children) instead of Rs. 800/- and 700/- under Section 125 CrPC as maintenance is found reasonable. So far as the amount of maintenance in favour of applicant No.1 is concerned, the same is rejected.

In the result, the revision is partly allowed.

Sd/-

(Rajani Dubey)
Judge