

HIGH COURT OF CHHATTISGARH, BILASPUR**Order Reserved On 18.09.2019****Order Delivered On 17.12.2019****CRR No. 439 of 2018**

- Smt. Meena Bai W/o Shri Dayaram Gajendra Aged About 55 Years
By Caste Kalar, R/o Village Junwani, Thana And Tahsil Charama,
Civil And Revenue District North Bastar Kanker Chhattisgarh

---- Applicant**Versus**

- Dayaram Gajendra S/o Late Shri Sonauram Gajendra Aged About 55
Years R/o Village Jaiskarra, Thana And Tahsil Charama, Civil And
Revenue District North Bastar Kanker Chhattisgarh

---- Respondent

For Applicant	:	Mr. Sunil Sahu, Adv.
For Respondent	:	Mr. Praveen Tulsyan, Adv.

Hon'ble Smt. Justice Rajani Dubey**C.A.V. Order****17.12.2019**

1. The present revision petition has been filed by the applicant against the order dated 20.02.2018 passed by learned Judge, Family Court Kanker, District Kanker, (C.G.) in Miscellaneous Criminal Case No. 60/2017, whereby the learned Family Court has dismissed the application under Section 125 of Cr.P.C. filed by the applicant.

2. Before the Family Court, an application under Section 125 of Cr.P.C, for grant of monthly maintenance of Rs. 3,000/- per month, has been filed by petitioner (wife) against respondent (husband) on the ground that her marriage was solemnized with the respondent 36 years ago from the date of filling of the application. They lived together approximately for 18 years and due to their wedlock, she gave birth of a male child namely Anil Kumar Gajendra. After some time, respondent started quarreling on trifles and used to torture and

threaten her for dire consequences so, she started living at her parental house and working as a labour for her livelihood but due to her old age, she is not in a position to do the labour work therefore, she filed application for grant of maintenance. On the other hand, respondent has performed his second marriage with one Rahi Bai and having three children from the second wife. Respondent has sufficient means of earning and it is his bounden duty to maintain his wife/the applicant but he did not provide any amount on account of maintenance.

3. In his reply, respondent denied all the allegations made against him and stated that petitioner used to go to her parental house without any reasonable cause and she herself did not want to live with him. In a social meeting, she had stated that she will not claim any maintenance from the respondent and with the consent of applicant, respondent performed his second marriage. He further pleaded that as the applicant is residing separately with the mutual consent, she is not entitled to get any maintenance from the respondent.

4. Before the Family Court, both the parties have adduced their evidence and after recording their evidence and hearing submissions, the family Court vide its impugned order dated 20.02.2018, dismissed the application of applicant under Section 125 of Cr.P.C. Hence, this revision.

5. Learned counsel for the applicant submitted that applicant is legally wedded wife of respondent and their marriage was solemnized before 36 years and the learned Family Court has committed gross error of law in dismissing the application on the ground that it has been filed after 30 years of separation, though, the applicant has filed the application when she is unable to maintain herself and there is no limitation for filing the application under Section 125 of Cr.P.C. He next submitted that the applicant's son is 28 years old and she is totally depended upon him. Learned trial Court has recorded the findings that respondent is having sufficient means and the income of the respondent has been duly proved by the applicant but the

maintenance application has been rejected only on the ground that she has been residing separately since long period. He further submits that the findings and reasoning recorded in para 13 of the Judgment is bad in law and the same cannot be sustained in the light of law laid down by this Court in the matter of Ghurava Bai v. Vishnuram reported in 2001 (2) CGLJ 283. Learned counsel for the applicant added that learned Family Court has failed to consider that applicant is living separately because of harassment and cruelty committed by the husband. Hence, the present petition deserves to be allowed.

6. On the other hand, learned counsel appearing on behalf of the respondent has supported the impugned order of the Court below.

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

8. Be that as it may, there is no dispute on the point that the marriage between the applicant and respondent was solemnized 36 years ago and out of their wedlock one male child was born and after some time, applicant started living separately. There is also no dispute on the point that respondent (husband) has performed his second marriage with Rahi Bai and out of their new wedlock there are three children.

9. In the matter of ***Ghurava Bai v. Vishnuram*** reported in **[2001 (2) C.G.L.J. 283]**, this Court held as under:-

“13..... As the provisions of the Limitation Act either in general or special are not applicable to an application under Section 125 Cr.P.C. the Court is not required to look into the question of limitation, but the Court may say that the delay in making the application was un-justified or the delay has been properly explained, the wife would or would not be entitled to maintenance. This principle, though is not enshrined under the provisions of law, has been applied by the Courts to look into the bona fides of a woman who is seeking maintenance.”

10. The respondent has got married with the consent of the applicant after four years when she did not return. At present her son is aged about 28 years and he can well maintain her mother/applicant. The applicant has not stated anything about her son whether he is maintaining her or not or he is handicapped and unable to maintain her. Therefore, after such a long period of 30 years, though, there is no limitation but as she stated before the village panchayat meeting that she will not claim any maintenance from the respondent and till 30 years she has not claimed then whatever circumstances arises, she is not entitled to claim for maintenance. The respondent has three children out of his second marriage, therefore he has responsibility to maintain them as well as his wife. In the light of this Court's previous order dated 13.08.15 in Smt. Sita Bai v. Jethuram Sinha passed in CRR No. 978/2014, finding about limitation is erroneous as the provisions of Limitation Act either in general or special are not applicable to an application under Section 125 Cr.P.C.

11. Learned trial Court found in para 6 to 9 that applicant is residing separately without any sufficient cause and it has also been found that applicant is able to maintain herself. This finding is based upon proper appreciation of evidence of both the parties and I do not find any illegality in the findings recorded by Court below.

12. Considering the overall evidence & Circumstances of the case, I am of the view that the applicant is able to maintain herself and the order impugned dismissing the application filed by the applicant is absolutely justified and does not require any interference by this Court.

13. Thus, the revision filed by the applicant has no substance and is hereby dismissed.

**Sd/-
(Rajani Dubey)
JUDGE**