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HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 498 of 2018**Order reserved on : 25/09/2019Order Delivered on : 20/12/2019

- Pramod Kumar Sahu, S/o Rekhraj Sahu, aged about 32 years, Reliance Petroleum Industries, Saptak Plaza, Above Das Jewelers, Second floor, Shankar Nagar, Nagpur (Maharashtra)

----Petitioner**Versus**

1. Smt. Uma Sahu, W/o Pramod Kumar Sahu, aged about 29 years, R/o House No.51/806, Beside Government Primary School, Kushalpur, Raipur (C.G.)
2. Kavay Sahu S/o Pramod Kumar Sahu, aged about 10 years.

Respondent No.2 minor through her natural guardian mother Smt. Uma Sahu, W/o Pramod Kumar Sahu, aged about 29 years, R/o House No.51/806, Beside Government Primary School, Kushalpur, Raipur (C.G.)

---- Respondents

For Petitioner	:	Shri Manoj Paranjape, Adv. With Shri Vivek Mishra, Adv.
For Respondents	:	Shri Manish Upadhyay, Advocate.

Hon'ble Smt. Justice Rajani Dubey**Order On Board****20/12/2019**

01. Challenge in the present revision filed under Section 19 (4) of the Family Courts Act read with Section 397/401 of the code of Criminal Procedure is to the order dated 04.04.2018 passed by the First Additional Principal Judge, Family Court,

Raipur, in M.J.C. No.153/2013 granting Rs.8,000/- to respondent No.1 and Rs.4,000/- to respondent No.2 totaling Rs.12,000/- per month as maintenance.

02. Applicant and respondent No.1 married to each other on 06.05.2009 according to the existing social customs and out of their wedlock respondent No.2-Kavay Sahu was born. The respondent No.-1/wife herein filed an application under Section 125 of Code of Criminal Procedure before the learned trial Court on the ground that after 15 days of marriage, the applicant/husband and his parents are alleged to have started making taunts against the respondent No.1/Wife for bringing insufficient dowry in the marriage, thereafter, respondents left her matrimonial house and since then she is not residing with the applicant. The respondent No.1 is unable to maintain herself, therefore, she claimed maintenance of Rs.20,000/- per month.

03. Applicant/husband however has denied all the allegations made by his wife replying to the application under Section 125 of the Code of Criminal Procedure. Even the respondent/wife herself did not want to reside with him and is well capable to maintain herself. The respondent/wife is residing separately without any sufficient cause and, therefore, she is not entitled for any maintenance.

04. Before the Family Court, both the parties have adduced their respective evidence. The learned Family Court, after hearing the parties, partly allowed the application of

respondents granting maintenance of Rs.8,000/- to respondent No.1 and Rs.4,000/- to respondent No.2 total Rs.12,000/-, which leads to filing of this petition.

05. Learned counsel for the applicant submits that the learned Family Court has failed to consider the monthly income of the applicant as also his source of income. The findings recorded by the Family Court that the respondent is residing separately for the sufficient reason are perverse on the state of evidence on record. He also submits that as many as 4 persons of the applicant's family are dependent on him and the order of maintenance to the tune of Rs.12,000/- is on the higher side. It is also added that the respondent/wife has left the matrimonial house without any sufficient reason, therefore, she is not entitled for maintenance. It is next submitted that on 18.03.2014, the applicant/husband got the decree of divorce on the ground of cruelty and same has not been challenged by the respondent/wife before any court of law, and after the decree of divorce, the applicant herein got married with one Minal and she now pregnant of four months. In support of his argument, he placed reliance on the decision of High Court of Delhi at New Delhi in the matter of **Deepak Malhotra Vs. Deepti Malhotra & Ors** reported in **2017 SCC Online Del 8483** and decision of High Court of Madhya Pradesh in the matter of **Anil Vs. Sunita** reported in **2016 LawSuit(MP) 1133**.

06. On the other hand, learned counsel for respondents

supported the impugned order passed by the learned trial Court.

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

08. Be that as it may, there is no dispute that the applicant and the respondent No.1 are legally married husband and wife, and as such it is the duty of the husband to take care of his spouse by paying the optimum amount of maintenance so that she is not required to live a helpless hellish life. At the same time, the husband's source of income should also be considered while awarding the maintenance and no random approach in doing so should be adopted. Here in this case, the learned Family Court, after appreciating the evidence of both the parties, recorded its findings in paras 8 to 14 that the respondent/wife is residing separately for sufficient cause and this finding of the learned Family Court, in my opinion, appears to be just and proper. So far as the income of the applicant is concerned, the applicant, in para 17 of his cross-examination, has admitted that Rs.30,000/- - Rs.35,000/- is being deposited every month in his account as salary, and the Family Court, on this ground awarded maintenance of Rs.12,000/- to the respondents.

09. Learned counsel for the applicant has strenuously argued that on 18.03.2004, the applicant/husband has got the decree of divorce on the ground of cruelty, the same has not been challenged by the respondent/wife before any Court of

law, and as such, the respondent/wife is not entitled for maintenance. This Court does not find much force in the argument of learned counsel for the applicant as the Hon'ble Supreme Court in the matter of **Rohtash Singh Vs. Ramendri (Smt.) and Others** reported in **(2000) 3 SCC 180**, held in para 10, which reads thus:-

“10.Claim for maintenance under the first part of Section 125 CrPC is based on the subsistence of marriage while claim for maintenance of a divorced wife is based on the foundation provided by Explanation (b) to sub-section (1) of Section 125 CrPC. If the divorced wife is unable to maintain herself and if she has not remarried, she will be entitled to maintenance allowance. The Calcutta High Court had an occasion to consider an identical situation where the husband had obtained divorce on the ground of desertion by the wife but she was held entitled to maintenance allowance as a divorced wife under Section 125 CrPC and the fact that she had deserted her husband and on that basis a decree for divorce was passed against her was not treated as a bar to her claim for maintenance as a divorced wife. (See; Sukumar Dhibar v. Anjali Dasi). The Allahabad High Court also, in the instant case has taken a similar view. We approve these decisions as they represent the correct legal position.

10. Thus, the finding of the learned Family Court in this regard is in accordance with law. The amount so awarded by the learned trial does not appear to be on higher side. The Court below was fully justified in awarding maintenance in

favour of respondents.

11. In view of the above, this Court is of the considered opinion that the order dated 04.04.2018 passed by the Court below being fully justified, do not call for any interference in revision petition.

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

Sd/-

(Rajani Dubey)

JUDGE