

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No.576 of 2018

1. Smt. Saraswati Chauhan, W/o Shankar Ram Chauhan, aged 30 years,
2. Minor Ku. Divya Chauhan, D/o Shankar Ram Chauhan, aged about 15 years,
3. Minor Ku. Damini Chauhan, D/o Shankar Ram Chauhan, aged about 11 years,
4. Minor Dipesh Chauhan, S/o Shankar Ram Chauhan, aged about 8 years,

Applicants No.2 to 4 through their natural guardian and mother Smt. Saraswati Chauhan, W/o Shankar Ram Chauhan,

All Caste Chikwa, R/o Village Kotba, Thana Bagbahar, Tahsil Pathalgaon, District Jashpur, Chhattisgarh

---- Applicants

versus

Shankar Ram Chauhan, S/o Dhirjan Ram Chauhan, aged about 40 years, Caste Chikwa, R/o Village Rende, Tahsil Pathalgaon, District Jashpur, Chhattisgarh

--- Respondent

For Applicants	:	Shri Sanjay Agrawal, Advocate
For Respondent	:	Shri Sanjeev Kumar Sahu, Advocate

Hon'ble Shri Justice Arvind Singh Chandel

Order on Board

16.1.2019

1. With the consent of Learned Counsel appearing for the parties, the matter is heard finally.
2. This revision has been preferred by the Applicants against the order dated 24.2.2018 passed by the Family Court, Jashpur in M.Cr.C. No.59 of 2017, whereby the Family Court has rejected the application of the Applicants under Section 125 Cr.P.C.
3. In this case there is no dispute on the point that Applicant No.1 is legally wedded wife of the Respondent and Applicants No.2 to 4

are their legitimate children and presently they are residing with Applicant No.1/mother. As pleaded by Applicant No.1, marriage between her and the Respondent took place in the year 2001. Out of their wedlock, Applicants No.2 to 4 took birth. It was further pleaded that in the month of July, 2016, the Respondent brought a lady namely Vrinda Chouhan and thereafter he expelled the Applicants out of his house. Since then the Applicants are residing separately from the Respondent. Applicant No.1 is unable to maintain herself and other Applicants. The Respondent is a mason (Rajmistri) and earns Rs.15,000/- per month. In his family, there is 8 acres of irrigated agricultural land from which also he earns Rupees 2 Lakhs per year. Therefore, a prayer was made by the Applicants for grant of total maintenance of Rs.13,000/- per month in their favour.

4. In his reply, the Respondent pleaded that after the year 2016, behaviour of Applicant No.1 changed and she used to talk to a gent on mobile and on this count disputes started taking place between them. Thereafter, she herself left him and went away along with that person and she lived with him for about 2 months. Thereafter, she returned with one lady Vrinda Chouhan and she herself left Vrinda Chouhan with the Respondent asking him that he shall keep Vrinda Chouhan with him as his wife. Since then Applicant No.1 is residing separately from the Respondent without any reasonable cause. Therefore, she is not entitled to get any maintenance. It was further pleaded by the Respondent that the children were earlier residing with him, but later on, Applicant No.1 suddenly came to him and took the children with her. Even now, he himself is looking after the children. He is engaged in doing labour work and, therefore, he is not in a position to make payment of monthly

maintenance of Rs.13,000/-.

5. Before the Family Court, Applicant No.1 examined herself as Applicant Witness No.1 and also examined one witness Pawan Chouhan as Applicant Witness No.2. The Respondent examined himself as Non-Applicant Witness No.1 and also examined Atwa Ram as Non-Applicant Witness No.2. After recording their evidence and hearing the arguments on behalf the parties, the Family Court, vide the impugned order dated 24.2.2018, rejected the application of the Applicants on the ground that Applicant No.1 has failed to establish that she is residing separately with a reasonable cause and rejected the application with regard to the children on the ground that presently the Respondent himself is making arrangements for the children's food, education and clothes etc.
6. Learned Counsel appearing for the Applicants submits that from the pleadings and the evidence available on record, it is well established that the Respondent is residing with Vrinda Chouhan and, therefore, this fact itself is sufficient for the Applicants for residing separately from the Respondent. But, despite that, the Family Court has rejected the application of the Applicants, which is not in accordance with law. He further submits that with regard to Applicants No.2 to 4, without there being any evidence available on record that how much amount is being spent by the Respondent for their maintenance, the Family Court rejected their application for grant of maintenance.
7. Learned Counsel appearing for the Respondent supported the impugned order.

8. I have heard Learned Counsel appearing for the parties and perused the record with due care.
9. Both Applicant Witness No.1, Saraswati Chouhan and Applicant Witness No.2, Pawan Chouhan have categorically stated before the Family Court that presently the Respondent has kept one lady Vrinda Chouhan with him as his wife. The Respondent himself has admitted this fact and has categorically stated that it is true that from the year 2016 he has kept Vrinda Chouhan with him as his wife. As stated by him, when Applicant No.1 refused to live with him in a social meeting then only he kept Vrinda Chouhan with him as his second wife. From the above itself, it is clear that without taking any divorce from the legally wedded wife/Applicant No.1, the Respondent kept Vrinda Chouhan as his wife. Thus, Applicant No.1 has sufficient cause to reside separately from the Respondent. Surprisingly, the Family Court has ignored this clear fact and rejected the application of Applicant No.1 on the ground that she was unable to establish the reason of her living separately from the Respondent.
10. With regard to Applicants No.2 to 4, admittedly, they are the legitimate children of the Respondent and Applicant No.1 and they are presently residing with Applicant No.1. Though the Respondent has deposed that he is incurring the expenditure of food, education and clothes of the children, but how much expenditure is being incurred by him, he has not examined any person in this regard nor has he filed any document in this regard before the Family Court. Despite that, surprisingly, the Family Court has rejected the application with regard to Applicants No.2 to 4 for their maintenance, which is also not in accordance with the evidence

available on record.

11. In his statement, the Respondent has admitted the fact that in his family, 8 acres of agricultural land is available in joint names. His witness Atwa Ram (NAW2) has also admitted the fact that the Respondent also works as a mason and as an agriculturalist. This witness has also admitted that a mason gets Rs.300/- per day.
12. From the above discussion, it is clear that Applicant No.1/wife has sufficient cause to reside separately from the Respondent/husband. It is also well established that she is unable to maintain herself and the children/Applicants No.2 to 4 and the Respondent has sufficient means to maintain them. Therefore, the impugned order passed by the Family Court, being perverse and not to be in accordance with the evidence available on record, is set aside. With regard to the maintenance, considering the social and financial status of both the parties, age of the Applicants No.2 to 4, earning capacity of the Respondent, Applicant No.1 is granted monthly maintenance of Rs.2,000/- and Applicants No.2 to 4 are granted monthly maintenance of Rs.1,000/- each, total Rs.5,000/-, with effect from today.
13. Consequently, the revision is allowed in the aforesaid terms.
14. Record of the Court below be sent back along with a copy of this order forthwith for information and necessary compliance.

Sd/-

(Arvind Singh Chandel)
Judge