

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved for orders on :19/11/2019

Order passed on :19/12/2019

CRR No. 665 of 2018

- Nitesh Kachwaha S/o Ashok Kashcaha, Aged About 33 Years, R/o Behind Pendra Road Station, Jain Temple Road, Gaurella, District Bilaspur Chhattisgarh, District : Bilaspur, Chhattisgarh

---- Applicant

Versus

1. Smt. Kanchan Kuchwaha W/o Nitesh Kashwaha, Aged About 32 Years, R/o Fountain Chaow, Ward No. 12, Manendragarh District Koriya Chhattisgarh, District : Koriya (Baikunthpur), Chhattisgarh
2. Ku. Yukti Kuchwaha D/o Nitesh Kachwaha, Aged About 3 Years, 3 months Minor Represented Through Natural Guardian Mother Smt. Kanchan Kuchwaha, R/o Fountain Chaow, Ward No. 12, Manendragarh District Koriya Chhattisgarh, District : Koriya (Baikunthpur), Chhattisgarh
3. Riyansh S/o Nitesh Kachwaha, Aged About 8 Mounths, Minor Represented Through Natural Guardian Mother Smt. Kanchan Kuchwaha, R/o Fountain Chaow, Ward No. 12, Manendragarh District Koriya Chhattisgarh, District : Koriya (Baikunthpur), Chhattisgarh

----Non-Applicants/Respondents

For Applicant– Shri Diraj Kumar Wankhede, Advocate.

For Respondents – Shri Adil Minhaj, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

CAV Order

19-12-2019

1. This revision has been brought challenging the order dated 04-05-2018 passed by the Family Court Manendragarh in Misc. Criminal Case No.63/2017 granting maintenance of Rs.9,500/- to the respondents.

2. It is submitted that the impugned order is challenged only on the ground of quantum of maintenance ordered and also on the entitlement of the respondent No.1 who is living separately without sufficient cause. It is further submitted that the applicant is just a vendor operating in railway station and he is not a proprietor of any canteen, which has not been appreciated by the Family Court. In fact, certificate has been filed as Annexure-A/6 of the applicant according to which his annual income is just Rs.50,000/-. Copy of Identity card

of the applicant is also produced which shows that he is a vendor. Therefore, he is incapable to make payment of Rs.9,500/- per month.

Learned counsel for the applicant placed reliance on the order passed by M.P. High Court in the matter of **Prakash Kushwaha Vs. Smt. Pooja**, 2014 2 JLJ 189; 2014 0 Supreme(MP) 217.

Reliance has also been placed on the order passed by this High Court in the matter of **Shiv Kumar Yadav Vs. Smt. Santoshii Yadav**, 2004 (2) CGLJ 204; 2004 0 Supreme(Chh) 32.

3. Learned counsel for the respondents rebuts the argument advanced by learned counsel for the applicant and submits that respondent No.1 is living separately for the reason that she was tortured and subjected to cruel treatment by the applicant because of which she has aborted twice. Therefore, there is sufficient cause for her living separately. It is further submitted that the applicant is operating three canteens, therefore, he is self employed and capable of paying maintenance as ordered by the Family Court. Therefore, there is no need of any interference in the impugned order.

4. Heard learned counsel for the parties and perused the documents.

5. First point of contention in this petition is the reason for separate living of respondent No.1. Respondent No.1-Kanchan Kuchwaha (AW-1) has stated that she got married to the applicant on 23-01-2013 and thereafter she was treated with cruelty by the applicant on various pretexts. Then, she is living separately since the birth of her son on 11-11-2016, as the applicant never came to take her back. She has also stated that the applicant is proprietor of one canteen at railway station at Pendra Road and he is also running two other canteens. In cross-examination she has admitted that she has never made any complaint to the police regarding ill-treatment of the applicant and also she has not produced any document regarding business of the applicant. But, there is

no admission otherwise that the applicant has not ill-treated her and is not in a position of having sufficient means. Her version has been supported by Safina Khan (AW-2) and her statement has remained unrebutted in cross-examination.

6. Applicant Nitesh Kachwaha (NAW-1) has made statement in denial to the statement given by respondent No.1. He has stated that prior to marriage respondent No.1 was teacher in school and was also taking tuitions, however, he has stated that he does not know what respondent No.1 is doing at present. Regarding his engagement he has admitted that he runs a vegetable shop from which he has earning of Rs.100/- to Rs.200/-. In cross-examination he has denied suggestions given by the respondent side and also denied about having business of running three canteens and having earning of Rs.1,00,000/- per month.

7. Ramgopal (NAW-2) has stated that respondent No.1 has left her matrimonial home without any sufficient cause and also that the applicant works as labour, sometimes he sells fruits and water bottles in railway station. He has denied the suggestion from the respondent side in his cross-examination.

8. Manish Kachhwaha (NAW-3) has stated that respondent No.1 is living separately without sufficient cause. There had been some dispute, but the parents of the applicant fueled and fired that dispute because of which she is living separately.

9. On perusal and appreciation of the evidence from both the sides, it is found that respondent No.1 along with her children, respondent No.2 and 3 is living separately from the applicant. This is also apparent that the applicant had made no effort to bring back respondent No.1 when she left in the year 2016. Thereafter, the applicant has also made no effort to pay for maintenance of his wife and children, because of which the respondents were compelled to file

application under Section 125 of the Cr.P.C. before the Family Court. It is not denied that there had been dispute between the applicant and respondent No.1 and the allegation of respondent No.1 that the applicant was subjecting her to cruel treatment is also an evidence showing preponderance of probability in favour of the respondent in this case, therefore, finding of the Family Court that respondent No.1 has sufficient cause for living separately is established by the evidence and also by the conduct of the applicant. Therefore, there is no need to interfere with this finding of the impugned order.

10. Regarding income of the applicant the evidence of respondent side appears to be vague and unsupported which has been challenged by the applicant side. Apart from that, there is no documentary proof brought by the respondent side to establish that the applicant is proprietor of some canteen. Therefore, the means and source of income of the applicant has not been adequately established so as to hold that he is capable to make payment of Rs.9,500/- per month to the respondents. On appreciating the evidence, it is found that the applicant appears to be a vendor working in railway station and also working as vegetable shopkeeper or fruit vendor, as there is no other evidence, income of the applicant cannot be assessed properly. Looking to the admission made by the applicant that he is doing menial work earning livelihood, therefore, his capability to make payment of Rs.9,500/- in the impugned order appears to be overestimated, hence, this order can be interfered on the point of quantity. Hence, according to this finding the impugned order can be interfered on this point.

11. Therefore, after due consideration, this revision petition is partly allowed. The entitlement of the respondents for grant of maintenance is upheld. However, the amount of maintenance as ordered by the learned Family Court is set aside and instead thereof it is ordered that the applicant shall pay maintenance of Rs.2000/- to respondent No.1 and Rs.1,500/-, Rs.1,500/- to

respondent No.2 and 3. As such, the applicant is required to pay maintenance of Rs.5000/- to the respondents for their monthly maintenance and this order shall be effective from the date of filing of the application by the respondents.

12. The petition stands disposed off.

Sd/-

(Rajendra Chandra Singh Samant)
Judge

Aadil