

HIGH COURT OF CHHATTISGARH, BILASPUR**Order Reserved On 10.07.2019****Order Delivered On 31.07.2019****CRR No. 714 of 2018**

- Niranjana Lal Mordia, S/o Thadamal Mordia, aged about 35 years, R/o plot no. 705, Avanti Garden, Daldal Sivni, Pandri, P.S. Mova, District Raipur, Chhattisgarh.

---- Applicant**Versus**

1. Smt. Geeta Mordia, W/o Niranjana Lal Mordia, aged about 32 years.
2. Vansh Mordia, S/o Niranjana Lal Mordia aged about 12 years, through Mother Smt. Geeta Mordia.
3. Prachi Mordia, D/o Niranjana Mordia, aged about 9 years, through Mother Geeta Mordia.

All R/o J/6 Rajiv Nagar, behind Shiv Mandir, District Raipur, Chhattisgarh.

---- Respondents

For Applicant	:	Mr. Shikhar Bakhtiyar, Adv.
For Respondents	:	Mr. J. K. Gupta, Adv.

Hon'ble Smt. Justice Rajani Dubey**C.A.V. Order****31.07.2019**

1. The applicant herein is the husband of respondent No. 1 and father of respondent Nos. 2 & 3. He has preferred this revision against the order dated 29.05.2018 passed by First Additional Principal Judge, Family Court, Raipur in MJC No. 212/2016, whereby the learned Family Court allowed the application of respondents under Section 125 Cr.P.C and directed the applicant to pay sum of Rs. 17,500/- [Rs.10,000/- to respondent No.1 (wife), Rs. 5,000/- to respondent No. 2. (son)]

and Rs. 2,500/- to respondent No. 3 (daughter)] per month as maintenance.

2. It is not in dispute that the applicant and the respondent No-1 got married before 13 years and out of their wedlock respondent No. 2 & 3 were born.

3. The case before the learned Court was that the marriage of applicant and respondent No.-1 was solemnized in the year 2003 and out of their wedlock respondent No. 2 (Vansh Mordia) & 3 (Prachi Mordia) were born. After marriage, they were living peacefully for three years but, thereafter, respondent No. 1 was subjected to cruelty by her husband (applicant). It is further alleged that applicant/husband started drinking and tortured her both mentally and physically. She filed an FIR against applicant under Section 498-A, 323, 506 and 377 IPC. Trial is pending before Judicial Magistrate First Class, Raipur. Respondent No. 1 (wife) is not in a position to maintain herself. Applicant is running an auto parts shop and he also running second-hand vehicle and property business, from those he is earning Rs. 1,50,000/- per month. Therefore, respondent No. 1 claimed a sum of Rs. 40,000/- per month for herself and for her children as a maintenance from her husband (applicant). The Family Court has ordered to give Rs. 10,000/- to respondent No. 1 (wife), Rs. 5,000/- to respondent No. 2 (son) and Rs. 2,500/- to respondent No. 3 (daughter) total Rs. 17,500/- per month. Hence, this revision petition.

4. Learned counsel for the applicant submits that the impugned order is not in accordance with the evidence on record and is, therefore, bad in law, liable to be set-aside. The learned Family Court has overlooked the fact that the non-applicants are residing in the house of the applicant from which an inference can be drawn that she is not compelled to leave the matrimonial

house but, on the contrary, the applicant (husband) has left his house and staying somewhere else so there cannot be any agony or anguish from which she is suffering. He also submitted that the learned Court below has failed to appreciate the fact that the applicant is a salaried person and is earning Rs. 7,000/- per month, for which owner of the shop, Lal Chand (DW-2), has been examined in the Court and it is proved that the shop in which applicant is working is of his owner's shop and he is working as a labour. The learned Family Court failed to appreciate and completely overlooked the fact that the income tax returns of the non-applicant No. 1 were placed on record which shows yearly income of Rs. 2,14,000/- by doing work of stitching and embroidery. The Family Court passed an order on assumption that the applicant is earning Rs. 30,000- 35,000/- per month, which has not been proved by the non-applicant before the Court below. Applicant is living separately due to the behavior of non-applicant No. 1. He is not in a capacity to pay Rs. 17,500/- per month maintenance amount. He further submitted that non-applicant No. 1 has admitted in her examination, in Para 9, that she is earning Rs. 2,000/- per month through stitching and embroidery, so, she is capable of maintaining herself. She also admitted that the applicant has to close his shop as he was being asked to vacate the premises. Therefore, the order dated 29.05.2018 is liable to be set-aside.

5. Learned counsel for the respondent supported the impugned order and submitted that the Court below was fully justified in awarding the maintenance.

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

7. Respondent No. 1 (wife) admitted in her cross-examination that she was earning Rs. 2,000/- per month and she further

admit that she filed this application on the basis of Dilbar Auto Part but she did not file any document relating to her husband's income. Mr. Lal Chand (NAW/2) stated before trial Court that Niranjana Lal Mordiya is working in his shop Dilbar Auto Parts as a labour. Before the trial Court, respondent No. 1 filed income tax returns in Ex P/9 and Ex. P/10 but applicant/husband did not file any document relating to his income. Learned trial Court, in its order, in para 19 & 20, found that according to one photo album, applicant was travelling by aeroplane and in another photograph (article A-1), applicant is sitting in a counter of the shop. On that basis, learned Family Court found that applicant has sufficient means and, therefore, ordered to give Rs. 17,500/- per month to the respondents for their maintenance.

8. In ***Sahil Kumari Devi & Another v. Krishan Bhagwan Pathak [(2008) 9 SCC 632]***, Hon'ble Supreme Court has held in para 45 which reads thus :-

“But even on merits, the Family Court was not right in fixing the amount of maintenance. The learned counsel for the respondent took us to the evidence adduced by the parties. From the material on record, it is clear that appellant No. 1 wife is residing in the house belonging to the respondent husband and such finding has been recorded even by the Family Court. It is also in evidence that she was receiving income from the land in her possession which belonged to her husband, the respondent herein. It is true that the respondent could not state as to the actual amount received by the wife from the cultivation of the land. But it is also one of the considerations which is relevant and material while fixing the

amount of maintenance. Moreover, appellant 1 has inherited some land from her father.”

Respondent No. 1 (wife) stated in his examination in para 2 that she is residing in her matrimonial house. It is also in evidence that she was receiving income from stitching and embroidery. On the other hand, there is no document produced by respondent No. 1 which proves the income of the husband.

9. In view of overall facts and circumstances, justice would be served, if this Court modified the order dated 29.05.2018 of the Court below in directing the applicant to pay Rs. 12,500/- [5,000/- to respondent No.1(wife), Rs. 5,000/- to respondent No. 2 (son) and Rs. 2,500 to respondent No. 3 (daughter)] per month as maintenance, from the date of this order.

9. Accordingly, the revision is partly allowed to the extent indicated herein above.

Sd/-
(Rajani Dubey)
JUDGE