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HIGH COURT OF CHHATTISGARH, BILASPUR**Order reserved on 31.7.2019****Order delivered on 20.9.2019****CRR No. 724 of 2018**

- Ayen Khan @ Rasool Khan S/o Lal Khan @ Bisauha Aged About 39 Years, Caste Muslim, R/o- Village- Sakti Ghat, Biranpur, Police Station And Tahsil- Saja, District- Bemetara, Chhattisgarh.

---- Applicant**Versus**

- Smt. Jahirun Bee W/o Ayen Khan @ Rasool Khan, aged about 36 years, Caste- Muslim, At Present Resident Of In Front Of Raja Bada, Mahatma Gandhi Ward No. 1, Village- Parpodi, Police Station And Tahsil- Saja, District- Bemetara, Chhattisgarh.

----Respondent

For Applicant	: Shri Kanwaljeet Singh Saini, Advocate on behalf of Ms. Sharmila Singhai, Advocate
For Respondent	: Shri Amit Kumar Sahu, Advocate

Hon'ble Smt. Justice Rajani Dubey**CAV Order**

1. Heard on admission.
2. This revision is directed against the order dated 01.06.2018 passed by the Judge, Family Court, Bemetara, District Bemetara, (CG) in Cr. M.J.C.No. 127/2016, whereby the Judge Family Court has partly allowed the application filed under Section 125 Cr.P.C. by the respondent and granted her monthly maintenance of Rs.2500/-.
3. Facts of the case are that the respondent filed an application under Section 125 Cr.P.C. before the Family Court for grant of maintenance of Rs.7,000/- per month and litigation expenses of Rs.5,000/- on the ground that she was married to the applicant

according to Muslim customs and traditions. Out of their wedlock, one child namely- Salman was born, who died on 16.1.2014 in a motor accident. After some time of the marriage, husband (applicant) of the respondent started her treating with cruelty on account of demand of dowry, due to which, she left the matrimonial house and since then is residing with her parents. She is unable to maintain herself. The applicant/husband has agricultural land and have a Toy shop from which he earns Rs.15,000/- per month, therefore, Rs.7,000/- per month may be granted to her as maintenance.

4. Denying the allegations the applicant has pleaded that respondent herself has left the matrimonial house without any reason and despite the applicant tried his level best to take her back to his home, she refused to come back. It is further contended that due to refusal of performing marital obligations by the respondent, the applicant performed second marriage in the year 1996. The applicant pleaded that he has no agricultural land and he is working as a labourer.
5. Before the Family Court, both the parties adduced their evidence and after recording their evidence, the Family Court vide impugned order dated 1.6.2018 granted maintenance of Rs.2,500/- p.m. in favour of the respondent. Hence, this revision has been filed by the applicant to set aside the impugned order.
6. Learned counsel for the applicant submitted that the order passed by the learned family court is perverse, erroneous and bad in law

and therefore, it is liable to be set aside. The learned Family Court has completely overlooked the evidence of the applicant as well as Habib, who have clearly stated that there were 3 social meetings convened between the parties and in every meeting the respondent refused to live with the applicant without any reason, therefore, the proceeding of divorce was taken place in the meeting and the applicant got divorce from the respondent, hence, she is not entitled for any maintenance. The learned Family Court has failed to appreciate the admitted fact that on account of death of her son- Salman, the respondent has received compensation of Rs.2,25,000/-. He further submitted that the respondent has not adduced any evidence that she is residing separately due to sufficient reason and also not produced any documentary evidence regarding income of the applicant.

7. Learned counsel for the respondent supported the impugned order and submitted that the order passed by the family court is just and proper and requires no interference.
8. I have heard learned counsel for the parties and perused the material available on record.
9. The Hon'ble Supreme Court in the matter of **Shabana Bano Vs. Imran Khan on 4 December, 2009**, in **Criminal Appeal No.2309 of 2009** in para 29 held as under :

“29. Cumulative reading of the relevant portions of judgments of this Court in Danial Latifi (supra) and Iqbal Bano (supra) would make it crystal clear that even a divorced Muslim woman would be entitled to claim

maintenance from her divorced husband, as long as she does not remarry. This being a beneficial piece of legislation, the benefit thereof must accrue to the divorced Muslim women.”

10. Perusal of the record would show that before the Family Court, the applicant/husband has filed number of documents regarding claim case and Doctor's prescription. Learned counsel for the applicant submitted that the applicant is 45 years old and he is suffering from various diseases. Exs. D2 to D16 proved that the applicant is not in a condition to give any maintenance. The respondent has stated in her evidence that her son has died in a motor accident and after the death of her son, the applicant did not care for her maintenance. The Family Court found that a Muslim lady is also entitled for maintenance from her husband. The respondent is middle aged woman and the applicant/husband has performed a second marriage, therefore, the Family Court has rightly found that the respondent is having sufficient reason to live separately from the applicant/husband. The respondent has not filed any documentary evidence regarding income of the applicant. Therefore, the Family Court has granted maintenance of Rs.2,500/- per month to the respondent/wife on the basis of applicant working as a labourer. Prevailing minimum wages rate is Rs.300/- per day, which comes to Rs.9,000/- per month, therefore, Rs.2,500/- per month cannot be said to be disproportionate or unreasonable looking to the present price index. The order passed by the Family Court does not suffer any

irregularity or illegality and the same is not liable to be interfered with. Thus, the revision is dismissed at the admission stage itself.

- 11.** Consequently, I.A.No.1/2018 for grant of stay is also dismissed.

Sd/

(Rajani Dubey)

JUDGE

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