

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 292 of 2015**

Kailash S/o Babulal, aged about 28 years, Caste- Sahu, Occupation Agriculture & driver, R/o Village Nimahi, Police Station and Tahsil Dabhra, District Janjgir Champa (C.G.).

---- Applicant

Versus

1. Smt. Radhika Bai W/o Kailash Sahu, aged about 28 years,
2. Ajay S/o Kailash Sahu, aged about 10 months (minor) through his legal guardian mother Radhika Bai W/o Kailash, aged about 28 years, R/o Village & Post Sero, Police Station and Tahsil Dabhra, District Janjgir-Champa (C.G.)

---- Respondents

For Applicant	:	Ms. Laxmeen Kashyap, Advocate
For Respondents	:	Ms. Smita Ghai, PL

Hon'ble Shri Justice Arvind Singh Chandel

Order on Board

21/01/2019

1. This revision has been filed by the Applicant/Husband against order dated 11/03/2015 passed by the Family Court (Link) Sakti, District Janjgir Champa in Miscellaneous Criminal Case No. 15/2014, whereby the Family Court allowed the application under Section 125 of the Code of Criminal Procedure filed by the Respondents and directed the Applicant to pay monthly maintenance of Rs. 2500/- to Respondent No. 1 and Rs. 1200/- to Respondent No.2.
2. There is no dispute on the point that Respondent No.1 (henceforth 'the Wife') is legally wedded wife of the Applicant and Respondent No.2 is

legitimate child of the Applicant. From their wedlock, one another son namely Sahil aged about 5 years born, who is residing with the Applicant. It was pleaded by the Wife before the Family Court that after the marriage, the Applicant used to torture her on demand of dowry. He also expelled her out of his house for some reasons. It was further pleaded by the Wife that she is not able to maintain herself and the Applicant has sufficient means to maintain them.

3. In his reply, the Applicant denied the contention of the Wife. It was pleaded by him that the Wife is residing separately without any reasonable cause and she herself left his house. It was further pleaded by him that he is a poor labour and has no means to maintain the Wife who is residing separately without any reasonable cause.
4. After recording the evidence of both the parties and hearing both the counsel, the learned Family Court partly allowed the application under Section 125 Cr.P.C and granted monthly maintenance of Rs. 2500/- in favour of Respondent No.1 and Rs. 1200/- in favour of Respondent No.2.
5. I have heard counsel for both the parties and perused the record.
6. In her statement, the Wife has categorically stated that from last two years she is residing in her maternal house. There she gave birth to Respondent No.2. Since then, the Applicant did not come to take her. It was further stated by her that the Applicant/Husband got second marriage with one Malti Bai R/o Village Pirda. Dhramlal Sahu Applicant Witness No.3 who is husband of said Malti Bai stated that the

Applicant had taken Malti with him and kept her as his wife. Anand Bai, Applicant Witness No. 4 also corroborated the above statement of Dharmendra. Ram Kumar Applicant Witness No.2 has also stated like that and his statement has not been rebutted during cross examination. From the above, it is clear that the Applicant got second marriage with one lady namely Malti, therefore, the Wife has sufficient cause to reside separately.

7. With regard to quantum of maintenance, the learned Family Court has awarded Rs. 2500/- in favour of Respondent No.1 and Rs. 1200/- in favour of Respondent No.2. As pleaded by the Wife, the Applicant is having an Auto and Agricultural land, but no document in this regard has been submitted by her. The Applicant had pleaded and stated that he is a labour and earning Rs. 150/- daily. He is not having agricultural land. His witness namely kamlesh Singh (Non Applicant Witness No. 3) and Tulambar Das (Non-Applicant Witness No. 2) have also stated like that. Thus, there is nothing on record on the basis of which, it can be presume that except labour work, the Applicant is having any source of income or he is having agricultural land.
8. Considering the above facts and circumstances and the social and financial status of both the parties and considering the Applicant has another liability, the amount awarded by the Family Court is on higher side. Therefore, the order passed by the Family Court is modified to the extent that the Applicant shall now pay monthly maintenance of Rs. 1500/- to Respondent No.1 and Rs. 1000/- to Respondent No.2. The above mentioned modification shall be effective from today.

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

Sd/-
(Arvind Singh Chandel)
Judge

Rahul