

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 519 of 2015

1. Pranita Deshmukh

Applicant

Versus

Om Prakash Verma

Respondent

CRR No. 582 of 2015

Om Prakash Verma

Applicant

Versus

Pranita Deshmukh

Respondent

Post for pronouncement of the order on 24.10.2019

**Sd/-
JUDGE**

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Order Reserved on : 02.08.2019****Order Delivered on : 24/10/2019****CRR No. 519 of 2015**

- Pranita Deshmukh W/o Om Prakash Verma Aged About 29 Years R/o Present R/o At Near Nar-Narayan Mandir, Borsi, Durg, Tah. And District Durg Chhattisgarh.

---- Applicant**Versus**

- Om Prakash Verma S/o Jeevan Lal Verma Aged About 36 Years Professor And H.O.D. Chhattisgarh Engineering And Technology College, Rajnandgaon - Chhattisgarh R/o Presently R/o At Qr. No. 2/c, Road No. 37, Sector 7, Bhilai Nagar, Tah. And District Durg Chhattisgarh.

---- Respondent**CRR No. 582 of 2015**

- Om Prakash Verma S/o Jeevan Lal Verma Aged About 36 Years Principle And H.O.D. Chhattisgarh Engineering And Technology Sansthan Rajnandon Chhattisgarh, Present R/o Q. No. 02 1/c, Road No. 37, Sector 7, Bhilai Nagar, Tah. And Distt. Durg Chhattisgarh.

---- Applicant**Versus**

- Smt. Pranita Deshmukh S/o W/o Om Prakash Verma Aged About 29 Years R/o Near Nar Narayan Temple Borsi Durg, Tah. And Distt. Durg Chhattisgarh.

---- Respondent

For Applicants	: Shri Vedant Belonde Advocate on behalf of Shri P.R.Patankar Advocate
For Respondent	: Shri Arvind Dubey, Advocate

Hon'ble Smt. Justice Rajani Dubey**C A V Order****24/10/2019**

In both these revision petitions arising out of the order dated 06.06.2015 passed by the Third Additional Principal Judge, Family Court, Durg in M.Cr.C. No. 41/14, the common question of law and fact is involved, as such they are being heard analogously and disposed of by this common order.

Questioning the legality and validity of the impugned order of the Family Court, applicant/wife in Criminal Revision No. 519/2015 has filed for seeking enhancement of the maintenance amount whereas the applicant/husband in Criminal Revision No. 582/2015 has filed for setting aside the order granting maintenance to the wife.

2. It is not disputed before the Family Court that the applicant in (Cr.Rev. No. 519/2015) and applicant in (Cr.Rev. No. 582/2015) are legally married husband and wife. Their marriage was solemnized on 23.11.08 and since 17.05.2011 they are living separately.

3. Applicant/wife in Cr. Rev. No.519/2015, has filed application before the Family Court under Section 125 Cr.P.C. on the averment that after the marriage, non-applicant/husband and his family members treated her with cruelty in the name of dowry and on 10.04.2009, January 2010 and March 2010, she was forcibly got aborted in Agrawal Nursing Home, Durg. It is further stated that on 17.05.2011, the husband with an intention to commit murder, assaulted her and on coming to know about the same, parents of the

applicant/wife took her away and thereafter FIR was lodged at police station against the applicant and his family members under Section 498-A IPC. Applicant/wife has filed application under section 125 Cr.P.C. before the Family Court, Durg claiming maintenance of Rs. 15,000/- from the husband.

4. In reply, husband/respondent has denied all the allegations as levelled against him and submitted that the wife is also educated lady and earning Rs. 40,000/- by taking classes in CSIT College, Durg and in other private coaching centers.

5. Learned Family Court after recording evidence and submissions of both the parties allowed the application and granted maintenance of Rs. 5,000/- per month to the wife. Thus, the present revisions have been filed by both the husband and wife.

6. In Cr. Revision No. 519/2015, filed by the wife, counsel for the applicant submits that the order passed by the trial court is contrary to law, facts and circumstances of the case. The maintenance amount of Rs. 5,000/- awarded by the Family Court is not justifiable looking to the status of the family of the applicant/husband. Learned Family Court has erred in law in not appreciating the fact that the husband is drawing Rs. 37,325/- from CIT College Rajnandgaon which has also been proved by the salary slip and evidence of the Accountant of College where the non-applicant/husband is working. Learned Family Court has also erred in not considering the fact that the wife is not earning. Learned Family Court has not considered the law laid down by the Hon'ble Apex court in the matter of **Bhagwan Vs. Kamla Devi** reported in **AIR 1975 SC 83**, wherein it has been observed that “the

wife should be in a position to maintain standard of living which is neither luxurious nor penurious but what is consistent with status of a family. The expression 'unable to maintain herself' does not mean that the wife must be absolutely destitute before she can apply for maintenance under Section 125 Cr.P.C."

7. It has been stated that the wife is entitled for maintenance to live and maintain the same standard as she used to maintain living with the husband and family members and looking to the cost of living in the present society, it would be practically impossible to maintain herself with Rs. 5,000/- per month. The husband is drawing salary of Rs. 37,000/- and is also getting additional income from agriculture but has been directed to pay a meager amount of Rs. 5,000/- which is totally unjust and improper. In the facts and circumstances of the case, their maintenance amount may be suitably enhanced in the larger interest of justice.

8. Counsel for the applicant/husband in Cr.Rev. No. 582/2015 filed his reply admitting the fact of marriage with the wife/non-applicant and pleaded that the order impugned is bad in the eye of law. Learned Family Court has failed to consider that both the husband and wife are working as Professors and are drawing handsome salary and without appreciating this fact, has allowed the application filed by the wife for grant of maintenance to the tune of Rs. 5,000/- which is on the higher side. It is further submitted that the wife/non-applicant has her own means of support which ought to have been taken into account for determining her right to maintenance. There is sufficient evidence and material in the present case that the non-applicant/wife is willfully

residing separately without any reason and it is a case where both the husband and wife are well educated and having their own source of livelihood. The main object of provision of Section 125 Cr.P.C. is proceeding to prevent vagrancy by compelling a husband to separate from his wife or parents, unable to maintain himself/themselves but in the present case, wife is the earning member and working as a Professor. The husband has produced sufficient evidence before the Family Court that the wife has no justifiable reason to desert the husband and it is only because she does not want to live with him and even she was not ready for counseling before the authorities. All such facts have been overlooked by the Family Court, therefore the order impugned passed by the Family Court is liable to be set aside. It is submits that the Magistrate is required to exercise the discretion in a just manner where the income of the wife, also, must be put in the scales of justice as against the means of the husband.

9. The submission has been opposed by counsel for the respondent/wife. Reliance has been placed in the matter of **Rishikesh singh @ T.R.Singh** reported in 2015(1)CGLJ 238; **Hemlalata Lalji Chandrakar Vs. Lalji Chandrakar** reported in **ILR 2017 CG 246**.

10. Heard counsel for the parties and perused the material available on record.

11. Before the Family Court, wife has examined herself as AW-1, AW-2 Karnapal Deshmukh, AW-3 HemeshDeshmukh and AW-4 Lokendra Chawda whereas husband has examined himself as NAW-1, Darbari Lal Deshmukh NAW-2, Lalit Deshmukh NAW-3 and NAW-4 Jageshwar Prasad Sahu.

12. The trial court has appreciated the evidence of the witnesses in para 9 to 23, and after hearing the parties has found that the wife has sufficient cause to live separately. The finding given by the trial court in para 23 is as under :

“Wife/applicant has deposed that on 17.05.2011, when her husband assaulted her she made a call to her father. Karnapal (AW-2) and Hemesh (AW-3) have also deposed that the applicant/wife had made a call at night to her father. Lalit Harmukh (NAW-3) and Jageshwar Prasad (NAW-4) have stated that the applicant/wife had slapped her husband. Darbarilal Deshmukh (NAW-2) has stated that there was some hot talk between husband-wife. It is thus clear from the statement of the witnesses that their relations were not good.”

13. Applicant/wife has lodged a report against the non-applicant/husband for demand of dowry but the witnesses are not reliable. Non-applicant has stated that he is willing to live with the applicant/wife but she is not willing to live with him and therefore the court below has come to the conclusion that the applicant/wife is living separately from the husband with sufficient reason. This finding is based on proper appreciation of the statement of the witnesses.

14. As regards to quantum of maintenance, learned trial court has appreciated both the oral and documentary evidence of the parties and relying upon the judgment of **Chaturbhuj Vs. Sita Bai reported in (2008) 2 SCC 316**, fixed the amount of maintenance to Rs. 5,000/- which is just and proper and does not call for interference. Furthermore, the applicant/wife is educated and is employed in some institution, earning sufficient income and therefore there is no

necessity to enhance the amount of maintenance as awarded by the court below. Thus, the order passed by the Family Court is well reasoned order and therefore both the petitions being without any substance, stands dismissed.

Sd/-

(Rajani Dubey)
Judge