

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 222 of 2016**

- Smt. Khusboo Sahu, W/o Shri Deepak Sahu, Aged About 24 Years, R/o Village Nearby Bus Stand Patna, Tahsil Baikunthpur, District Korea (C.G.).
- Vashisath, S/o Deepak Sahu, Aged About 2 Years (Minor), Through Natural Guardian / Mother Smt. Khusboo Sahu, R/o Village Nearby Bus Stand Patna, Tahsil Baikunthpur, District Korea (C.G.).

---- Applicants**Versus**

- Deepak Sahu, S/o Shivrath Sahu, Aged About 28 Years, R/o Village Badkapara, Surajpur, District Surajpur (C.G.).

---- Respondent

For Applicants	: Mr. Anil Gulati, Advocate
For Respondent/State	: Mr. A.N. Pandey, Advocate

Hon'ble Smt. Justice Rajani Dubey**CAV Order****27.08.2019**

1. This Revision has been filed by the applicant against order dated 20.01.2016 passed by Judge, Family Court, Baikunthpur, District Korea in MJC No. 60/13 whereby the Family Court has dismissed the application filed by applicant no. 1/wife and allowed the application of applicant no. 2/son and awarded Rs. 2,000/- per month as maintenance.
2. Facts of the case are that before the Family Court the applicants have preferred an application for grant of maintenance under Section 125 of Cr.P.C. on the ground that applicant no. 1 is legally wedded wife of the respondent/husband. Their marriage was solemnized on 28.05.2010 and out of their wedlock applicant no. 2

was born. After one year of the marriage, applicant no. 1 was being subjected to cruelty. Respondent tortured her physically and mentally for demand of dowry and left her to her parental house. Respondent has sufficient means of income therefore, she may be given Rs. 10,000/- for herself and Rs. 5,000/- for applicant no. 2/son, total Rs. 15,000/- per month as maintenance.

3. The respondent denied all allegations stating that he never demanded dowry and never tortured his wife for bringing dowry. Applicant no. 1 left his house on her own will without any justifiable cause. She is an educated lady and is running a boutique shop. she is capable to maintain herself.
4. The learned Family Court, after appreciating oral and documentary evidence of both the parties, dismissed the application of applicant no. 1 and allowed the application of applicant no. 2 and granted Rs.2,000/- per month as maintenance from the respondent. Hence, this revision has been filed by the applicants.
5. Learned counsel for the applicants submitted that impugend order passed by the learned Family Court is bad in law, perverse and based on no reliable evidence. The learned Family Court has failed to appreciate that applicant no. 1 is residing separately and having no source of income and the repondent has performed second marriage with Purnima Sahu and out of their wedlock they have one child. The repondent tried to establish this fact that applicant no. 1 is running a boutique shop, but apart from oral statement, no document has been produced by the respondent. He further submits that amount of maintenance passed in favour of applicant no. 2 is very less and it is liable to be enhanced as the respondent

is having sufficient means of income and looking to the daily needs studies of applicant no. 2.

6. Learned counsel for the respondent supported the impugned order.
7. Heard learned counsel for both the parties and perused the material available on record.
8. Before Family Court this is not disputed that marriage between the parties was solemnized on 28.05.2010 and out of their wedlock applicant no. 2 was born. Learned trial court after appreciating oral and documentary evidence of the parties found that respondent performed second marriage with another lady and he is residing with her and there is sufficient reason for applicant no. 1 to live separately from the respondent. Learned trial court without any documentary evidence found that applicant no. 1 is running a boutique shop and capable to maintain herself and, therefore, rejected the claim of applicant no. 1 for grant of maintenance which is perverse to law. Since applicant no. 1 is legally wedded wife of the respondent and the respondent has contracted a second marriage, there is sufficient reason for her to live separately from the respondent. Applicant no.1 is residing in her parental house along with her minor son and she has no income and is unable to maintain herself and her son. The Family Court has granted maintenance of Rs.2000/- to applicant no.2-son and has not granted a single penny to applicant which is unjustified. Applicant no.1 is a legally married wife of the respondent and the respondent being husband is duty bound to maintain his wife and children, therefore, applicant no. 1 is entitled to get maintenance from the respondent/ husband.

9. Learned trial court found that the respondent has agricultural land in village Sedam and has income of Rs.1,00,000/- from it and he is also working as pharmacist and lab technician and thereby earning Rs.20,000/- per month, therefore, he has sufficient and regular income to pay maintenance to the applicants. Looking to the present price index, amount of Rs. 5,000/- per month as maintenance would be just and proper for applicant no. 1. So far as applicant no.2-son is concerned, he is minor and Rs.2,000/- has already been granted by the Family Court in his favour and presently no need to enhance it.
10. Accordingly, the revision is partly allowed and it is directed that the respondent/ husband shall pay maintenance of Rs. 5,000/- per month to applicant no.1.

**Sd/-
(Rajani Dubey)
Judge**