

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 940 of 2014**

- Smt. Laxmi Bajaj @ Nandani Khatri, W/o W/o Harish Kumar Khatri, Aged About 26 Years, R/o Raigarh, At Present Residing Father Vasudev Bajaj, Janjgir, Distt.- Janjgir-Champa C.G.

---- Applicant

Versus

- Haris Khatri, S/o Khemchand Khatri, Aged About 29 Years, R/o Chakradhar Nagar, Santosh Barf Factory, Bhawan, Sindhu Bhawan, Pakki Kholi, Raigarh, Distt.- Raigarh C.G.

---- Respondent

For Applicant	: Ms. M. Asha, Advocate
For Respondent/State	: Mr. Sanjay Agrawal, Advocate

Hon'ble Smt. Justice Rajani Dubey**CAV Order****11.09.2019**

1. This Revision has been filed by the applicant against order dated 23.09.2014 passed by Judge, Family Court, Janjgir, District- Janjgir-Champa (C.G.), in Miscellaneous Criminal Case No. 237/12 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. 3,500/- per month as maintenance in favour of her son (applicant No. 2 before trial Court).
2. Facts of the case are that before the Family Court the applicants 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 12.12.2009 and out of their wedlock, Paras Khatri (applicant no. 2

before trial Court) was born. After one year of the marriage, the relation of applicant with parents of respondent became weak and due to their cruel treatment, applicant No. 1 started residing separately with her son in her parental house. She is unable to maintain herself and respondent has sufficient means, therefore, she may be given Rs. 8,000/- for herself and Rs. 5,000/- for applicant no. 2/son, total Rs. 13,000/- per month as maintenance.

3. The respondent denied all allegations stating that Applicant No. 1 herself did not want to reside in her matrimonial house and without any reasonable cause, she is residing in her parental house. The applicant No. 1 was suffering from heart disease prior to marriage and the parents of the applicant did not inform the respondent about the same. The parents and family members are interfering and are spoiling the marriage, and applicant No. 1 had left her matrimonial house without informing him. The financial condition of the respondent is not strong, so, application is liable to be dismissed.
4. The learned Family Court, after appreciating oral and documentary evidence of both the parties, vide order dated 23.09.2014, dismissed the application of applicant No. 1 and allowed the application of applicant No. 2 and granted Rs. 3,500/- per month as maintenance from the respondent. Hence, this revision by the applicant (wife).
5. Learned counsel for the applicant submits that impugned order passed by the learned Family Court is bad in law, perverse and based on unreliable evidence. The learned Court below failed to appreciate the evidence on record in its proper perspective and

adverse order is passed against the applicant. Finding of learned family Court is bad in the light of evidence of the applicant on record. She clearly stated that cruel treatment and torture was given to her and, though, at times, she tried to resolve the dispute by entering into compromise, however, there was no change in the behaviour of the respondent. Hence, it can not be said that without any sufficient cause, she was living separately from the respondent/husband. Learned counsel for the applicant further submits that the learned Court below failed to see that the applicant No. 1 was not having any source of income nor there is any evidence to show that she is earning for her livelihood. She also submits that the learned Court below failed to see that order dated 12.11.2013 passed in Civil Suit No. 82A/2013 was already under-challenged before the Hon'ble High Court by filing FAM No. 111/2013 and the Hon'ble High Court stayed the effect and operation of order dated 12.11.2013, hence, in the light of the above facts and circumstances of the case, the order passed by the Court below is bad and liable to be set aside.

6. Learned counsel for the respondent supporting the impugned order submits that the trial Court was fully justified in passing the impugned order.
7. Heard learned counsel for both the parties and perused the material available on record.
8. Before the family Court, the applicant examined herself as Applicant Witness No.1, Majharam (Aw/2) and her father (Aw/3). The respondent examined himself as Non-applicant witness No. 1 and his brother San Khatri (NAW/2) and Ravikaran Sahu (Aw/3).

9. There is no dispute on the point that marriage between the parties was solemnized on 12.12.2009 and out of their wedlock one son Paras Khatri was born. Learned family Court, after appreciating oral and documentary evidence, observed in para 9 to 25, that applicant No. 1 is residing separately without any sufficient cause and dismissed the claim of applicant No. 1/ wife and granted maintenance for her son only. In the decision of Supreme Court in the matter of **Deb Narayan Halder Vs. Anushree Halder reported in AIR 2003 SC 3174** it is held in Para (C) that "*Wife left matrimonial home without any justifiable ground - Not entitled to maintenance.*" In light of above, this Court does not find any irregularity or illegality in the finding so recorded by the Court below.
10. Accordingly, the revision has no merit and is hereby dismissed.

Sd/-
(Rajani Dubey)
Judge