

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No.722 of 2017

1. Nishiba Paik, aged about 37 years, wife of Jogendra Paik,
2. Saimshan Paik, aged about 5 years (Minor), through natural guardian mother Nishiba Paik, Applicant No.1

Both are R/o Village Jagdishpur, P.S. Basna, District Mahasamund, Chhattisgarh

---- Applicants

versus

Jogendra Paik, aged about 37 years, son of Gulab Paik, R/o Village Narayanpur, P.S. Sankara, Tahsil Pithora, District Mahasamund, Chhattisgarh

--- Respondent

For Applicants	:	Shri N.S. Dhurandhar and Shri Pramod Ramteke, Advocates
For Respondent	:	None

Hon'ble Shri Justice Arvind Singh Chandel

Order on Board

17.1.2019

1. This is an admitted revision and is listed for final hearing.
2. This revision has been preferred against the order dated 8.8.2016 passed by the Family Court, Mahasamund in M.Cr.C. No.99 of 2015, whereby the application under Section 125 of the Code of Criminal Procedure, so far as it relates to Applicant No.1, has been rejected and as regards Applicant No.2, a sum of Rs.1,000/- has been granted as monthly maintenance in his favour.
3. As pleaded by Applicant No.1, her marriage with the Respondent was solemnised as per christian customs in the year 2008. Out of their wedlock, Applicant No.2 took birth. It was further pleaded that after the marriage, the Respondent harassed Applicant No.1 for demand of dowry and she was also assaulted. In the year 2011, the Respondent ousted the Applicants from his house. Since then,

they are residing in a rented house at Jagdishpur. It was also pleaded that Applicant No.1 is unable to maintain herself and her child/Applicant No.2. The Respondent owns 10 acres of agricultural land and earns Rs.3,00,000/- per year from the said agricultural land. He also works as an insurance agent. In reply, the Respondent denied the allegations made against him. It was pleaded by him that Applicant No.1 is residing separately from him without any sufficient cause. She also earns Rs.15,000/- per month. Therefore, she is not entitled to get any maintenance. The Family Court, after considering the evidence on record, rejected the application for grant of maintenance to Applicant No.1 holding that she is residing separately without any sufficient cause, but granted monthly maintenance of Rs.1,000/- in favour of Applicant No.2. Hence, the instant revision by the Applicants.

4. Learned Counsel appearing for the Applicants submits that there is sufficient evidence on record on the basis of which it is well established that Applicant No.1 is residing separately with sufficient cause. It is further argued that looking to the financial status and earning capacity of the Respondent, the grant of monthly maintenance of Rs.1,000/- to Applicant No.2/child is on much lower side.
5. I have heard Learned Counsel appearing for the Applicants. None appears for the Respondent. I have also perused the record with due care.
6. In her cross-examination, Applicant No.1 has admitted the fact that she has been working as a Staff Nurse in Jagdishpur Hospital prior to her marriage and presently she is getting monthly salary of

Rs.12,250/-. She has further admitted that on doing overtime duty, she gets Rs.100/- per day. She has further admitted that she is not residing with the Respondent since the year 2010. She has also admitted the fact that she has not made any report against the Respondent regarding demand of dowry or harassment nor has she filed any application for restitution of conjugal rights. She has also admitted the fact that the Respondent has filed an application under Section 9 of the Hindu Marriage Act for restitution of conjugal rights. She has also admitted that the Respondent has also sent her a notice socially to keep her with him. She has also admitted that in the social meeting, she has stated that the Respondent is not her husband.

7. From the above, it is clear that Applicant No.1 is a working woman and is residing separately from the Respondent at Jagdishpur. From the admissions made by her, it is also clear that she herself is residing separately with her own will and without any reasonable cause. Thus, the Family Court has rightly arrived at the conclusion that she is residing separately from the Respondent without any reasonable cause. Apart from this, from the evidence on record, it is also clear that Applicant No.1 is getting monthly salary of about Rs.13,000/-. Thus, she is quite able to maintain herself.
8. As regards Applicant No.2, it is not in dispute that he is a legitimate child/son of the Respondent and Applicant No.1. Though Applicant No.1/mother is a working woman, the Respondent being father of Applicant No.2 is also liable to maintain him. Though it was pleaded by Applicant No.1 that the Respondent owns about 10 acres of agricultural land and also works as an insurance agent, there is no documentary evidence produced by Applicant No.1 in

this regard. The Respondent has also not disclosed about his work and income. Considering the social and financial status of the husband and wife, age of their son and also considering the present price index, the grant of monthly maintenance of Rs.1,000/- to the son/Applicant No.2 is on lower side. Therefore, the monthly maintenance of Applicant No.2 is enhanced from Rs.1,000/- to Rs.2,000/- payable with effect from today.

9. Consequently, the revision is allowed in part to the extent indicated above.
10. Record of the Court below be sent back along with a copy of this order for information and necessary compliance.

Sd/-

(Arvind Singh Chandel)
Judge