

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 1408 of 2018**

- Smt. Jigyasa (Gupta) Soni, W/o Shri Prakash Gupta, Aged About 32 Years, C/o Shri Ujjwal Soni, Near Bharat Kirana Stores, Ganpati Nagar, Changorabhata, Raipur, District - Raipur (C.G.).

---- Applicant**Versus**

- Prakash Gupta, S/o Shri Shivratan Gupta, Aged About 34 Years, Occupation Private Service, R/o Itwari Bazar Chowk, In Front Of Dr. N. P. Gupta, Sadar Bazar, Dhamtari, Tahsil & District - Dhamtari, (C.G.).

---- Respondent

For Applicant	: Mr. Roop Naik, Advocate
For Respondent/State	: Mr. Awadh Tripathi, Advocate

Hon'ble Smt. Justice Rajani Dubey**CAV Order****29.08.2019**

1. Heard on admission.
2. This Revision has been filed by the applicant against order dated 26.09.2018 passed by First Additional Principal Judge Family Court, Raipur in MJC No. 653/16 whereby the learned Family Court has awarded Rs. 5,000/- per month as maintenance in favour of the applicant. This revision has been filed against this order for enhancement of maintenance amount.
3. Brief facts of the case are that applicant (wife) filed an application under Section 125 of Cr.P.C. before the Family Court claiming maintenance of Rs.41,000/- per month from the respondent (husband) on the ground that her marriage with the respondent was solemnized on 29.01.2015. After some time of the marriage, the

respondent and his family members started demand of dowry and the applicant (wife) was subjected to cruelty. Thereafter, the applicant left the matrimonial house on 09.01.2016. The applicant is unable to maintain herself and earning of respondent is Rs. 75,000/- per month, therefore, she claimed for maintenance.

4. In his reply, respondent denied all the allegations made against him and pleaded that the applicant has left the house without any reason. Therefore, she is not entitled to get any maintenance from the respondent. Applicant is Assistant Professor in college and her earning is Rs. 30,000/- per month therefore, she is able to maintain herself.
5. Before the learned Family Court, evidence have been adduced by both the parties and after recording the evidence and hearing their statements, the Family Court passed impugned order dated 26.09.2018 and granted monthly maintenance of Rs. 5,000/- per month in favour of the applicant. Hence, this revision has been filed by the applicant for enhancement.
6. Learned counsel for the applicant submits that impugned order passed by the Family Court is liable to be modified looking to the evidence available on record. The learned Family Court has clearly held that the applicant is residing separately with sufficient reason and she is unable to maintain herself but the learned Court below has awarded only Rs. 5,000/- per month. Looking to the financial condition and status of the husband, wife has equal right to live in the society. The learned Court below has overlooked the evidence available on record and also not granted opportunity to adduce evidence for proper determination of salary of the respondent. Applicant has filed document and evidence which shows that the

respondent's salary is Rs. 75,000/- per month but the said facts have been overlooked by the learned Court below. Respondent is the owner of Maruti Swift Dzire car and he is maintaining standard life style so looking to the facts and circumstances of the case, the impugned order deserves to be modified.

7. Learned counsel for the respondent submits that the respondent has filed cross-objection against impugned order. He submits that respondent filed a petition for restitution of conjugal rights before the Family Court on 2.1.2017 and the Family Court, Dhamtari has passed a judgment for restitution of conjugal rights on 10.12.2018 and directed the wife/applicant to return to husband's house and carry her responsibilities of the married life. But the applicant /wife did not return. Thereafter, the respondent has filed execution proceedings before the Family Court, Dhamtari but the applicant has not challenged the same before the Court of law and she filed the application for enhancement of maintenance amount before this Court. It is well-settled law that wife cannot claim the maintenance after the decree of conjugal rights. So, impugned order is liable to be set aside. He further submits that applicant is a earning woman and she is lecturer in engineering college, therefore, she is not entitled for any maintenance. Reliance has been placed on **order dated 23.08.2017 passed by High Court of Gujarat at Ahmedabad in Special Criminal Application No. 2593 of 2014 with Special Criminal Application No. 2588 of 2014 with Criminal Misc. Application No. 14071 of 2016.**
8. Heard learned counsel for both the parties and perused the material available on record.

9. There is no dispute on the point that marriage between the applicant and the respondent was solemnized in the year 2015 and thereafter, the applicant resided with the respondent for some time. Thereafter, the applicant is residing separately. Learned trial Court in its order from para 7 to 11 after appreciating the evidence of both the parties has held that the applicant has sufficient cause to live separately. This finding of the learned Family Court is in accordance with the evidence available on record. So, Cross-objection has no merit.
10. The learned Family Court has granted Rs. 5,000/- per month as maintenance. In the light of the principle of law laid down by Hon'ble the Supreme Court in some cases, it is quite vivid that income of the respondent (husband) has been proved before the Family Court to be Rs. 28,000/- per month and as such taking the income as Rs. 28,000/- per month, as accepted by the Family Court, the Family Court ought to have granted 25% of the total income as maintenance to the applicant (wife) which comes to Rs. 7,000/- which the petitioner/ wife is entitled from today.
11. Accordingly, the revision is partly allowed and it is directed that petitioner/wife is entitled for maintenance of Rs. 7,000/- per month from the respondent/husband from the date of passing of this order.
12. With the aforesaid modifications, the Revision has been disposed of at the motion stage itself.

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