

HIGH COURT OF CHHATTISGARH, BILASPUR

Order Reserved on : 10.02.2020

Order Passed on : 12/03/2020

Cr.R. No.236 of 2019

1. Smt. Kamla Sahu W/o Omprakash Sahu Aged About 28 Years
2. Ku. Bhumi D/o Omprakash Sahu Aged About 7 Years Minor Through Legal Natural Guardian Mother Namely Kamla Sahu
3. Ku. Lavanya Aged About 3 Years And 6 Months, D/o Omprakash Sahu, Minor Through Legal Natural Guardian Mother Namely Kamla Sahu
(all are R/o Manas Nagar, Kohdiya, Korba, Tahsil And District Korba, Chhattisgarh)

---- Petitioners

Versus

- Omprakash Sahu S/o Kuswa Ram Sahu Aged About 30 Years R/o Village Gopalpur, Police Station Sarsiwa, Tahsil Bilaigarh, District Baloda-Bazar, Chhattisgarh

---- Respondent

And

Cr.R. No.355 of 2019

- Omprakash Sahu S/o Kuswa Ram Sahu Aged About 30 Years R/o Village Gopalpur, Police Station Sarsiwa, Tahsil Bilaigarh, District Baloda-Bazar, Chhattisgarh

---- Petitioner

Versus

1. Smt. Kamla Sahu W/o Omprakash Sahu Aged About 28 Years
2. Ku. Bhumi D/o Omprakash Sahu Aged About 7 Years Minor Through Legal Natural Guardian Mother Namely Kamla Sahu
3. Ku. Lavanya Aged About 3 Years And 6 Months, D/o Omprakash Sahu, Minor Through Legal Natural Guardian Mother Namely Kamla Sahu
4. (all are R/o Manas Nagar, Kohdiya, Korba, Tahsil And District Korba, Chhattisgarh)

---- Respondents

For Applicants (In Cr.R. No.236/2019) : Mr. K.P.S. Gandhi, Advocate.

For Applicant (In Cr.R. No.355/2019) : Mr. Amiyakant Tiwari, Advocate.

For respondent (In Cr.R. No.236/2019) : Mr. Amiyakant Tiwari, Advocate.

For Respondents(In Cr.R. No.355/2019) : Mr. K.P.S. Gandhi, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

C A V ORDER

12/03/2020

1. Both the revisions arise out of the same order in the same case, therefore, they are being decided by this common order. The applicants in Cr.R. 236/2019 shall be referred to as applicants and the applicant in Cr.R. No.355/2019 shall be referred to as respondent in this order.
2. Cr.R. No.236/2019 has been brought for enhancement in the maintenance ordered in favour of the applicants passed in Criminal M.J.C. No.09/2017 vide order dated 24.11.2018, by the learned Family Court, Korba.
3. It is submitted by the learned counsel for the applicants that the respondent is a man of sufficient means having an earning of Rs.1,00,000/- per month from his hardware shop in village- Gopalpur. Apart from that the respondent is owner of 15 acre of agricultural lands from which he receives annual income of Rs.3,00,000/-. Therefore, the prayer of the applicants for grant of maintenance of Rs.15,000/- was reasonable. The learned Court below has committed an error in making assessment of only Rs.8,000/- in favour of the applicants which is not befitting to their status that they enjoy, while they were living with the respondent. Hence, it is prayed that the impugned order be interfered

with and the maintenance granted to the applicant may be enhanced.

4. Cr.R. No.355/2019 has been brought being aggrieved by the order of maintenance passed against the respondent.
5. It is submitted by the learned counsel for the respondent that the applicants have suppressed this fact that applicant No.1 is getting maintenance of Rs.1,000/- per month from the order in the proceeding under Section 23 of Domestic Violence Act. The learned Court below has not appreciated this fact that the applicants are residing separately without any sufficient reason and further the amount ordered to be paid as maintenance is on the excessive side and beyond the capacity of the respondent to pay the same. Therefore, it is prayed that interference be made in the impugned order in favour of the respondent.
6. Learned counsel for the applicant in Cr.R. No.236/2019 reverts the arguments made by the learned counsel for the applicant in Cr.R. No.355/2019. Similarly, in Cr.R. No.355/2019 learned counsel for the respondent reverts the arguments made by the learned counsel for the respondent side in Cr.R. No.236/2019.
7. Heard learned counsel for both the parties and perused the documents present on record.
8. The question for determination in Cr.R. No.236/2019 is this that whether the applicant has capability to payment of enhancement maintenance and the question for determination in Cr.R. No.355/2019 is this that whether the applicants are living separately without the sufficient cause and that the maintenance in the impugned order is beyond the capacity of the respondent.
9. Applicant Kamla Sahu (A.W.-1) has stated in her examination in chief regarding the torture meted out to her by the respondent and other in-

laws. And that despite the meeting of the society and advice given no change was seen in the respondent and ultimately the applicant No.1 and her children, applicant No. 2 and 3 were driven out of her matrimonial home. She has stated about the resources of income of the respondent. Her statement has remained unrebutted in cross-examination. However, the suggestions also establishes that applicant is running a hardware shop.

10. The statement of Kamla Sahu (A.W.-1) has been supported by Shriram Sahu (A.W.-2).

11. Respondent- Om Prakash Sahu (N.A.W.-1) has stated in his examination-in-chief that he is willing to have the applicants back and maintain them and he himself is employed in a shop styled as Muskan traders and getting a salary of Rs.5,300/- per month. He has further stated that because of the irritating behavior of the applicant No.1 there had been dispute and the applicant No.1 herself has deserted him therefore, the applicants are living separately without sufficient cause. In cross-examination, he has denied all the suggestions given by the applicant side, he has denied social meetings and also denied that he never took the interest to bring the applicants back to his house and he has also denied the suggestions regarding his income given by the applicant side.

12. On appreciating the evidence brought from the applicant side that the preponderance of probability has been found on the applicant side to show that the applicants are living separately because of sufficient reasons of the mal-treatment, mis-behaviour and cruel treatment of the respondent. Similarly, the evidence brought by the applicant side has not been effectively denied by the respondent side. Therefore, after over all consideration and the submissions and on the facts of the case, I am

of this view that some enhancement on the basis of prayer made by the applicants in Cr.R. No.236/2019 appears to be proper whereas the prayer in Cr.R. No.355/2019 appears to be without any merit. Therefore, both the petitions are disposed off. The Cr.R. No.236/2019 is allowed and the respondent is now ordered to make a payment of Rs.12,000/- to the applicants as monthly maintenance i.e. Rs.4000/- to each of the applicant from the date of passing of this order. And the Cr.R. No.355/2019 is dismissed.

13. Accordingly, these petitions stand disposed off.

Sd/-

(Rajendra Chandra Singh Samant)

Judge