

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 714 of 2019

1. Pokhraj Sahu, S/o Shri Laluram Sahu, Aged About 25 Years, R/o Village Nimoda (Mana) P.S. Rakhi, Tehsil Abhanpur, District- Raipur, Chhattisgarh.

---- Applicant

Versus

1. Smt. Saraswati Sahu, W/o Shri Pokhraj Sahu, Aged About 21 Years, R/o Gitti Khadan, Bhairav Nagar, District- Raipur, Chhattisgarh.
2. Ku. Jahrna Sahu, D/o Pokhraj Sahu, Aged About 2 Years, Through Her Natural Guardian, Smt. Saraswati Sahu, R/o Gitti Khadan, Bhairav Nagar, District- Raipur, Chhattisgarh.

---- Respondents

For Applicants : Mr. Pragalbha Sharma, Advocate.

For Respondents : Mr. Anish Tiwari, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

17/02/2020

1. The petition has been brought against the order dated 10.5.2019 passed by the Family Court, Raipur in MJC No.257/2016 awarding monthly maintenance of Rs.4,000/- to the respondents, which is to be paid by the applicant.
2. It is submitted that in the present petition the applicant is pressing only one ground that respondent No.1 herself has deserted the applicant and is living separately without any sufficient cause, hence, she is not entitled for maintenance as per provision of Section 125 (4) of CrPC. In support of aforesaid submission, learned counsel for applicant has placed reliance on the judgment of Gujarat High Court in Girishbhai Babubhai Raja v. Hansaben Girishchandra & another, reported in (1986) 1 GLR 630 and Sushilaben Rameshchandra v. Rameshchandra Ambala Rana, reported in (1993) CriLR 148. The view expressed by the Gujarat High Court in both the aforementioned cases is this that

the judgment passed in civil case for restitution of conjugal rights has a binding effective on the criminal proceedings.

3. The petitioner had filed a petition under Section 9 of the Hindu Marriage Act, 1955 against the respondent No.1 which was registered as HMA No.231/2016 and decided on 7.9.2018 in which the respondent no.1 was ordered to resume her matrimonial life with applicant, but the respondent No.1 has not complied with the said order. Therefore, it is a clear case of desertion. In these circumstances, the hence, revision be allowed and the impugned order be set aside.
4. On behalf of respondent, it is submitted that the respondents have very well established in the evidence that they have sufficient reasons for separate living from the applicant. In Rohtash Singh v. Ramendri & Ors., reported in AIR 2000 SC 952 it was held by the Supreme Court that Section 125 of CrPC provides that even a divorced wife can make a claim for maintenance. Hence, in such a situation, the issue of desertion cannot be taken into consideration.

Reliance has been placed on the judgment of Babulal v. Sunita, reported in 1987 CrLJ 525. It is submitted that it has been held by the M.P. High Court that even there being a decree for restitution of conjugal rights, the wife can pray for grant of maintenance under Section 125 of CrPC as there is no expressed bar present under Section 125 of CrPC. Hence, the revision petition is without any substance, which is liable to be dismissed.

5. I have heard both the parties and perused the documents on record.
6. On perusal of the evidence brought by the parties in the proceedings, it is found that the respondent No.1 has given ample reasons for living separately with applicant. In cross-examination, she has admitted that there is an order of the Court directing her to reside with the applicant, however, she has stated that she does not want to go and reside with the applicant. She has further admitted that she wants to go back for the reason that the applicant treats her with cruelty. The applicant was also examined, who has denied all the allegations levelled against him by the respondent in his examination-in-chief. He has denied in cross-examination that any complaint was given by the respondent No.1 to police against him. Whereas the respondent No.1 has stated that she had lodged one complaint with the police. However, after enquiry by

the police, the offence mentioned in the complaint was found to be a non-cognizable offence.

7. The learned Family Court in its judgment dated 7.9.2018 passed in HMA No. 231/2016 has held that there is evidence that the applicant used to treat respondent No.1 with cruelty and also used to make demand of dowry. However, only for the reason that respondent No.1 is not living with the applicant, it has been held that the respondent No.1 is living separately because of reasonable cause. Section 125(4) of CrPC specifically provides that if a wife is living separately without any sufficient reason then she has no entitlement for maintenance. This provision specifically does not mention anything about any order passed in a civil proceeding regarding restitution of conjugal rights. As it has been held in Babulal's case (supra) by M.P. High Court that there is no specific bar under Section 125 of CrPC that in presence of decree for restitution of conjugal rights the wife shall have no entitlement to make any claim for maintenance. This is also the view of Supreme Court in Rohtash Singh's case (supra).
8. After considering on all the materials and the above case laws, I am of this view that only presence of one decree for restitution of conjugal rights by itself does not dis-entitles the respondent No.1 to claim maintenance from the applicant. The decree for restitution of conjugal rights passed on 7.9.2018 and the impugned order has been passed on 10.5.2019. The intention of the applicant is nowhere reflected that he wishes to execute the decree of Family Court granted in his favor for restitution of conjugal rights and therefore, he has not filed any application for execution of the same. This being the position, it can be safely said that the reason given by the learned Family Court to hold that the respondents are entitled for maintenance and the applicant is liable to pay the same, cannot be faulted with.
9. Consequently, the petition has no substance and the same is liable to be and is hereby dismissed as such.

Sd/-

(Rajendra Chandra Singh Samant)
Judge

