

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 933 of 2018

- Viplav Majumdar S/o Late Khamendranath, Aged About 30 Years, R/o Ward No.04, Shankarngar, Takhtpur Pandria Road, District Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh

---- Applicant

Versus

- Smt. Manisha Majumdar W/o Viplav Majumdar, Aged About 24 Years, R/o Gudiyari, Ekta Nagar, H.N. C20, Raipur Chhattisgarh., District : Raipur, Chhattisgarh

---- Respondents

For Applicant : Shri Amit Kumar, Advocate.

For Respondent – Shri Akhilesh Kumar, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

09/03/2020

1. This criminal revision has been brought being aggrieved by the order dated 18-07-2018 passed in M.J.C. No.201/2016 by the Family Court Raipur allowing the application filed by the respondent under Section 125 of the Cr.P.C. and granting her maintenance of Rs.15000/- which is to be paid by this applicant.
2. It is submitted that the impugned order has been passed erroneously by the Family Court. The fact had been this, that respondent has herself deserted the applicant for no reason and has made false allegations against the applicant that she was treated with cruelty. Efforts were made by the applicant to bring back the respondent, for which application was filed under Section 9 of the Hindu Marriage Act, before the Family Court, Bilaspur, which has been decreed in his favour, even then the respondent has not come back. The statement made by the respondent regarding income of the applicant is exaggerated and therefore the

maintenance order is beyond capacity of the applicant. It is also alleged that the respondent is living in adultery with one Haldar in Calcutta, regarding which the respondent has made admission in her statement before the Court, which was not at all considered by the Family Court. The learned Family Court has also not appreciated that the respondent herself is qualified and capable to earn her livelihood. On the other hand, the applicant is ready to fulfill his marital obligation on condition that the respondent comes back to him, for that the respondent's statement is of clear denial. Therefore, for these reasons the respondent had no entitlement for maintenance. The jurisdiction of the Court is also challenged submitting that the respondent does not reside in Raipur, therefore, the Court at Raipur had no jurisdiction.

3. Learned counsel for the respondent submits that no error has been committed by the Family Court. It has been established by evidence that the respondent has sufficient reasons for living separately from her husband and that she is unable to earn a living for herself. The capacity of the applicant has also been established through the evidence that he has business of tent house and also that the applicant is holder of degree of BAMS and he runs a dispensary. Therefore, he has sufficient means to pay maintenance. Rebutting the other arguments it is submitted that this revision petition is without any substance which may be dismissed.
4. Heard learned counsel for the parties and perused the record of the Court below.
5. Considered on the first ground raised by the applicant that the respondent has sufficient reason to live separately from him.

Respondent Smt. Manisha Majumdar has submitted that after her performance of marriage with the applicant on 26-01-2015, she lived for about 8 months with the applicant. She is living in her parental house since 29-09-2015. She explained the reason that she was tortured by the applicant for demand of dowry of one Scorpio vehicle or Rs.12,00,000/- cash. Apart from that, the applicant has also concealed this fact that he was already married, he had driven out his first wife from his house by torturing her for dowry and that his previous wife had filed a complaint under Section 498A of the IPC. It was the applicant himself who has left the respondent in her parental house. In cross-examination she has again stated that on 29-09-2015 the applicant had left her in her parental house and thereafter she had lodged the FIR in Mahila Thana Raipur. She has admitted that in counseling she has stated that she does not want to live with her husband. She has also stated in cross-examination that age of the applicant was double to her age which was also concealed, had she known about it she would not have married him. She has also admitted that she does not want to comply with the decree of the Family Court for restitution of conjugal rights which is in favour of the applicant, on the proposition of the Court also she has also denied the same.

6. Deepankar Mandal (AW-2) has supported the respondent regarding the demand of dowry made by the applicant and the torture given for the same. He has also stated about lodging of the FIR against the applicant. In cross-examination he has stated that the applicant himself has never demanded Scorpio vehicle or money on telephone, however, he has stated that the applicant had orally

made the demand. He has also admitted that the respondent is not willing to go back despite the offer made by the applicant and also about the decree in the case for restitution of conjugal rights.

7. Applicant Viplav Majumdar (NAW-1) has stated that about 5 to 6 months from the date of marriage the respondent went back parental house on the pretext that she has to appear in some examination, when the applicant has visited parental house of the respondent to bring her back the respondent bluntly refused. He has also stated about the decree of the Family Court in the case of restitution of conjugal rights. In cross-examination he has denied about any demand made by him of dowry.
8. Prashant Gupta (NAW-1) has supported the respondent on this point that he had been to the parental house of the respondent, when she refused to come back.
9. The question is whether it is established that the respondent was treated with cruelty by the applicant before the application under Section 125 of the Cr.P.C. was filed. The respondent had given a complaint in Mahila Thana Raipur, copy of the same is exhibited as Annexure-P/3 which mentions the demand of dowry and torture and also concealing of age and other facts by the applicant side. On the basis of this complaint, a counseling was held in which the respondent has refused the proposal to go back to her matrimonial home. On ground of cruelty a wife can definitely refuse to go back to her matrimonial home. Leaving aside the demand of dowry, the concealment of the essential facts regarding the age and previous marital status by the applicant, which does not appear to be disputed by the applicant side, is itself a cruelty.

Had it been a case that the respondent had knowingly married the applicant that he had previous marriage and that he is double age of her age, the case would have been different. In the matter of a match making the persons concerned have the option to make the best choice and in this case looking to the facts present it is found that the respondent did not have that choice to make, because of the suppression made by the applicant side. Hence, if for these reasons the respondent is denying to cohabit with the applicant, in that case, I am of this opinion that she has every right to do so and she has sufficient cause to live separate from the applicant.

The allegation made by the applicant that the respondent is living in adultery is totally a new ground raised in this revision petition itself which was never raised in the proceeding before the Family Court. Similarly, the question of jurisdiction has also been raised for the first time in this revision petition. Therefore, grounds of adultery and jurisdiction raised cannot be taken into consideration in this petition.

Regarding earning capacity of the respondent, there is no evidence brought by the applicant in his evidence before the Family Court. Therefore, now only the capacity of the applicant remains to be considered. In the respondent's evidence it has been brought that the applicant is running a Chandasi Dawakhana and also a tent house from which he is having huge income. It is also stated that the applicant is holder of BAMS degree. In cross-examination she has again stated that the tent house runs in the name of the applicant and that the applicant has a joint family. Other adverse

suggestions given have been denied. The applicant has stated before the Family Court that he has income of Rs.3000/- from an employment in some cloth shop. In cross-examination he denies that he owns a dispensary and a tent house and has sufficient income. Although, he has not made any statement that he does not hold any degree of BAMS and thus he appears to be a degree holder as claimed by the respondent and he has qualification to run a dispensary which gives support to the respondent's statement. Evidence regarding other business of the applicant is not fully established. However, the fact that established is sufficient to hold that the applicant has means to make payment of monthly maintenance to the respondent.

10. No assessment can be made regarding the monthly income of the applicant as there is only imaginary statement made by the respondent side. Therefore, on that basis it can be viewed that the amount of maintenance ordered appears to be arbitrary and which needs reduction. Therefore, I find this revision petition without any substance on the point of entitlement of the respondent, however, as regards the quantum of maintenance and the earning capacity of the applicant side, the amount of maintenance needs reduction. Hence, this revision petition is partly allowed with modification and upholding the entitlement of the respondent for grant of maintenance, it is ordered that the applicant shall now pay the respondent monthly maintenance of Rs.10,000/- from the date she has filed the application under Section 125 of the Cr.P.C.

Sd/-
(Rajendra Chandra Singh Samant)
Judge