

HIGH COURT OF CHHATTISGARH, BILASPUR

Cr.R. No.443 of 2019

- Sohan Sahu S/o Khamhan Sahu Aged About 24 Years R/o Village- Patora, Police Station- Thankhamharia, Tahsil- Saja, District- Bemetara, Chhattisgarh

---- Petitioner

Versus

- Smt. Omeshwari @ Amrika W/o Sohan Sahu Aged About 23 Years R/o Village- Gangibahra, Post- Bazar Charbhatha, Police Station- Kawardha, Tahsil- Sahaspur- Lohara, District- Kabirdham, Chhattisgarh

---- Respondent

And

Cr.R. No. 1230 of 2019

- Omeshwari Sahu W/o Sohan Sahu Aged About 23 Years At Present R/o Village Gangibahra, Post Bazaar Chakarbhata, Police Station Kawardha, Tahsil Sahaspur Lohara, District Kabirdham, Chhattisgarh

---- Petitioner

Versus

- Sohan Sahu S/o Shri Khamhan Sahu Aged About 24 Years R/o Village Patora, Police Station Thankhamharia, Tahsil Saja, District Bemetara, Chhattisgarh

---- Respondent

In Cr.R. No.443/2019: –

For Petitioner : Mr. Bharat Rajput, Advocate.

For respondent : Mr. Jitendra Nath Nande, Advocate.

In Cr.R. No.1230/2019: –

For Petitioner : Mr. Jitendra Nath Nande, Advocate.

For respondent : Mr. Bharat Rajput, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant
Order on Board

27-01-2020

Heard.

1. Both the Criminal Revisions arise from the order dated 13.02.2019 passed in Criminal M.J.C. No.116/2018, by learned Family Court, Bemetara, C.G., passing order of maintenance in favour of respondent in Cr.R. No.443/2019 against the applicant in the same petition.
2. Cr.R. No.443/2019 has been filed by the husband challenging the impugned order granting maintenance and Cr.R. No.1230/2019 has been filed by the wife praying for enhancement of the maintenance granted by the impugned order. For the sake of clarity, the applicant in Cr.R. No.443 of 2019 shall be referred to as applicant for all purposes in this order and similarly respondent in this petition shall be referred to as respondent in all the purposes in this order.
3. It is submitted by the learned counsel for the applicant that the learned trial Court has failed to appreciate that respondent had left her matrimonial home without any reasonable cause and did not turn up despite several efforts made by the applicant. It was the respondent herself who used to mis-behave and torture the applicant and his parents. The learned Family Court has also not appreciated that the respondent is herself capable of earning to support herself. It is further submitted that the learned Family Court has held in the impugned order that the father of the applicant is owner of about 8 acres of land, therefore, the applicant has vested interest in the same on the basis of which it was held that he is capable to pay the maintenance as ordered. This finding of the Family Court is erroneous. The applicant himself is very clearly landless and he has no sources of income except doing manual labour work, therefore, the maintenance order to be paid by him is exorbitant. Therefore, it is prayed that the impugned order may be set

aside.

4. Learned counsel for the respondent opposes the submissions made by the learned counsel for the applicant and submits that the learned Family Court has not committed any error in passing the order. The respondent had very clearly proved by giving evidence that she is living separate from her husband, the applicant, for which she has sufficient cause and that she is unable to maintain herself. Applicant had been maintaining her when she used to live in her matrimonial home. The applicant has entitlement over the landed property of his father and he is himself making use of the income from the said agricultural land, therefore, there is no excuse for the applicant. It is further submitted that the maintenance granted to the respondent is very much on the lower side which is not sufficient to meet the expenses which are necessary under the present circumstances and the present cost of living. Therefore, it is prayed that an order of enhancement of the maintenance amount may be passed in favour of the respondent by allowing her petition.
5. Learned counsel for the applicant reverts the submissions made in Cr.R. No.1230/2019 and learned counsel for respondent reverts the submissions made in Cr.R. No.443/2019.
6. Heard counsel for both the parties and perused the documents present.
7. The learned Family Court has ordered the applicant to pay a maintenance of Rs.2,500/- per month to the respondent. The respondent had stated in her application that after her performance of marriage with applicant on 02.04.2017, then she was tortured for demand of dowry and then she was driven out from her matrimonial home on 07.04.2018.
8. The applicant in reply has denied the statement in application and alleged that the respondent has left matrimonial home on her own and

when the applicant tried to bring her back out she has completely refused to come back, therefore, it is clear that she is willingly residing separately.

9. Omeshwari @ Amrika (A.W.-1) has supported her statement in her examination in chief. In cross-examination, her statement has been un rebutted. She has admitted that she has lodged an F.I.R. against the applicant for his prosecution under Section 498(A) of I.P.C. She is living in her parental house only for the reason that the applicant side has refused to have her back, she has denied other adverse suggestions given to her by the applicant side. Her statement has been supported by Narayan Sahu (A.W.-2), he has stated that he is the President of Sahu Samaj, therefore, he received the complaint about the expulsion of the respondent from her matrimonial home for the reason of demand of dowry and other things. In cross-examination, he has remained firm on his statement. However, he has admitted that in the meeting that was held, the applicant side was denying the allegations made by the respondents. He has denied the suggestions that the respondent herself use to mis-behave and abuse the applicant and his parents. However, he has admitted that he is not a direct witness of the torture given to wife.
10. Gandram Sahu (A.W.-3) has similarly stated about the act and behavior of the applicant with respondent, which he has come to know only on the basis of the information given to him.
11. Ghanshyam (A.W.-4) has supported the respondent in his statement.
12. Applicant Sohan Sahu (N.A.W.-1) has denied the statement of the respondent in his examination in chief and stated that the respondent never tortured for demand of dowry and that she has made false allegation about him. He has further stated that the respondent herself use to mis-behave with him and his family members and has left her

matrimonial home willingly. She has also stated about making efforts to bring back the respondent to which he completely refused. His statement has remained unrebutted in cross-examination.

13. Pushpa Bai (N.A.W.-2) has stated in support of the applicant in her examination-in-chief and similar is the statement of Neelkanth Sahu (N.A.W.-3), Shyamlal Thakur (N.A.W.-4).

14. After perusing and appreciating the whole evidence present in the proceeding, I am of this view that the learned Family Court has not committed any error and coming to conclusion as drawn in the impugned order, it is based on the preponderance of probabilities in favour of the respondent evidence. There is no specific and clear evidence brought by the applicant side to show that he has seriously made efforts for bringing back the respondent to her matrimonial home. The reason given by the respondent for living separately that is the torture and demand of dowry is from the applicant side has remained unrebutted, which is a sufficient cause for her living separately. The applicant has failed to establish that the respondent has own source of income and she is capable to earn and support herself. Although it is observed in the impugned order that respondent is having some earning by doing labour work but that does not mean that she is having sufficient earning to support herself.

15. Further, the ground raised in this revision petition that the applicant is not having such income so as to support the respondent by paying maintenance to her. In cross-examination, there is evidence present to show that the father of the applicant has in his own possession 8 acres of agricultural land and that the applicant himself is an able bodied person capable of doing labour work. The applicant had performed marriage with the respondent, therefore, he had the responsibility to maintain her anyhow. Hence, the applicant has the capability to earn

and provide for the maintenance of the respondent which cannot be denied by him.

16. The quantum of the maintenance allowed in another issue raised the maintenance of Rs.2,500/- per month which is not a big amount. Even if it is assumed that the applicant has the capability of earning only on the basis of manual labour, on that basis also his earning capacity on the basis of current rate of remuneration for labour work can be three times the amount which he has been ordered to pay to the respondent. Therefore, after these discussions and the observations made hereinabove, I am of this view that there is no ground in Cr.R. No.443/2019 to interfere with the impugned order. Similarly, I am of this view that there is no ground to interfere with the impugned order in Cr.R. no.1230/2019 for the reason that the earning capacity of the applicant has been determined hereinabove and on the basis of which the amount of maintenance as ordered appears to be within the capacity of the applicant.

17. As a result of the findings given hereinabove, none of the petitions deserves to be allowed, therefore, both the revision petitions are dismissed.

18. Accordingly, the petition stands disposed off.

Monika

Sd/-
(Rajendra Chandra Singh Samant)
Judge