

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 1620 of 2019

Annapurna Patel W/o Vinod Kumar Patel, Aged About 24 Years D/o Ramayan Prasad Patel, Caste - Patel, R/o Village - Chaple, Tahsil - Kharsia, District - Raigarh At Present R/o Bamhanidih, Police Station And Tahsil - Bamhanidih, District - Janjgir - Champa Chhattisgarh.

---- Applicant

Versus

Vinod Kumar Patel S/o Panikram Patel, Aged About 30 Years Caste - Patel, R/o Village - Chaple, Tahsil - Kharsia, District - Raigarh Chhattisgarh.

---- Respondent

For Applicant	: Mr. Aditya Khare, Advocate.
For Respondent	: None.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

24-02-2020

Heard the revision petition finally at the motion stage itself.

1. This revision petition has been brought against the order dated 18.11.2019 passed by the Learned Family Court, Janjgir-Champa dismissing the application filed by the applicant under Section 125 of the Cr.P.C. against the respondent.
2. It is submitted by learned counsel for the applicant that the applicant is a married wife of the respondent and because of the cruel treatment of the respondent she is residing separately with her parents. The respondent is neglecting in giving her maintenance and as such, she filed an application under Section 125 of the Cr.P.C. Learned Family Court has erroneously disbelieved the evidence brought by the applicant's side and dismissed her application without assigning any specific reason, therefore, the impugned order suffers from infirmity and needs to be set aside.
3. None for the respondent, though served.

4. On perusal of the evidence present in the record of the proceedings, it is found that the applicant has stated before the Court that she was tortured by the respondent for dowry and also alleged to be a sorcerer as well as a characterless woman. This statement has remained unrebutted in her cross-examination. The applicant had given a written complaint to the police vide Ex. P/1 making similar allegations. The respondent's side has no evidence to deny the same, therefore, on the basis of preponderance of probability it was established that the respondent was treating the applicant with cruelty and this was the reason present for her living separately. The respondent in his evidence alleged that the applicant was administering him some kind of medicine because of which, he fell ill and had to take treatment. This evidence has not supported with any document, therefore, that needs no appreciation.
5. Learned Court below has held that the applicant and the respondent got married, they are living separately and because of the applicant living separately, it cannot be said that the respondent is neglecting in her maintenance.
6. The applicant has stated that she is not being maintained by the respondent and the respondent has also not claimed that he is making any payment for maintenance to the applicant. Therefore, the fact that the applicant was neglected by the respondent is very much apparent from the evidence of both the parties itself and the prayer made by the applicant should not have been dismissed in such a light manner.
7. The claim of the applicant is that she is unable to earn her livelihood . On the basis of the evidence present in the case regarding the income of the respondent she has stated in evidence that the respondent is a man of means being Proprietor of the grocery shop from which he

makes an earning of Rs.30,000/- per month and apart from that, he is also an agriculturist with annual income of Rs.1,50,000/-, therefore, he is capable to pay maintenance. The adverse suggestion given in the cross-examination has been denied by the applicant. This statement has been supported by the other witnesses also. The respondent has stated before the Court that he is resource-less and landless person and also unemployed. He is being maintained by his father. In cross-examination, he has denied the adverse suggestions. Similar is the statement of the other witnesses of the respondent's side.

8. There is no clear evidence present before the Court to conclude with certainty that the respondent is the owner of the grocery shop or he is owner of some agricultural land, therefore, the only basis on which the respondent can be held capable, is that he is an able bodied man and he has married the applicant, therefore, it is his duty to maintain her. Therefore, based on this simple reasoning, the order of maintenance can be passed against the respondent. On the basis of the discussions made herein-above, this revision petition is allowed. The impugned order is set aside, the application filed by the applicant under Section 125 of the Cr.P.C. is allowed and the respondent is directed to make a payment of Rs.2,500/- per month to the applicant as maintenance from the date of filing of the application under Section 125 of the Cr.P.C.
9. Accordingly, this revision petition stands disposed of.

Sd/-
(Rajendra Chandra Singh Samant)
Judge