

HIGH COURT OF CHHATTISGARH, BILASPUR**Cr.M.P.No.168 of 2012**

Sushila W/o. Ram Lal, D/o. Kaleshwar, Aged About-45 years, Caste-Rajwar, R/o. Village-Pandari, Police Station-Surajpur, Tehsil-Ramanujnagar, District-Sarguja (CG)

---Petitioner

Versus

Ram Lal, S/o. Baijnath, Aged About-48 years, Caste-Rajwar, Occupation-Service, R/o. Village-Pandari, Police Station-Surajpur, Tehsil-Ramanujnagar, District-Sarguja (CG) Presently residing at R.T.I. Colony, Bishrampur, Quarter No.1103, Police Station-Bishrampur, Tehsil-Surajpur, District-Sarguja (CG)

---Respondent

For Petitioner : Mr.Sarfaraz Khan, Advocate along with petitioner-wife

For Respondent : Mr.Shakti Raj Sinha, Advocate along with respondent-husband

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

12/2/2021

1. The application filed by the petitioner-wife under Section 125 of the CrPC was rejected by learned Additional Chief Judicial Magistrate, Surajpur on 10.9.2010 in Misc. Criminal Case No.9/2009, which was affirmed by the First Additional Sessions Judge, Surajpur on 28.12.2011 in Criminal Revision No.153/10 and which was unsuccessfully challenged before this Court in petition under Section 482 of the CrPC.
2. When the matter was taken-up for hearing before the Supreme Court in Criminal Appeal No.992 of 2015, the Hon'ble Supreme Court remanded back the matter to this

Court with a direction to pass fresh orders in accordance with law keeping in view the observation made therein.

3. Pursuant to the order of the Hon'ble Supreme Court, this matter was taken-up for hearing before this Court. Thereafter, on 11.01.2021 in compliance of the order of the Supreme Court, the respondent-husband has filed affidavit and thereafter counter-affidavit has been filed by the petitioner also on 23.1.2021 and one more affidavit has also been filed by the respondent-husband on 11.2.2021.
4. Mr.Sarfaraz Khan, learned counsel for the petitioner-wife, would submit that despite having been directed by the Supreme Court in the above-stated criminal appeal, 30 decimal of agricultural land has not been registered and provided to the petitioner-wife by the respondent-husband and the dwelling house as per affidavit has also not been provided to her though the respondent is pensioner and he is also getting income from other sources, but maintenance amount is also not being paid, as such, she is unable to maintain herself and she is maintaining herself with the aid of her daughter and son-in-law, as such, the petitioner-wife is entitled for 30 decimal of agricultural land as stated by the respondent-husband before the Supreme Court and the dwelling house and maintenance amount at least an amount of ₹ 3,000/- per month be directed to be paid by

the respondent herein.

5. Mr.Shakti Raj Sinha, learned counsel for the respondent-husband, would submit that 30 decimal of land will be provided to the petitioner and appropriate transfer deed will be executed within 3 months from today and similarly a dwelling house as contained in affidavit dated 16.2.2015 pursuant to the order of the Supreme Court dated 21.1.2015 along with transfer deed will be handed over to the petitioner-wife within 3 months from today. He would further submit that the respondent-husband is only a pensioner and he has no source of income apart from the pension amount, therefore, he is unable to make any payment in cash and the Supreme Court has also left open the said question to be decided by this Court as to whether he is liable to pay the maintenance amount in cash.
6. In reply to the issue of maintenance amount in cash, Mr.Sarfaraz Khan, learned counsel for the petitioner-wife, would submit that the respondent owns 5 acres of land and documents in this regard have also been filed by the petitioner-wife along with affidavit and apart from this, he has landed ancestral property bearing 4 to 5 acres of land and therefore, he can easily pay a reasonable amount of ₹ 3,000/- per month as maintenance to the petitioner.
7. I have heard learned counsel for the parties, considered their rival submissions made hereinabove

also went through the records with utmost circumspection.

8. At this stage, it would be appropriate to notice the order dated 21.1.2015 passed by the Supreme Court in Criminal Appeal No.992 of 2015 which states as under:-

"Learned counsel for the respondent-husband submits that the respondent has already provided a dwelling house to the petitioner, apart from one acre of agricultural land towards maintenance. He seeks four weeks' time to file an affidavit setting out the details of the dwelling house and the land referred to above. He submits that the respondent is prepared to transfer title to the said property in favour of the petitioner including the land as the means for maintenance of the petitioner-wife.

Learned counsel for the petitioner has no objection to the disposal of the matter on the above terms provided the respondent identifies the land in question as also the house which he is conceding in favour of the petitioner and transfers title in both to her.

The respondent may accordingly file an appropriate affidavit indicating the dimensions of the dwelling house as also its location along with the appropriate site plan and the particulars of the one acre land which has been/or may be transferred to the petitioner in lieu of her maintenance."

9. Thereafter, affidavit was filed by the respondent-husband before the Supreme Court on 16.2.2015 . Paras-6 to 9 of the said affidavit state as under:-

"6. That further for constructing a house for Sushila I, Ram Lal aka Thunnu Raam will give to Sushila, 10 dismil land out of the plot bearing Khasra No.1634. It is situated at Village Pandari, Police Station-Surajpur, Tehsil-Ramanuj Nagar, District-Surajpur (Chhattisgarh).

7. This plot, mentioned as Khasra No.1634/10 in the land records, is adjacent to the road going towards the village. It has the road to its east

side, plots 1635 and 1633 to the north and south respectively. The plot No.415 is to the west of it.

8. That presently I am the owner of this property. A copy of the land record from the office of KANUNGO showing me as the owner is annexed hereto as Annexure A-2.

9. That I also propose to construct a dwelling mud house for Sushila on this plot. That the house will be a having 2 rooms of 12/12 feet each, a kitchen of 7/7 feet (approximately) and a washroom of 7/5 feet (approximately)-a total constructed area of 380 sq.feet (approximately). A site plan of the proposed House showing its location is annexed hereto as Annexure A-3."

10. Thereafter, on 29.7.2015 the following order was passed by the Supreme Court:-

"The appellant appears to have filed an application under Section 125, Cr.P.C. claiming maintenance from the respondent which application was heard and dismissed by the Chief Judicial Magistrate Surajpur, District Sarguja in the State of Chhattisgarh by his order dated 10.09.2010. When the challenged in a revision petition, the Additional Sessions Judge affirmed the said order passed. Undeterred the appellant-wife filed Criminal Miscellaneous Petition No.168 of 2012 before the High Court of Chhattisgarh at Bilaspur. The High Court has by the order impugned in this appeal concurred with the view taken by the courts below. The High Court has held that the respondent was lawfully married to one Budhan Bai and since the wedlock between the two continued to subsist, the alleged marriage between the appellant and the respondent was a nullity no matter the parties had co-habitated for a long time and begotton a daughter also. The appellant's claim for maintenance was on that basis rejected.

When this appeal came up for hearing before us on 21.01.2014, learned counsel for the respondent-husband conceded his liability to maintain the appellant and submitted that he had clearly provided a dwelling house to her besides one acre of agricultural land in lieu of maintenance.

On behalf of the appellant-wife it was

urged by learned counsel appearing for her that he had no objection to the disposal of the appeal if the respondent-husband identified the land and the house he was conceding in her favour and transferred title in both to her.

We had in the light of the above submissions directed the respondent-husband to file a proper affidavit indicating the dimensions of the dwelling house and its location along with an appropriate site plan and the particulars of the acre of land offered by him. An affidavit has pursuant to the said order been filed by the respondent-husband in which it is inter alia stated that the house which he initially intended to transfer in favour of the appellant-wife turned out to be ancestral property allotted to another co-sharer. Even so the respondent has offered to construct a dwelling house for the appellant comprising two rooms, 12 x 12 feet, each, a kitchen of 7 x 7 feet and a washroom of 7 x 5 feet. He has enclosed with the affidavit a site plan of the house which he has undertaken to construct for the appellant. The affidavit also identifies 1 acre of land said to have been purchased in the name of the appellant.

When the matter came up today learned counsel for the respondent submitted that the appellant is committed to making the offer made by him on 21.01.2015 good by not only constructing a dwelling house as indicated in the affidavit but also making up the deficiency in the land offered by him towards maintenance. On behalf of the appellant it was submitted that the respondent needs to be directed to discharge the obligation cast upon him by law and make good the offer that this Court has recorded in its order dated 21.01.2015.

We do not consider it necessary to keep these proceedings pending on our Board as the issue appears to have been amicably resolved by the parties agreeing to the arrangement referred to in our Order dated 21.01.2015. A part of that offer has admittedly been made good by the respondent as a certain extent of land has been purchased in the name of the appellant. What remains to be done is purchase of the remaining extent of land to make a total of one acre and also construction of a dwelling house for use and occupation by the appellant. That process in our opinion can be completed under the supervisory

control of the High Court who can monitor the steps taken by the respondent and pass consequential orders on the subject.

It was argued on behalf of the appellant that the respondent is a pensioner from SECL department and that he should not only provide a shelter and a parcel of land for cultivation but also monthly maintenance in cash to the appellant. This position is disputed by learned counsel the respondent according to whom the respondent is a sickly labourer and has no source of income leave alone pension from his former employer. We do not see any reason why the High Court cannot examine that part of the matter also while disposing of the proceedings finally. It is open to the High Court to examine whether the respondent is indeed a pensioner or has any other source that may justify award of maintenance in cash over and above what the respondent has agreed to provide.

We accordingly allow this appeal, set aside the order passed by the High Court and remand the matter back to the High Court to pass fresh orders in accordance with law keeping in view the observations made above. A copy of the order passed by us on 21.01.2015 as also the affidavit filed by the respondent shall also be forwarded to the High Court. The parties to appear before the High Court on 14th September, 2015. NO costs."

11. A careful perusal of the aforesaid order would show that the respondent has agreed before the Supreme Court to give 30 decimal of more agricultural land to the petitioner in addition to 70 decimal of land which has already been given to her, which is not in dispute.
12. Mr. Shakti Raj Sinha, learned counsel for the respondent, would fairly submit that 30 decimal of land will be given to the petitioner at village-Pandari, Police Station-Surajpur, Tehsil-Ramanujnagar, District-Surajpur and transfer deed will be executed in her favour within that period. Similarly, a dwelling house

as per affidavit given by the respondent-husband before the Supreme Court as per size and dimension will also be given in the said area mentioned in the affidavit within 3 months from today and necessary transfer deed will be executed in her favour. The above-stated statement is placed on record. Upon delivery of possession of said accommodation to the petitioner-wife as per affidavit, the petitioner will vacate the present premises and hand-over to the respondent-husband.

13. Now, the question remains of the maintenance amount in cash to be paid to the petitioner-wife.
14. The respondent-husband has stated that he is only a pensioner and the Supreme Court has clearly held that if he has any other source of income, then she will be entitled for maintenance amount in cash. Since he has no other source of income, therefore, he is not liable to pay the amount of maintenance, which is seriously disputed by learned counsel for the petitioner-wife.
15. Mr.Sarfaraz Khan, learned counsel for the petitioner-wife, would submit that revenue documents have been filed demonstrating that he has total 5 acres of land in his possession in which he is earning huge agricultural income and apart from that, he is also having ancestral property that is also agricultural land which is total 4 to 5 acres of land. Since he is having total 10 acres of land, therefore, it cannot be

held that he has no agricultural income and he has only income from pension amount and therefore, he cannot give maintenance to the petitioner.

16. Admittedly, the respondent-husband is pensioner, but documents have been brought on record to demonstrate that he has some additional agricultural lands, though exactly it cannot be held that what income he is earning from the aforesaid agricultural lands, but at least it cannot be held that he has no other agricultural income except the amount of pension.
17. It is stated at the Bar that the petitioner is a weak woman and recently suffered surgery and her daughter and son-in-law are taking care of the petitioner, otherwise, she is unable to maintain herself, therefore, if monthly income is not granted in this regime of COVID-19, she will die. She is in need of money for medical treatment in order to keep herself healthy. Therefore, considering the pension amount of the respondent-husband, which is stated to be ₹ 10,700/- per month and considering the agricultural income on account of holding of the respondent, ₹ 2,000/- per month maintenance from 1.1.2021 would be just and proper.
18. This Court would have ordinarily granted the amount of maintenance from the date of application, but considering the fact that the matter went up to the Supreme Court and the dispute has already been settled

by the Hon'ble Supreme Court in Criminal Appeal No.992 of 2015 and only the question of compliance of order is to be secured by this Court and the amount of maintenance, if any, is to be finalized by this Court, as such, amount of maintenance is being granted from 1.1.2021. However, the petitioner-wife would be entitled to file application under Section 127 of the CrPC after completion of one year.

19. In that view of the matter, the petition under Section 482 of the CrPC finally stands disposed of with the following directions:-

(i) The respondent will provide 30 decimal of land and dwelling house as per affidavit given by him before the Supreme Court and quoted above within 90 days from today.

(ii) The petitioner will be entitled for ₹ 2000/- per month as maintenance from 1.1.2021.

20. A copy of this order be sent to the Chief Judicial Magistrate, Surajpur who will ensure the compliance of this order and inform to the Registry of this Court that order has been complied with.

Sd/-

(Sanjay K. Agrawal)
Judge

B/-