

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 1008 of 2015

Rohitas Agrawal, S/o Kedarnath Agrawal, Aged About 44 Years, R/o Dabhara, Near Gayatri Mandir Dabhara, Thana & Tehsil- Dabhara, Civil & Revenue District- Janjgir-Champa (C.G.)

--- Applicant

Versus

Meenu Agrawal, D/o Hari Mittal (W/o Rohitas Agrawal), Aged About 40 Years, R/o Champa, Dhongaghat Champa, Thana & Tehsil- Champa, Civil & Revenue District- Janjgir-Champa (C.G.)

--- Respondent

For Applicant : Mr. Punit Ruparel, Advocate.

For Respondent : None.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

05/03/2021

1. This revision petition has been preferred against order dated 03.09.2015 passed by the learned Judge, Family Court, Janjgir, District- Janjgir-Champa, (C.G.) in M.J.C. No. 264/2012, granting maintenance of Rs. 2000/- per month to the respondent.
2. It is submitted by learned counsel for the applicant, that the impugned order is erroneous. The application of the respondent was allowed by the learned Family Court on the ground of cruelty against this applicant. The respondent had separately lodged FIR against this applicant under Section 498A of the IPC, for which, the applicant was prosecuted in Criminal Case No.

295/2012 and he has been acquitted by the trial court vide judgment dated 25.07.2016. Hence, the ground of cruelty, is no longer in existence.

3. It is further submitted that marriage of the applicant with the respondent, was also not valid, as the respondent was already married, which has been admitted by her in her statement before the Court. Reliance has been placed on the judgment passed by this Court in **Criminal Revision No. 63 of 2010 (Tika Ram Sahu Vs. Smt. Annpurna Sahu & another) dated 19.01.2011**, in which, grant of maintenance to the wife by the Family Court, was set aside, on the ground of invalidity of the marriage.
4. It is also submitted that the respondent is living separately without any sufficient reason and further, the income of the applicant, is not sufficient to pay for the maintenance of the respondent. Hence, this revision petition be allowed and relief be granted to the applicant.
5. Learned counsel for the applicant placed reliance on the judgment of High Court of Madhya Pradesh in **Pooja Gour V. Shri Umit Alias Pinky Patel (CRR No. 1904/2015 dated 26.04.2016)** and in the matter of **Shamim Bano Vs. Asraf Khan**, reported in **(2012) 4 CGLJ 280**.
6. There is no appearance from the respondent side although, the notice has been returned served.
7. Considered on the submissions. The first submission that the ground of cruelty, on the basis of which, the application was

allowed, has been proved false because of acquittal of the applicant from the prosecution against him under Section 498A of the IPC. This ground and the ground of separate living, both have to be taken together. The impugned order was passed on 03.09.2015 and on that date, it was the finding of the learned Family Court that the respondent has sufficient reason for separate living. The acquittal of the applicant from the criminal case against him, is a subsequent development, therefore, this fact, which cannot be taken into consideration in exercise of revisionary jurisdiction, as this jurisdiction is limited to consider on the facts, evidence and circumstances that were present and in existence on the date, the impugned order was passed. The applicant has remedy available, he has option to file an application under Section 127 of the Cr.P.C., under which, the Court is empowered to alter or to set aside the order of the maintenance earlier granted. Therefore, this ground raised in this revision petition, are not entertainable.

8. As submitted that the respondent is not valid wife of the applicant, regarding the same, there is admission in the cross-examination of respondent Meenu Agrawal (AW-1), that she was earlier married to one Santosh Agrawal, she has denied the suggestion, that the earlier marriage was not dissolved. Later on, she has produced the certified copy of the decree of divorce obtained by her with respect to the earlier marriage, which was not challenged by the applicant side. Hence, the ground of invalidity of the marriage by the applicant, is without substance.

9. The another ground raised in this revision petition that the applicant has sufficient means to pay amount of the maintenance to respondent. The applicant had not led any evidence in the proceeding under Section 125 of the Cr.P.C. to show his incapacity, whereas, the respondent- Meenu Agrawal (AW-1) has stated in her examination-in-chief that the applicant has business of stationary and he is earning about Rs. 5000/- per day, which has not been challenged in her cross-examination, therefore, looking to the evidence present, there is nothing to suggest that the applicant is not capable to make payment of maintenance to the respondent.
10. After considering on the submissions made and the conclusion drawn before the Court, I am of this view that this revision petition is without any substance, which is liable to be dismissed.
11. In view of the above, the instant revision petition is dismissed and disposed of.

Sd/-
(Rajendra Chandra Singh Samant)
Judge