

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved for orders on :23/03/2021

Order passed on : 19/05/2021

CRR No. 358 of 2018

1. Smt. Vinita Chandra W/o Swaraj Chandra, Aged About 27 Years, R/o- Village- Odekera, P.S.- Jaijaipur, District- Janjgir-Champa, Chhattisgarh. Presently Residing At Village- Banari, P.S. and Tahsil- Janjgir, District- Janjgir-Champa, Chhattisgarh., District : Janjgir-Champa, Chhattisgarh
2. Chirag D/o Swaraj Chandra, Aged About 06 months, Revisioner No. 02 is a minor and is represented by his natural guardian (Mother) namely Smt. Vinita Chandra, R/o Village - Odekera, Thana Jaijaipur, District- Janjgir-Champa, Chhattisgarh., District : Janjgir-Champa, Chhattisgarh

---- Revisioner/Applicants

Versus

- Swaraj Chandra, S/o Doommani Chandra (D.M. Chandra), Aged About 28 Years, Caste- Chandra, R/o- Village- Odekera, Thana Jaijaipur, Tahsil- Sakti, District- Janjgir-Champa, Chhattisgarh. Presently Residing At- M.P.V.G.C. Colony, Qrt. No. D.-207 Birshingpur Pali, P.S. - Pali, District- Umariya, Madhya Pradesh, District : Umariya, Madhya Pradesh

---- Respondent/Non-applicant

For Applicants/Revisioners – Shri Surfaraj Khan, Advocate.

For Respondent – Shri Ravindra Sharma, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant
CAV Order

19-05-2021

1. This criminal revision has been brought challenging the correctness, propriety and legality of the order dated 25-01-2018 passed in MJC, Misc. Criminal Case No. 72/2016 by the Family Court Janjgir, District Janjgir-Champa dismissing the application of applicant No.1/revisioner No.1 under Section 125 of the Cr.P.C., however, allowing the application for applicant No.2/revisioner No.2 under Section 125 of the Cr.P.C. and granting maintenance of Rs.2,000/- per month.

2. It is submitted by learned counsel for the applicants/revisioners that dismissal of the application of applicant No.1 was totally erroneous and illegal. The applicant No.1 had proved by bringing evidence that she was compelled to live in her parental house because of the cruel treatment of the respondent.

Therefore, the finding, that she is living separately without any sufficient cause, is totally incorrect. It is further submitted that maintenance granted to applicant No.2 of Rs.2000/- per month is meager amount and not sufficient to meet the needs of the applicant No.2. The respondent is a man of means and he is capable to make payment of maintenance to the applicants, which may be sufficient for their maintenance and upkeep. Therefore, it is prayed that the impugned order be modified. The prayer of applicant No.1 may be allowed and she may be granted relief of maintenance and the amount of maintenance granted to applicant No.2 may also be enhanced suitably.

3. Learned counsel for respondent opposes the submission and submits that the learned family Court has not committed any error in dismissing the application of the applicant No.1 and granting maintenance of Rs.2000/- to applicant No.2, which needs no interference.

It is also submitted that respondent has obtained decree of divorce against applicant No.1 in Civil Suit No.182A/2018 by judgment dated 17-02-2020, which further shows that the applicant No.1 has no entitlement for grant of maintenance. It is mentioned in the judgment in divorce case that the respondent had a decree in his favour under Section 9 of the Hindu Marriage Act. Applicant No.1 failed to comply with the decree which further goes to show that applicant No.1 is living separately without any sufficient cause. Hence, this revision petition is without any substance which may be dismissed.

Reliance has been placed on the order passed by this Court in Criminal Revision No.728/2013 (Smt. Ritu Jangade Vs. Maleshwar Jangade) on 17-01-2014.

4. Heard learned counsel for the parties and perused the record.

5. Considered on the submissions.

6. Vinita Chandra (AW-1) has stated in her examination-in-chief about her being tortured for demand of dowry, misbehaviour and other cruel treatment

because of which she was compelled to leave her matrimonial home. In cross-examination she has remained firm on this statement. However, she has made a statement that she wants to live with the respondent, but she does not want to live with the parents of the respondent.

7. Bhuneshwar Prasad (AW-2), father of applicant No.1 has made similar statement in cross-examination. He has denied the adverse suggestion and admitted that no complaint was ever made to the community or to the police. In cross-examination he has also made this admission that he wants to send his daughter to her matrimonial home on condition that the respondent keeps her separate from his parents.

8. Shyamlal Sahu (AW-3) has made statement in favour of the applicants side, in cross-examination, he has admitted that he does not personally know about the dispute between applicant No.1 and the respondent. Therefore, there is no support from his statement.

9. Swaraj Bharan Singh Chandra (NAW-1) has stated about the erratic behaviour of the applicant No.1 and her insistence for going back to her parental house. He has stated that applicant No.1 has put this condition that respondent should keep her in Bilaspur separate from his parents, it would be only then she can reside with him. He has stated about the misbehaviour and the cruel treatment of applicant No.1. In cross-examination he has made total denial of the allegation of the applicant's side regarding torture for demand of dowry.

10. Govind Patel (NAW-2) and Kishore Kumar Chandra (NAW-3) have made similar statement.

11. On appreciating these evidence, it is found that there is clear admission from the applicant side that respondent had made proposal to have applicant No.1 back in her matrimonial home, but applicant No.1 had a condition that the respondent should live separate from his parents, which cannot be said to be a

reasonable condition. The allegation of cruelty from the applicant side have been denied, there are allegation from the respondent side that it is applicant No.1 who herself misbehaved with the respondent and his parents. This fact regarding the condition of applicant No.1 for living with the respondent separate from his parents further supports the statement made by the respondent side. Hence, on this basis, I am of this view that learned Family Court has drawn conclusion against applicant No.1, on the basis of proper appreciation of evidence which needs no interference.

12. Considered on the another submission of enhancement of the maintenance amount of applicant No.2.

13. Respondent has in his statement before the Court stated that he is unemployed and is unable to pay maintenance. In cross-examination he has admitted that he is Graduate in Engineering. He has denied other suggestions about his income. The evidence of the applicant side is also only oral statement without any document in support of the same. Therefore, there appears to be no specific evidence present to prove that the respondent has some regular source of income. The learned Family Court has held in the impugned order that the respondent is having some earning from engineering works and also by working on agricultural land of his father, therefore, he has capability to pay maintenance. Hence, there being no specific ground to hold that there is incapability of the respondent to make payment of maintenance, and then there is no denial that applicant No.2 is a child of the respondent and therefore, finding that the needs of applicant No.2 cannot be met sufficiently within the amount of Rs.2000/- only, the prayer for enhancement deserves to allowed.

14. Consequently, the revision petition is partly allowed. The prayer of applicant No.1 in this revision petition is dismissed. The prayer of applicant No.2 for enhancement of the maintenance amount is allowed and it is ordered

that the respondent shall now pay Rs.4000/- per month to applicant No.2 for his maintenance until he attains majority. This amount shall be payable from the date of the order passed by the Family Court.

Sd/-

(Rajendra Chandra Singh Samant)
Judge