

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 589 of 2019

Order Reserved on : 10/02/2021

Order Delivered on : 24/03/2021

1. Pravesh Gupta, S/o Shri Anant Gupta, Aged About 33 Years R/o Ward No. 08, Turkaripara, Khairagarh, Post Khairagarh, Police Station And Tahsil Khairagarh, District Rajnandgaon Chhattisgarh., District : Rajnandgaon, Chhattisgarh

---- Petitioner

Versus

1. Smt. Priyanka Gupta, W/o Pravesh Gupta, Aged About 30 Years, R/o Behind Balram Talkies Gandhi Nagar, Bilaspur, Police Station Civil Line Tahsil and Distirct-Bilaspur, Chhattisgarh.
2. Ku. Aditi Gupta, D/o Pravesh Gupta, Aged About 1 Years, Minor Represented Through Mother Smt. Priyanka, Gupta, R/o Behind Balram Talkies, Gandhi Nagar, Bilaspur, Police-Station Civil Line, Tahsil and District-Bilaspur, Chhattisgarh.

---- Respondents

CRR No. 595 of 2019

1. Priyanka Gupta, W/o Shri Pravesh Gupta, Aged About 33 Years, R/o Behind Balram Talkies, Gandhi Nagar Bilaspur, Police Station - Civil Line, Tahsil and District Bilaspur Chhattisgarh.
2. Ku. Aditi Gupta, D/o Shri Pravesh Gupta, Aged About 4 Years, Through Priyanka Gupta (Mother), R/o Behind Balram Talkies, Gandhi Nagar Bilaspur, Police Station - Civil Line, Tahsil and District-Bilaspur Chhattisgarh.

---- Petitioners

Versus

1. Shri Pravesh Gupta, S/o Shri Anant Gupta, Aged About 36 Years, R/o Ward No. 8, Turkaripara Khairagarh, Post - Khairagarh, Police Station And Tahsil - Khairagarh, District-Rajnandgaon, Chhattisgarh.

---- Respondent

<u>For Applicant</u>	:Mr. Ajay Thakre, Advocate in CRR No.589/2019. Ms. Priyanka Gupta, Applicant in person in CRR No.595/2019.
<u>For Respondent</u>	:Ms. Priyanka Gupta, Respondent in person in

CRR No.589/2019.
Mr. Abhishek Sharma, Advocate in CRR
No.595/2019.

Hon'ble Shri Justice Rajendra Chandra Singh Samant
CAV Order

24/03/2021

1. Both the revision petitions arise out of the same order dated 4.4.2019 passed in M.J.C. No.212/2017 by which the application of respondent No.1(wife) filed under Section 125 CrPC was dismissed partly but the application of respondent No.2 was allowed and she was granted maintenance of Rs.6,000/- per month.
2. The applicant in CRR No.589/2019 shall be referred to as 'applicant' and respondents in this petition shall be referred to as 'respondents' for the purpose of both the revision petitions in this order.
3. Learned counsel for applicant in CRR No.589/2019 makes this submission that maintenance granted to the respondent No.2 is on higher side and beyond the capacity of the applicant. Hence, the maintenance granted be reduced to the suitability and capability of the applicant.
4. Learned counsel for respondents in CRR No.589/2019 submits that the prayer of the applicant in this revision petitions is unreasonable. Applicant is a man of means, who deals in Computer Articles and has monthly earning of Rs.70,000 to 80,000/-. The learned Family Court has not committed any error in granting maintenance to the respondent No.2, hence, the revision petition is liable to be dismissed.
5. Learned counsel for respondents make submissions in CRRNo.595/2019, that the impugned order rejecting the application of Respondent No.1 is erroneous. The finding of the learned Family Court that the behavior of the respondent No.1 was cruel towards the applicant is totally erroneous and that the respondent No.1 has herself deserted the applicant and living separately without any sufficient cause is again erroneous. It was established by bringing evidence that

behavior of the applicant was cruel towards the respondent No.1 and that the proposal from the respondent No.1 to the applicant to take her back has been refused by the applicant. Respondent No.1 is still ready to go back and continue with the marital life with the applicant to which the applicant has made no response. Hence, the impugned order rejecting the prayer for maintenance of respondent No.1 is not sustainable, therefore, the revision petition be allowed and relief of maintenance be granted to the respondent No.1.

6. Learned counsel for applicant make submissions in reply to CRR No.595/2019, that the decree of divorce has been granted in favor of the applicant on the ground of cruelty of the wife i.e. respondent No.1. Therefore, respondent No.1 has no entitlement for maintenance the revision petition be dismissed.
7. Applicant Pravesh Gupta has examined himself as NAW-1, he has levelled allegation against respondent No.1, that she used to visit her parental home frequently. Her behaviour with the applicant and his family members was not good. She did not do the household works. The allegations made by the respondent No.1 in her statement have been denied. In cross-examination, his statement has remained un rebutted. It was proposed that he can help the respondent No.1 in coming back to his house but she has denied. He has also admitted that in last week of April, 2014 the respondent No.1 came to the matrimonial home with him and then he had to leave with her in her parental house for the reason that she was suffering from some ailment. The suggestions were denied that the respondent No.1 was tortured for demand of dowry and that she was misbehaved and ill-treated.
8. The learned Family Court has made reference to the SMS that was sent by the respondent No.1 to the applicant on mobile phone and also referred to the contents of the messages. On perusing the statement of the respondent No.1, it is found that the suggestions given that she is holder of mobile No.7024594698 was clearly denied and that she sent the messages through that mobile phone was also denied.
9. Applicant Pravesh Gupta (NAW-1) has not made any statement regarding the mobile number or the messages sent to him in his examination-in-chief and no such question was put to him in this

respect. On suggestion, he has admitted that he has no knowledge as to who is the holder of mobile No.7024594698 and that he has also not produced any document in that regard. Therefore, without there being any evidence that the respondent No.1 was the holder of the mobile number mentioned hereinabove, the learned Family Court has made mention of the same and the messages which were neither produced nor confronted to the respondent No.1 and drawn a conclusion that the respondent No.1 was responsible for cruel treatment. That alone is the finding of the Family Court, that respondent No.1 used to make allegations on character of the applicant and therefore she was responsible for cruel treatment which is not based on any evidence that is present in the record, therefore, this finding is totally erroneous and baseless.

10. Other submission from the applicant side that as the ground for grant of decree of divorce to the applicant is the cruelty of the respondent, therefore, the respondent No.1 has no entitlement present on this ground. The copy of judgment & decree passed in divorce petition has been filed along with this revision petition, which is dated 4.4.2019 i.e. the same date on which the application under Section 125 CrPC of the respondent No.1 was rejected, hence, this ground that the respondent No.1 is a divorcée on ground of cruelty was not available for consideration at the time of determination of the entitlement of respondent No.1 under Section 125 CrPC, hence, this ground cannot be entertained in revision petition as this Court while exercising revisional jurisdiction cannot go beyond the facts and circumstances that were present at the time of passing of the impugned order.
11. After appreciating the evidence present in the record of the proceedings, it is found that the respondent No.1 had established that her relation with the applicant was strained, although the allegations are made from both the sides, but this can be regarded as sufficient reason for her living separate from the applicant. Hence, it is found that the finding in the impugned order on this point is also erroneous.
12. The respondent No.1 has in her evidence stated about the business and income of the applicant and the applicant has also admitted in cross-examination that he is proprietor of shop styled as 'Computer Solutions. He has denied about getting income of Rs.1lakh per month

from that shop. Copy of income returns have been filed. Ex.-D1C is a copy of return for the year 2013-14 which shows annual income of Rs.1,59,250/-. Another copy of return of 2014-15 shows annual income of Rs.2,25,000/-. The applicant was examined in the Court of 16.10.2018 but he did not file income tax return of the current year, therefore, the documents that have been filed to show the income of the applicant cannot be made ground for consideration of his current income, however, it can be made out that the applicant is a businessman and, therefore, he has sufficient means to pay maintenance to respondent No.1.

13. The submissions from the applicant side with respect to CRR No.589/2019 do not appear to be forceful in any respect after the finding recorded hereinabove that the applicant is a man of sufficient means as he is a proprietor of a business styled as Computer Solution.
14. After considering on all the submissions and on the basis of discussions made hereinabove and also the conclusions that have been drawn, this Court is of view that the revision petition CRR No.589/2019 appears to be without any substance which is dismissed. The revision petition No.595/2019 filed by respondents is allowed. Applicant is directed to pay a monthly maintenance of Rs.6000/- to respondent No.1 from the date of impugned order. The total amount of maintenance shall be payable Rs.12,000/- including the maintenance payable to respondent No.2 according to the orders of the Family Court.

Sd/-

(Rajendra Chandra Singh Samant)
Judge