

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 709 of 2018

Order Reserved on : 09/03/2021

Order Delivered on : 12/04/2021

- Rahul Tiwari, S/o Vijay Sagar Tiwari, Aged About 25 Years, R/o K-8 Boriya Road Moti Nagar, Near Sharda, Petrol Pump, Raipur District Raipur Chhattisgarh Current Address Poonam Complex Flat No. 701, Building No. 96, Near Hdfc Bank Shanti Park Meera Road, Thane Mumbai M. H., District : Mumbai, Maharashtra

---- Applicant

Versus

- Mrs. D. Shruti, W/o Rahul Tiwari, Aged About 25 Years, R/o G-27, Krishak Nagar, Krishi Mahavidyalay Campus, P.S. Telibandha Raipur, District-Raipur, Chhattisgarh.

---- Respondent

For Applicant	:	Mr. L.K. Mishra, Advocate.
For Respondent	:	Mr. Pranjal Shukla, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

CAV Order

12/04/2021

Heard.

1. The petition has been brought challenging the legality, propriety and correctness of order dated 21.5.2018 passed by the Family Court, Raipur in M.J.C. No.78/2016 allowing the application of respondent under Section 125 CrPC and granting maintenance of Rs.20,000/- per month to her.
2. It is submitted by the counsel for applicant, that the impugned order is totally erroneous and illegal. The applicant was granted interim maintenance of Rs.2,000/-. Subsequent to which she has been

granted maintenance of Rs.20,000/-, which is a huge difference and without any basis. After marriage, the respondent (wife) resided with the applicant for a period of 7 months only. Respondent is willingly residing in her parental house without any sufficient cause. The allegation of demand of dowry, as alleged by the respondent in her application, has not been proved in evidence and, further, there is no such finding in the impugned order that any dowry demand was made by the applicant from the respondent. Referring to the document Ex.D4 which is record of proceeding before the counselors, it is submitted that in this proceeding there is no mention of any demand of dowry. Hence, the respondent has no entitlement for grant of maintenance under Section 125(4) of CrPC. The learned Family Court has committed error in holding her entitlement. It is also submitted that the learned Family Court has erroneously held that the applicant is a man of sufficient means. It was the pleading of the applicant that he plays Jhunjhuna (a musical instrument) in band party, therefore, the applicant is unable to make payment of the huge amount of Rs.20,000/- per month to the respondent.

Reliance is placed on the judgment of Supreme Court in the case of Deb Narayan Halder v. Smt. Anushree Halder, reported in AIR 2003 SC 3174. It is submitted that if the wife leaves her matrimonial house without any justifiable reasons, she has no entitlement for maintenance. Therefore, this is a similar case and the respondent has no entitlement for maintenance. The revision petition be allowed and the impugned order be set aside.

3. Learned counsel for respondent opposes the submissions and submits that the learned Family Court has not committed any error in passing the impugned order. The respondent has clearly proved her entitlement for maintenance by proving that she was tortured for demand of dowry by the applicants and thereby she was compelled to leave her matrimonial home and take shelter in her parental home, hence, she has sufficient cause for living separate. The respondent had filed complaint in Mahila Thana because of which the counseling procedure was taken up. Placing reliance on the judgment of Supreme Court in the case of Sunita Kachwaha and others v. Anil Kachwaha, reported in

(2014) 16 SCC 715 it is submitted that the applicant has no ground to maintain this revision petition which may be dismissed.

4. Considered on the submissions.
5. On perusal of the evidence present in the record of the proceedings under Section 125 CrPC, it is found that the respondent has established in her evidence the fact of demand of dowry and the torture given to her for that reason. It is her statement in cross-examination that the marriage was consummated after passing of about one month. Although, it is denied that she used to refuse for such cohabitation. It was her admission that she had undergone open heart surgery and it was known to the applicant. She has denied the fact that fact of her open heart surgery was suppressed and this was the reason of dispute with her husband. It is also her admission that she made complaint to Mahila Thana, Raipur and then she received some of her things back through the police-station. She has not given any reply to the question whether she wants to live again with her husband or not. Asha Rao (AW-2) has supported the version of D. Shruti (AW-1). She is mother of the respondent. In cross-examination, she has admitted that no complaint was given regarding demand of dowry to any authority. There is admission about open heart surgery of the respondent and denial about concealing of the same from the applicant.
6. Rahul Tiwari NAW-1 has stated in examination-in-chief that after performance of marriage in the year 2015, the marriage was not consummated immediately because it was opposed by the respondent. It was after 15 days, the respondent disclosed that she has undergone bypass surgery and then only the applicant for the first time came to know about this fact. It is stated that the respondent, who was living in Mumbai with the applicant had come to her parental home about 15 times at the expenses of the applicant. It is the respondent, who has tortured the parents of the applicant. The respondent had made a false complaint in the police-station. Subsequent to which, the applicant had returned all the gifts received. The respondent herself does not want to live with the applicant regarding which she has made admissions. In cross-examination, there is no suggestion given by the respondent side to this witness about making demand of dowry and

torturing the respondent for the same.

7. Vijay Sagar Tiwari NAW-2 has made similar statement in examination-in-chief. He is father of the applicant. In cross-examination, he has stated that he never knew that his daughter-in-law, the respondent, had undergone bypass surgery. He came to know about this fact after 15 days of the marriage. He is admitted that this was the reason of dispute between both the sides. In his cross-examination also there is no suggestion given by the respondent side that the respondent was tortured for demand of any dowry. ExD-4 is the minutes of counseling proceedings and on perusal of the same, it is found that there is no mention of any demand of dowry. Further, it is mentioned that the respondent does not want to live with her husband, the applicant, and that she wants divorce.
8. The learned Family Court has not given any finding in the impugned order regarding the torture due to demand of dowry, but it has been held that the cause of dispute between the applicant and respondent was this, that the respondent had undergone open heart surgery and as alleged by the applicant side that the disclosure about this surgery was made after about 15 days of the marriage. The learned Family Court has correctly held that this dispute is the reason due to which respondent is living separately. The applicant side has not made any effort in proper manner to bring back the respondent. The denial of the respondent before the counselors to reside with the applicant will alone not be sufficient ground unless some willingness to have the respondent back is shown by the applicant himself. There is no such report or evidence that the respondent is physically incapacitated in performing her duty as a wife, therefore, the treatment and behavior of the applicant side with respondent side was totally uncalled for, showing exactly towards the respondent which is the reason that she residing with her parents. Hence, the act of the applicant side is clearly covered under the definition of the 'cruelty' by the respondent side. Hence, for these reasons, the finding of the Family Court that the respondent has sufficient reason for living separate is a correct finding.
9. It is evidence of respondent side that the applicant is Music Director and he has sufficient income from that work. In the evidence, Rahul Tiwari NAW-1 has stated in examination-in-chief that he plays

Jhunjhuna for which he gets Rs.8,000/- to Rs.10,000/- per month. In cross-examination, he has denied about making of music albums, although, it is his admission that he had been to Guwahati, Mumbai, Asam, Ahmdadbad, Goa, Delhi, Bangalor, Bankak, Canada, Tishukiya, Nerul, Pune, Kolkata for the music work. He has further admitted that there is one video loaded in his name in the You Tube and also that for playing Jhunjhuna he has visited foreign countries. Although he has denied the suggestions about his income.

10. Upon appreciation of whole evidence and looking to the evidence adduced by the applicant side, it appears to be clear that the vocation of the applicant is not an ordinary means of earning livelihood, as the applicant is receiving calls and visiting foreign countries which involves huge expenditure, therefore, it can be easily gathered that the applicant has sufficient income to pay the maintenance as ordered.
11. After overall consideration on all the facts and circumstances in evidence, I am of this view that the impugned order does not suffer from any infirmity, hence, this revision petition is dismissed.

Sd/-

(Rajendra Chandra Singh Samant)
Judge