

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CR.R. No. 740 of 2019****Reserved on 22-9-2021****Pronounced on 07-10-2021**

Ramdev S/o Puniram Aged About 20 Years Caste - Sidar, R/o Sukhda, Police Station And Tahsil - Dabhra, District Janjgir Champa CG

----Applicant**Versus**

1. Smt. Pushpa W/o Ramdev Savra
2. Yuvraj S/o Ramdev aged about 2 Years Caste - Savra, minor, represented through mother Smt. Pushpa wife of Ramdev, aged about 28 Years, caste - Savra,

Both R/o Sukhda, Police Station and Tahsil - Dabhra, District Janjgir Champa, CG at Present Village - Putidih, Police Station and Tahsil - Dabhra, District Janjgir Champa CG

----Non-applicant

 For Applicant : Shri H.S. Patel, Adv.
 For non-applicants : None though represented earlier.

Hon'ble Shri Justice N.K. Chandravanshi
CAV Order

1. This criminal revision has been preferred by the applicant against the order dated 15-3-2019 passed by the Judge, Family Court, Link Court, Sakti, District Janjgir Champa, in Misc. Criminal Case No. 99/2018 whereby amount of maintenance to the tune of Rs. 2,000/- and Rs. 1,500/- per month respectively has been granted to the non-applicants No. 1 and 2.

2. It is not in dispute that the applicant and non-applicant No. 1 are legally wedded husband and wife. Their marriage was solemnized in the year 2011. It is also not in dispute that on report lodged by the non-applicant/wife, criminal case No. 143/2017 under Section 498-A/34 of the Indian Penal Code (in short 'IPC') is pending against the applicant and others, before Judicial Magistrate First Class, Dabhra.

3. Brief facts of the case are that the non-applicants filed application under Section 125 of the Criminal Procedure Code (in short, 'Cr.P.C.') stating that relation between the applicant/husband and non-applicant No. 1/wife was good till birth of their first child. When non-applicant/wife conceived 2nd time, thereafter their relation became bitter because the applicant/husband started torturing her asking her to bring Rs. 50,000/- from her parents. He was also doubting about paternity of her 2nd child who was in her womb. Community meeting was convened with regard to their dispute, where she was compelled to dissolve their marriage, otherwise, she and her family members would be ousted from the community. Thereafter, the applicant/husband ousted her from his house. The non-applicants have no source of income, therefore, amount of maintenance as prayed for, be ordered to be given by the applicant. The applicant/husband in his reply, denied the allegations and stated that he has never demanded or tortured the non-applicant/wife, instead of that, when she was going to learn stitching work in the house of Parmeshwar Sahu, then illicit relation developed between them. He tried to explain non-applicant/wife, despite that, she did not change her attitude, therefore, community meeting was convened where, on demand made by her and decision taken by the community members, he gave Rs. 50,000/- to non-applicant/wife, thereafter documents regarding dissolution of their marriage was executed between them in front of community members, and thereafter, she is living in her matrimonial house, where she gave birth to non-applicant No. 2. He has also mentioned in his reply that non-applicant/wife does stitching work and thereby she earns Rs. 7,000/- monthly, therefore, they are not entitled to get maintenance from the applicant/husband.

4. After affording opportunity to both the parties to adduce evidence and after hearing them, vide impugned order dated 15-3-2019, learned trial Court allowed the application in part, filed by

the non-applicants and granted maintenance as mentioned above. Being aggrieved by this order, the applicant/husband has filed this criminal revision.

5. Earlier, non-applicants were represented through counsel before this Court, but later on, neither they nor their counsel appeared and they remained absent.

6. Learned counsel for the applicant submits that allegation of demand of money against applicant is totally false and baseless. Actually, non-applicant/wife had developed illicit relation with Parmeshwar Sahu, in whose house, she went to learn stitching work. Efforts to explain her were made by the applicant/ husband, despite that, she did not change her attitude and in community meeting, she herself had stated that she will not break her relation with Parmeshwar Sahu. On demand made by her, the applicant/husband gave her Rs. 50,000/- and thereafter, Talaknama documents Ex. D-1-C, Ex. D-2-C, Ex. D-3-C, Ex. D-4-C, Ex. D-5-C were executed between them. Thus, she herself is living separately by her own will, therefore, in view of the provisions of Section 125(4) of the Cr.P.C., she is not entitled to get any maintenance from the applicant, although he did not make any argument in respect of maintenance granted to applicant No. 2 (son). To buttress his argument, he placed reliance on decision of High Court of Madhya Pradesh, Jabalpur in case of **Kamal Singh -v- Sunita and another** [2007(2) CGLJ 11].

7. I have heard learned counsel for the applicant and perused the record of court below as well as the documents annexed with the revision.

8. On going through the evidence of both the parties, it shows that relation between the applicant/husband and non-applicant-wife was good till the birth of their first child, bitterness of their relation started when non-applicant/wife went to learn stitching work to the house of Parmeshwar Sahu, because as per

statement of both the parties, thereafter the applicant started doubting about illicit relation between her and Parmeshwar Sahu. The applicant informed the parents of non-applicant/wife in this regard and her parents came to Raigarh and non-applicant/wife also went with them to her matrimonial house. The non-applicant Smt. Pushpa (P.W. 1) has admitted in her cross-examination that after one month, the non-applicant had gone to take her and she came with him to her Sasural at village Sukhda. Although she had denied suggestion of learned counsel for the applicant/husband that thereafter also, she used to talk with Parmeshwar Sahu on mobile, which was heard by brother of the applicant, but she has admitted in her cross-examination that on being called by the applicant/husband to her parent, they came. These facts show that bitterness of their relation was not resolved.

9. Non-applicant Smt. Pushpa (A.W. 1) has also admitted in her cross-examination that community meeting was held with regard to their dispute and documents regarding Chhodchutti were written in that meeting, in which she had signed. Although, she has stated that she was compelled to sign but she has also admitted that she has not opposed the documentation of Chhodchutti executed in community meeting. Non-applicant/husband Ramdev (NAW 1) and Ramnath (NAW 2) have also stated in their evidence regarding said community meeting and execution of documents regarding Chhodchutti between them. Those documents have been exhibited as Ex. D-1-C, D-2-C, D-3-C, D-4-C, D-5-C. If the non-applicant/wife was forced to sign aforesaid documents then she would have examined any witness in this regard, but she has not examined any witness who appeared in the meeting, whereas Ramnath (NAW 2) has been examined by the applicant/husband. Therefore, evidence of non-applicant/wife Smt. Pushpa does not inspire confidence of the Court that she was compelled to sign in aforesaid documents.

10. It has been mentioned in Ex. D-3-C and Ex. D-4-C which were executed by the applicant and non-applicant/wife

respectively that since there had been dispute between them, therefore, both of them are ready to live their life separately on the basis of mutual consent.

11. Ramdev (NAW 1) has deposed in his deposition that at the time of execution of documents regarding Chhodchutti, he had given Rs. 50,000/- to the non-applicant/wife, thereafter, aforesaid documents were executed. His statement is well supported by Ramnath (NAW 2) and also by document Ex. D-5 wherein Ramnath (NAW 2) has proved his signature. Non-applicant/wife Smt. Pushpa (AW1) has denied that the applicant had given her Rs. 50,000/- but she has not examined any witness to support her in this regard, whereas statement of Ramdev (NAW 1) is supported by Ramnath (NAW 2) regarding Ex. D-5-C. Non-applicant/wife had lodged report against her husband (applicant) and others under Section 498-A of IPC which is pending in the Court but only lodging report under Section 498-A of IPC does not prove that wife has been tortured by the husband for demand of dowry, therefore, only filing of such report cannot prove that the applicant/husband tortured her to bring Rs. 50,000/- from her parents.

12. Core base of relation between husband and wife is faith on each other. If it is shaken, then it is the duty of that party whose part is shaky, to regain the faith of other party. But it seems in this case that it was not done and in community meeting, applicant and non-applicant decided to live separately from each other. Since non-applicant wife is living separately from her husband by mutual consent, therefore, in view of provisions of sub-section (4) of Section 125 of the Cr.P.C., the non-applicant/wife is not entitled to receive maintenance from applicant/husband, therefore, upto that extent, the impugned judgment passed by the Court below is set aside.

13. So far as non-applicant No. 2 Yuvraj is concerned, the applicant/husband has not denied in his reply that non-applicant

Yuvraj is his son. In cross-examination also, he has stated that he has two children. Thus, it is found, as has been held by learned Court below, that non-applicant No. 2 Yuvraj is son of applicant/husband, therefore, being father, he is legally and morally bound to maintain his son. Learned Court below has granted Rs. 1,500/- per month for maintenance of his son Yuvraj, which cannot not be termed as illegal or improper, therefore, the order impugned with regard to grant of maintenance of non-applicant Yuvraj to the tune of Rs. 1,500/- per month is upheld.

14. In the result, the revision is partly allowed. The impugned order, to the extent it grants maintenance to the non-applicant No./wife, is set aside. It is upheld whereby it grants maintenance to the applicant No. 2 to the tune of Rs. 1,500/- per month. Other conditions of the impugned order shall remain intact.

Sd/-

N.K. Chandravanshi
Judge

Pathak/-