

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
Reserved on 16-9-2021

Delivered on 28-9-2021

CR.R. No. 831 of 2019

Amit Jalan S/o Shri Gopal Prasad Jalan aged about 37 Years
 R/o 27 Abhoy Guha Road, Second Floor Room No. 205, Near
 Post Office, Liluah, District Howrah (W. B.)

---- Applicant

Versus

Smt. Rita Jalan W/o Shri Amit Jalan, aged about 35 Years R/o
 C/o Sita Ram Kanodia, E/ 80, Kamal Kunj, Samta Colony
 District - Raipur CG

---- Non-appliant

CR.R. No. 779 of 2019

Rita Jalan W/o Amit Jalan aged about 34 Years R/o E-80, Kajal
 Kunj, Raipur, District Raipur, CG,

Present Address C-93, Ground Floor, Samta Colony, behind
 Pandey Nursing Home, Sitaram Kanodia, Raipur CG

Mob. No. 9713570615

---- Applicant

Versus

Amit Jalan S/o Gopal Prasad Jalan aged about 38 Years R/o
 27, Abhoy Guha Road, Room No.205, Second Floor, Near Post
 Office Don Bosco School, Liluah Howrah (WB) Pin 711204,

---- Non-appliant

 For Amit Jalan : Shri Pragalbha Sharma, Adv.
 For Smt. Rita Jalan : Shri Vivek Sharma, Adv.

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

1. Since both the above revision petitions arise out of same order, they are heard together and disposed of by this common order.

2. Both the revisions have been preferred challenging the correctness, legality and propriety of the order dated 2-5-2019 passed by the 2nd Addl. Principal Judge, Family Court, Raipur (CG) in Misc. Cr. Case No. 145/2015, allowing the application filed by the applicant Smt. Rita Jalan in CR.R. No. 779/2019 (she is non-appliant in Cr. R. No. 831/2019, hereinafter referred to as 'wife'),

under Section 125 of the Criminal Procedure Code, 1973 (in short 'Cr.P.C.') and granting maintenance to her to the tune of Rs. 15,000/- per month from the date of order i.e. 2-5-2019 and litigation expenses Rs. 500/-, against the non-applicant in CR.R. NO. 779/2019 and applicant in CR.R. No. 831/2019 (hereinafter referred to as 'husband').

3. It is not in dispute in this case that wife and husband are legally wedded with each other. The only ground which the wife has raised in her revision is that amount of maintenance granted by learned Family Court is not proper, therefore, she has prayed for enhancement of maintenance amount, whereas the husband has challenged the impugned order praying for quashing of entire proceedings pursuant to the application filed by the wife under Section 125 of the Cr.P.C.

4. Learned counsel for the husband submits that the husband or his relatives have never tortured the wife and they have never made any demand of dowry or money from her or her parents, whereas wife is uncultured and arrogant lady, she has never taken interest in house hold works. She was not ready to adjust with her husband and his parents. She was enforcing upon husband to oust his parents. To make peace in their life, the husband also took a rented accommodation to live with wife, despite that, her attitude did not change, even she used to beat him, when he made complaint about her behaviour to her parents, then they also threatened to implicate him in criminal case. The wife herself left his home and his company without any sufficient reason and had lodged false report under Section 498 of the Indian Penal Code (In short 'IPC') against them. He further submits that the husband is working in bank, his monthly salary is not very high and he is hardly able to maintain himself and his old aged parents. Some times he requires to take loan, whereas, wife is well educated lady and also does fashion designing. She is able to maintain her livelihood, despite that, learned court below without considering aforesaid facts, granted her Rs. 15,000/- per month maintenance amount, which is erroneous, perverse and not sustainable.

5. Per contra, learned counsel for the wife submits that since beginning of her marriage, attitude of her husband and his parents was not good with her, even the husband did not make physical relation with her, on being inquired, they told that they are not satisfied with the dowry/ money received in marriage. They asked her to bring Rs. 10 lacs from her parents, otherwise, they will ruin her life and husband will marry elsewhere. He further submits that family members of wife explained them to live harmoniously and not to torture the wife, but they did not change their behaviour and said that until and unless their demand is fulfilled, they will not keep the wife with them. Therefore, from 10-2-2015, the wife is living with her parents at Raipur. Family members of wife tried to settle the dispute between them through counseling centre, but the husband did not appear in the counseling, therefore, wife lodged FIR under Section 498 of the IPC against the husband. He further submits that husband is working on the post of manager of Axis Bank and getting huge monthly salary. His annual income has been assessed by the Family Court to the tune of Rs. 8,26,274/- and has granted only 25% as maintenance amount to the wife, which is on lower side and learned Family Court ought to have awarded at least 1/3rd from the gross salary of husband, because granting 25% to the wife from income of husband is not a straight jacket formula, therefore, he prays to modify / enhance the amount of maintenance awarded by the learned Family Court.

6. I have heard learned counsel for both the parties, perused the record of the trial Court as also the impugned order.

7. So far as the reasons for living of wife separately from her husband is concerned, wife Smt. Rita Jalan (P.W. 1) has stated in her duly sworn affidavit /examination-in-chief that behaviour of husband was not good towards her, even he did not make physical relation with her, because they were not satisfied with the dowry/money received by them in marriage. Husband and his parents started torturing her to bring Rs. 10 lacs from her parents, when she showed inability, then they refused to keep her with him. Husband and they also used to say that if she does not fulfill their

demand, then they would spoil her life and husband will perform marriage elsewhere. Her family members intervened, despite that, their behaviour did not change, therefore, she has lodged FIR under Section 498 of the IPC against them and since 10-2-2015, she is living with her parents.

8. Sitaram Kanodia (P.W. 2) is father of wife. He has also supported the statement of her daughter Rita Jalan (A.W. 1) in his court statement. Both of them have denied adverse suggestions given to them by counsel for the husband.

9. Husband Amit Jalan (NAW 1) has deposed in his statement that behaviour of wife was arrogant not only with him but also with his parents. She used to say him to oust his parents. He has further stated that even he had taken rented accommodation to live separately from his parents, despite that, attitude of wife was not changed. In this regard, during the course of argument, his counsel drew attention of the Court on Ex. D-1, tenancy agreement. He has further stated that wife herself has left his company and his house without any sufficient reason. But his statement did not inspire confidence of the Court because he himself has admitted in his cross-examination that in the Court of Howrah he had stated that he cannot keep wife with him. He has also filed divorce petition Ex. D-6 dated 18-4-2016 against wife. He has also admitted that before 18-4-2016 he had filed divorce petition which he had withdrawn. He has also admitted in his cross-examination in para 23 that in the month of May, 2014 when he was sleeping with mother, wife objected for that. Although, he has stated that since his mother was not well, therefore, he was sleeping with her. He has filed various medical documents but he has not filed medical document of illness of his mother of the month May, 2014. Looking to the aforesaid facts and particularly admission made by husband, the evidence led by the wife in her deposition inspires confidence of the Court in respect of preponderance of probabilities that attitude and behaviour of husband was not proper with her, therefore, I do not find any infirmity in the conclusion given by learned Family Court that the wife is living separately with sufficient reason from her husband.

10. So far as quantum part of maintenance amount is concerned, it is not in dispute that husband is working as Manager in Axis Bank, Branch Customer Service Officer, Distt. Kolkata, which he himself has stated in his deposition. He has also admitted that he is getting Rs. 55,517/- monthly salary. Although, he has given detail about his expenditure but he has also admitted in his cross-examination that his younger brother is working in KPMG and he is also a chartered accountant, therefore, it cannot be accepted that his parents are dependent only upon him. Looking to his salaried income, learned trial Court has, after making computation on the basis of decision of the Hon'ble Supreme Court, rightly held that wife is entitled to get Rs. 15,000/- per month as maintenance from her husband. This amount is neither in higher side nor in lower side.

11. In the case of **Rajnish -v- Neha and another** [(2021) 2 SCC 324], Hon'ble Supreme Court has held that the maintenance amount awarded must be reasonable and realistic and avoid either of the two extremes i.e. maintenance awarded to the wife should neither be so extravagant which becomes oppressive and unbearable for the respondent, nor should it be so meagre that it drives the wife to penury. Learned trial Court has not committed any error in computing the amount of maintenance for wife. Therefore, neither it is required to be enhanced nor reduced. In other words, it is just and proper.

12. In view of above discussion, I find that trial Court has not committed any error in passing the impugned order. Both the revisions being devoid of substance, deserve to be and are hereby dismissed.

Sd/-
N.K. Chandravanshi
Judge