

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 548 of 2017

Goverdhan Kunwar S/o. Jitan Ram, aged about 29 years, Permanent resident of village Kachhuwapani, Police Station Dokad, District Jashpur (CG) presently residing at Khajanchi Toli, behind the Jail Jashpur District Jashpur (CG)

--- Petitioner

Versus

1. Smt. Subhadra Kunwar W/o. Goverdhan Kunwar, aged about 21 years, R/o. Village Khaksatola, Tapkara, Tahsil Farshabahr, Police Station Tapkara, District Jashpur (CG).
2. Aayush S/o. Goverdhan Kunwar, aged about 1 year 7 months, minor through Legal guardian mother Smt. Subhadra Kunwar, W/o. Goverdhan Kunwar, aged about 21 years, R/o. Village Khaksatola, Tapkara, Tahsil Farsabahr, District Jashpur (CG)

---- Respondents

For the Appellant :- Mr. Rohitashva Singh, Advocate
For the respondent :- Mr. Sanjeev Kumar Sahu, Advocate

Hon'ble Shri Justice Manindra Mohan Shrivastava
Hon'ble Smt. Justice Vimla Singh Kapoor,

Order on Board By Manindra Mohan Shrivastava, J.

18.08.2021

1. This revision arises out of order dated 29.04.2017 passed by the Family Court, Jashpur District Jashpur, whereby an order of grant of maintenance under Section 125 CrPC has been passed in favour of wife/respondent No.1 and son/ respondent No.2.
2. Marriage was solemnized between the appellant/husband and the respondent/wife on 19.05.2013 and thereafter son namely Aayush

was born on 27.11.2014. The dispute arose between the husband and the wife which led to wife leaving the matrimonial house. Later on, application for grant of maintenance under Section 125 CrPC was filed by the wife and the child. In the application, it was pleaded inter-alia, that though after marriage, for some time, the husband and wife resided peacefully, thereafter the husband and the in-laws started subjecting the wife to cruelty stating that she has not brought sufficient dowry and started making demand of motorcycle. Insisting on the demand, the wife was subjected to abuses and assault also. Even after, she became pregnant, behavior of the husband and the in-laws did not change and the mother of the husband started declaring that she was arranging for her son's re-marriage. Even after, the child was born on 27.11.2014, the behaviour of the in-laws did not change and on 15.06.2015, she was assaulted by the in-laws and the husband too and unceremoniously shunted of the matrimonial house along with her minor son and since then she is residing in parental house. Though number of times request was made, that she may be taken back, the husband came with numbers of persons entered into quarrel only aimed at snatching the son away without any intention to take the wife back to the matrimonial house.

3. The husband denied all the allegations specifically denying the allegation with regard to demand of dowry, mis-behaviour, cruelty and stated that the wife has been acting in an unusual manner and she locked the doors of the house from the outside and left the matrimonial house without informing anybody. The husband went to the house of the wife number of times but she did not come back.

4. Learned Family Court after having drawn summery proceedings and recording the statements of the witnesses came to the conclusion that the wife is unable to maintain herself, she has been subjected to cruelty, mis-behaviour and is therefore, justified in living separately. On such consideration, the family Court passed the order of award of maintenance in favour of wife and the son which has been subjected to challenge in this revision.
5. Learned counsel for the applicant would seek to assail the finding of the Family Court mainly on the submission that there is ample evidence that the husband went to the parental house of the wife on more than one occasion but the wife did not return. This clearly shows that the wife herself was not inclined to come back to the matrimonial house. He would further submit that stereotype allegations of being subjected to cruelty in connection with demand of dowry long after the marriage are not supported by any attempt made by the wife to raise the dispute either in the forum of their society, court or even before Police or informing the same to anybody else. Therefore, the Family Court ought to have disbelieved such evidence of cruelty, mis-behavior, maltreatment alleged to have been meted out to the wife by the husband or in-laws. The second limb of submission learned counsel for the applicant is that in the summery proceedings the family Court recorded a finding that the wife was justified in living separately mainly on the ground of alleged cruelty, harassment and mis-behavior. Later on the husband filed an application under Section 9 of the Hindu Marriage Act, for restitution of conjugal right and in those proceedings after recording the evidence the family Court came to the conclusion that wife is not

justified in living separately and therefore, passed a decree of restitution of conjugal right. He would submit that once an order is passed in these proceedings which are based on determination of rights of the parties, the order passed in the summary proceedings under Section 125 CrPC will lose its efficacy and therefore, such order cannot be allowed to sustain. For that purpose, reliance has been placed on the matter of **Rakesh Malhotra vs. Krishna Malhotra (2020) 14 SCC 150**.

6. On the other hand, learned counsel for the respondent would submit that the findings recorded by the Family Court on the aspect of cruelty, harassment and maltreatment are findings of fact based on legally admissible evidence on record and merely because another view is possible, this being revision and not appeal, findings are not liable to be interfered with. He would next submit that the evidence of the wife that she is not prepared to go back to husband's house and was willing to live with him only on a condition that he would live separately from his parents has to be assessed in the context and the background in which she left the matrimonial house and took shelter in her parental house. The family Court, it is contended, held that the wife is justified in living separately not by ignoring that she refused to reside with the husband unless he resides separately from his parents but also taking into consideration that because of the harassment, cruelty and mis-behavior, the wife was not willing to reunite with all of them but to confine only to the husband. Replying to other ground it is submitted that the order passed by the family Court under Section 125 CrPC was earlier in point of time and subsequent order passed by the family Court in proceedings under

Hindu Marriage Act could not be made a basis to assail the legality and validity of earlier order of maintenance under Section 125 CrPC and the remedy of the applicant lies elsewhere.

7. We have heard learned counsel for the parties and perused the material on record.
8. Learned family Court while deciding application under Section 125 CrPC has taken into consideration the pleading as also the evidence which have come on record. From the impugned order we find that in order come to the conclusion that the wife was subjected to harassment and cruelty, the family Court has taken into consideration emphatic evidence in this regard led by the wife herself by examining as one of the witness, wherein she has stated regarding the harassment and cruelty and the reason for such harassment and cruelty. Therefore, it cannot be said that the findings has been recorded by the Family Court without there being any evidence. It is not even a case where challenge to be finding is laid on the ground that the evidence is not legally admissible. Whether in view of the wife having not disclosed the cruelty in the forum of the community or having not lodged any FIR should be taken to doubt the veracity of her statement so as to disbelieve the same, is essential in the realm of appreciation of evidence. Exercise of revisional jurisdiction is not the same as one in appeal. This Court would not undertake reassessment of evidence as a matter of course to arrive at its own findings and conclusion. Revisional jurisdiction can be exercised and the order passed by the Court below could be interfered with when the revisional courts finds that the finding of the Court below suffers from patent defects or an error of jurisdiction of

law or the perversity which has crept in the proceedings please see **State of Rajasthan vs. Fatehkaran Mehdu AIR (2017) SC 796**. In the case of **Amit Kapoor vs. Ramesh Chander (2012) 9 SCC 460**, it has been held by their Lordship in the Supreme Court that the revisional Court is empowered to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. It has been held that the object of this provision is to set right a patent defect or an error of jurisdiction or law.

Applying the aforesaid principle, we find ourselves unable to interfere with the finding of the Family Court in the matter of award of maintenance to the wife on the face of the evidence of cruelty, harassment and mis-behaviour being the reason for the wife for living separately. Therefore, the finding of the Court that the wife of living separately does not warrant any interfere in exercise of revisional jurisdiction.

9. The second limb of submission of learned counsel for the applicant cannot be looked into. It is admitted that the order under Section 125 CrPC was passed by the Family Court much prior to passing of any order in proceedings under Section 9 of the Hindu Marriage Act. The order in those proceedings was passed on 24.08.2018 in Civil Suit no. 17-A/2017. The validity of the order under challenge cannot be judged on the basis of subsequent order. It is not a case that the Family Court while exercising jurisdiction under Section 125 CrPC ignored to look into the order passed in proceedings under the Hindu Marriage Act dealing with maintenance aspect whether temporary or permanent. At the most, subsequent order passed in civil

proceedings could be made a basis to seek variation of the maintenance order by taking recourse to provision contained section 127 CrPC but that cannot be made a ground to assail the order passed under Section 125 CrPC much prior to the order passed in civil proceedings under Hindu Marriage Act.

10. Reliance placed on the judgment of Supreme Court in the case of Rakesh Malhotra vs. Krishna Malhotra is misconceived. In that case the court was considering the situation where an order of permanent alimony was passed first in point of time which was followed by institution of proceedings under Section 125 CrPC, in that context, it was held that the application for grant of maintenance would not be maintainable and it was directed to treat application under Section 25(2) of the Hindu Marriage Act. In the present case, the maintenance order had already been passed. In the result, leaving the applicant to workout remedy as may be available to him under the law to seek variation of the maintenance order in view of the subsequent order passed in matrimonial proceedings under the Hindu Marriage Act, the revision is dismissed.

Sd/-

Manindra Mohan Shrivastava
Judge

Sd/-

Vimla Singh Kapoor
Judge