

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Proceedings through Video Conferencing****CR.R. No. 1063 of 2019**

Smt. Surekha Sahu W/o Shri Shivkumar aged about 43 years
R/o Village Birkona, Tahsil and District Bilaspur, CG C/o Father
Late Ramkrishna Sahu, Village and Post Birkona Tahsil and
District Bilaspur, CG

----Applicant

Versus

Shiv Kumar Sahu, aged about 58 years S/o Shri Bhukhram
Sahu R/o Village Hardi (Jarve) Tahsil Baloda, Distt. - Janjgir-
Champa, CG

----Respondent

For Applicant : Mr. B.K. Chakrabarty, Adv.
For respondent : Mr. Sanjay Agrawal, Adv.

Hon'ble Shri Justice N.K. Chandravanshi**Order on Board****28-7-2021**

1. This criminal revision has been preferred by the applicant against the order dated 30-7-2019 passed by the Family Court, Bilaspur in Misc. Cr. Case No. 562/2018 whereby the Family Court has dismissed the application filed by the applicant under Section 125 of the Criminal Procedure Code, 1973 (in short 'Cr.P.C.').

2. Facts of the case, in brief, are that the applicant filed an application before the Family Court for grant of maintenance under Section 125 of the Cr.P.C. mentioning that she is legally wedded wife of the respondent. Their marriage was solemnized in the year 1993 but they have no issue. The respondent/ husband was not providing her other facilities except meal and he used to torture her mentally. He was also not caring for her routine expenditure, medicines, etc., instead, he always gave his whole salary to his brother and nephew. Since behavior of the respondent/husband was not good with her, therefore, his other relatives also used to torture her physically and mentally. The brother of the applicant/ wife persuaded the respondent/husband and his relatives to behave in a good manner

with the applicant, despite that, they did not change their behavior. Therefore, the applicant is living with her brother. She has no means of her livelihood whereas the respondent/husband is clerk at the Government Jajlya Dev College, Janjgir and is earning salary Rs. 40,000/- per month. Therefore, she made prayer to grant Rs. 15,000/- per month for her maintenance from the respondent/husband.

3. The respondent/husband denied the allegations pertaining to maltreatment / misbehavior by them against the applicant. He has pleaded in his reply that the applicant herself is not interested to live with him because he is physically 80% disabled person and she is not interested to take his care and to provide him necessary support looking to his disability. The applicant was living with him happily but when disability of the respondent increased and he became disabled to do his routine work, then, the applicant disliked him and also started avoiding his care. She herself left his house on 11-6-2018 with her brother. By doing stitching work, she earns Rs. 7 to 8 thousand per month, therefore, she is not entitled to get any maintenance amount from the respondent.

4. Learned Family Court, after appreciating the oral and documentary evidence adduced by both the parties, vide order dated 30-7-2019 dismissed the application of the applicant holding that she herself is living separately from the respondent without any sufficient reason because he is ready to keep her with him but she herself is not ready to live with him.

5. Learned counsel for the applicant submits that the impugned order passed by learned Family Court is bad in law, perverse and

erroneous because it is not in dispute that the applicant is legally wedded wife of the respondent and interim maintenance amount was granted by learned trial Court *pendente lite*, because due to torture made by the respondent and his relatives, the applicant was compelled to leave her matrimonial house. The applicant is not having any source of income and she is dependent on her brother, whereas the respondent is a government servant getting Rs. 40,000/- per month as salary. Despite that, she has been denied maintenance amount by the learned Family Court. Hence, in the light of the above facts and circumstances of the case, the order passed by the Court below is erroneous, perverse and liable to be set aside.

6. Learned counsel for the respondent/husband supporting the impugned order submits that the trial Court was fully justified in passing the impugned order because the applicant herself did not want to live with the respondent/husband.

7. I have heard learned counsel for the parties and perused the material available on record.

8. The applicant has examined herself as Witness No. 1. Except herself, no other witness has been produced by her.

9. Applicant Smt. Surekha Sahu has stated in her statement filed under Order 18 Rule 4 of the Civil Procedure Code that she lived for 12 to 15 years with her husband/respondent, after that the husband/respondent used to torture her physically and mentally, but she has not stated in her statement as to how the respondent was torturing her. Facts and evidence produced by both the parties show that the respondent is a physically disabled person and his disability is said to be 80%. The applicant herself has admitted in her cross-

examination that since last 1 to 2 years, her husband is unable to do his daily routine work due to his disability.

10. The applicant has also admitted in her cross-examination that her marriage was solemnized against her will. She has also admitted that as she does not want to live with the respondent, she did not appear before the Janjgir Court in the case filed by the husband under Section 9 (of Hindu Marriage Act). She has also admitted that in execution proceedings of that case, she has noted in the order sheet that she does not want to go with her husband.

11. The applicant has admitted in her cross-examination that she has not made any complaint before the society, police station or court regarding alleged cruelty committed by the husband.

12. Respondent Shiv Kumar Sahu has denied in his statement filed under Order 18 Rule 4 of the C.P.C. that he has committed any cruelty with the applicant in the manner as alleged by her, rather, he has stated that due to his 80% disability, his care is required to be taken for daily routine work and other work which the applicant did not want to do, therefore, she herself has left his house and denied to live with him, despite the order of the court.

13. Above evidence adduced by both the parties clearly establishes that the respondent is physically disabled person which is said to be 80% and due to such disability, he is unable to do his daily routine work. No doubt, in such a situation, special care is required for him, but despite being a wife, the applicant is not interested to take care of him and left him alone in such a pathetic condition. It has also been proved from the admission of the applicant herself that despite the order of the Court passed in the application under Section 9 of the

Hindu Marriage Act, the applicant is not interested to live with husband. The applicant has not adduced any evidence to prove her statement that she is subjected to torture by respondent/husband or his relatives. The evidence available on record shows that the applicant herself does not want to live with husband. Looking to the above evidence, I do not find any illegality or irregularity in the finding recorded by learned Family Court that the applicant is living separately from her husband without any sufficient reason whereas, the respondent/husband is ready to keep her with him.

14. In case of **Deb Narayan Halder -v- Anushree Halder (Smt.)** [(2003) 11 SCC 303], Hon'ble Supreme Court has held that if wife herself has left her matrimonial house without any justifiable ground, then she is not entitled to grant maintenance.

15. In the light of above, this Court does not find any illegality or irregularity in the finding recorded by the Court below in dismissing the application filed by the applicant under Section 125 of the Cr.P.C.

16. Accordingly, the revision being without merit is hereby dismissed.

Sd/-

N.K. Chandravanshi
Judge