

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 05.07.2021

Delivered on 09.07.2021

Criminal Revision No.1073 of 2019

- Smt. Sunita Patel W/o - Virendra Kumar Patel Aged About 25 Years R/o - Village Paladhikhurd, Police Station And Tahsil Baradwar, Present Address R/o - Village Baradwar, Police Station And Tahsil Baradwar District Janjgir-Champa Chhattisgarh

---- Applicant**Versus**

- Virendra Kumar Patel S/o - Ramesh Lal Patel Aged About 34 Years R/o - Village Paladhikhurd, Police Station And Tahsil Baradwar, District Janjgir-Champa Chhattisgarh Present Address R/o - Police Line Gariyaband, Tahsil And Police Station Gariyaband District Gariyaband, Chhattisgarh

---Respondent

For the applicant	: Shri KK Dewangan, Advocate
For the non-applicant	: Shri Deepak Kumar Singh, Advocate

Hon'ble Shri Justice Naresh Kumar Chandravanshi**CAV Order**

1. This revision petition under Section 19(4) of the Family Court Act, 1984 is directed against order dated 08.8.2019 passed by Family Court, Circuit Court, Sakti, Distt. Janjgir Champa (CG) in Misc. Criminal Case No.82/2017, whereby an application under Section 125 of the Code of Criminal Procedure, 1973 for grant of maintenance filed by the applicant has been dismissed.

2. Case of the applicant in brief, is as under:-

Marriage of the applicant and the non-applicant was solemnized on 23.4.2013 as per the Hindu customs and rites. Parents of the applicant had given ornaments, utensils and other house hold articles at the time of the marriage. Allegation against the non-applicant and his family members is that after the marriage, the applicant was subjected to cruelty and harassment for bringing insufficient dowry and they also demanded Rs.5 lakhs and 50 gm (5 thola) gold. In order to save the marriage, the applicant tolerated the harassment. Even the family members of the non-applicant did not allow her to talk to neighbours and even she was not provided with proper food. Then she informed her parents about the harassment. Father of the applicant filed an application before the Sub Divisional Magistrate, Sakti under Sections 97-98 of the CrPC and in compliance of search warrant issued, the applicant was produced before the SDM, Sakti. Thereafter she went to her paternal house from the Court. Thereafter she lodged a report against the non-applicant and his family members at Police Station Baradwar, Distt. Janjgir-Champa and the matter is pending before Judicial Magistrate, Sakti. The applicant filed an application under Section 125 CrPC stating that she has no source of income and is unable to maintain herself, whereas the non-applicant is Constable in the Police Department and is earning monthly salary of Rs.40,000/- and he is also

earning Rs.5 lakhs per annum from his agriculture land. Hence, the applicant has claimed Rs.20,000/- per month for her maintenance from non-applicant.

3. The non-applicant/husband filed his reply admitting the fact of marriage with the applicant and denied the allegations of demand of dowry and harassment towards the applicant. He pleaded that the applicant failed to fulfill the responsibility and obligation of married life. He further pleaded that he tried his level best to bring back the applicant to her matrimonial house but the applicant refused to return as she wants to live with her parents. The non-applicant further pleaded that he even helped the applicant to complete her post graduation degree and even helped her to attend various competitive examinations. The applicant through her father deliberately filed application under Sections 97-98 CrPC to defame family members of the non-applicant. Her statement before the SDM shows that she wants to live with her father and brother. The non-applicant is ready to keep his wife with him but she has gone to parental house on her own will. The applicant prefers to live in the parental house due to their high financial status. Therefore, application under Section 125 CrPC for maintenance may be dismissed.

4. The Family Court, by its impugned order dated 08.8.2019 dismissed the application for maintenance on the ground that

sufficient reason to live separately from the non-applicant has not been proved by the applicant, therefore, she is not entitled to get maintenance amount from the non-applicant.

5. Questioning the legality and validity of the impugned order of the Family Court, the applicant has filed instant criminal revision for granting maintenance allowance.

6. Learned counsel for the applicant submits that after the marriage, the applicant was subjected to cruelty being not satisfied with dowry/gifts given at the time of the marriage and the non-applicant and his relatives used to harass and torture the applicant on demand of Rs.5 lakh and 5 thola gold from the parents of the applicant. He further submits that the applicant and her witnesses have proved that the family members of the non-applicant have harassed and tortured the applicant in her matrimonial house. Then applicant's father filed an application before the Sub Divisional Magistrate, Sakti under relevant sections of CrPC, thereafter the applicant was rescued from the matrimonial house of the applicant. He further submits that the applicant filed FIR under Section 498A of the Indian Penal Code against the non-applicant and his family members and a criminal case is pending against them. Despite all these oral and documentary evidence, the learned Family Court has rejected the application filed by the applicant under Section 125 CrPC without

considering the evidence, therefore, the order impugned is illegal, perverse and not sustainable in the eye of law.

7. Per contra, learned counsel for the non-applicant submits that impugned order has been passed after due consideration upon the evidence available on record, therefore, no interference is warranted by this Court.

8. I have heard learned counsel for the parties, perused the impugned order and the evidence available on record.

9. There is no dispute that marriage of the applicant was solemnized on 23.4.2013 with the non-applicant and they are legally married husband and wife.

10. Applicant Sunita Patel (AW-1) has stated in her statement that since the beginning her married life was not happy, non-applicant and his relatives, i.e. father, mother, sister and sister-in-law were not satisfied with the gift brought by her at the time of the marriage and they used to harass and torture her for bringing insufficient dowry. She has further stated that on 12.3.2016 when she came with non-applicant at her matrimonial house at Village Paladikhurd at that time, on being called by father of the non-applicant, her father and four elderly persons from the society came to her matrimonial house but since Ram Sai Patel, brother-in-law of the non-applicant had not come at that time, they were sent back. She further stated that family members of the non-

applicant were not allowing her to talk with the neighbours and also not providing proper food. Then she called her father on mobile phone and informed the harassment of the family member of the non-applicant, then her father filed an application before the SDM, Sakti and after issuance of search warrant, she was brought before the SDM, Sakti, thereafter she went to the parental house from the Court. Thereafter she filed a complaint under Section 498-A/34 IPC against the non-applicant and his relatives.

11. Gopal Ram (AW-2) is father of the applicant and Sulochana (AW-3) is the sister-in-law of the applicant. They have also stated that the applicant was subjected to cruelty on demand of dowry by the non-applicant and his family members and also that they demanded Rs.5 lakh and 5 thola gold from parents of the applicant. But in their statement, Gopal Ram (AW-2) and Sulochana (AW-3) have stated that non-applicant had demanded Rs. 5 lakhs and 5 thola gold just after marriage whereas the applicant Sunita Patel has not stated such thing in her examination-in-chief.

12. Sunita Patel (AW-1) has admitted in her cross-examination that custom of dowry is not prevailing in their society. She has also admitted that at the time of marriage, the non-applicant had not made any demand for dowry. Her father Gopal Ram, (AW-2) has also admitted in his cross-examination that there was no talk

regarding dowry at the time of marriage. Looking to their afore-stated admission, it is not believable that the non-applicant and his family members had demanded Rs.5 lakhs and 50 thola gold from the applicant and if it so, it is not clear as to when they had made the aforesaid demand. The aforesaid statement of the applicant and her witnesses do not inspire confidence of the Court because if the non-applicant and his family members were so interested about the dowry then they would have demanded the same at the time of the marriage but no such custom is prevailing in their society as applicant Sunita Patel (AW-1) herself has admitted in her cross-examination.

13. Applicant Sunita Patel has admitted in her cross-examination that when she was living at Gariyaband with non-applicant, she was studying there and also appeared in the practical examination. A perusal of the above statement shows that the non-applicant was very much cooperative and supportive towards the studies of the applicant. Non-applicant Virendra Kumar (NAW-1) has stated in his statement that when the applicant was staying with him at Gariyaband, she completed her MA, PGDCA, B. Lib. and also undergone training of tailoring under the Skill Development Authority, Govt. of Chhattisgarh and even he has facilitated/permitted her to attend the competitive examinations like PSC, Hostel Superintendent, Patwari etc.

although no documents have been filed by the non-applicant in support of his above statement. But Sunita Patel (AW-1) has admitted in her cross-examination that when she was staying with non-applicant in Gariyaband she was studying there and also attended practical examination there. A perusal of the above facts shows that the attitude and behaviour of the non-applicant is fully cooperative towards the applicant, therefore, statement of applicant and her witnesses regarding torture and cruelty towards demand of dowry is not reliable.

14. Sulochna (AW-3) has stated in her statement that at Gariyaband the non-applicant had beaten the applicant in front of her and threatened them not to reveal the incident to anybody or report in police station otherwise he will kill them. But applicant Sunita Patel has not stated these facts in her statement. It appears that applicant's witness Sulochana has exaggerated the facts.

15. Applicant Sunita Patel has got recorded her statement (Ex-P4C) before the SDM, Sakti where she was brought in compliance of production warrant issued under Sections 97 - 98 of the CrPC. She has stated in her statement that her mother-in-law and father-in-law were neither permitting her to go to her parental house nor to her husband's place. She has also stated that she wanted to go to her parental house with her free will and wants to

live with her parents and she does not want to go to her husband's place. While giving statement before the SDM, she has not stated anything regarding cruelty and torture by the non-applicant or his relatives on account of demand of dowry.

16. Applicant Sunita Patel (AW-1) has not stated in her evidence that she wants to go to her husband's place or wants to live with him, whereas the non-applicant in his evidence has stated that two times he had gone to take the applicant but her parents did not permit him to meet with her. He has also stated that he wants to keep her with him according to her own condition, but since her father is Inspector in Railways and her brother is Army personal and they earn more salary than him, therefore, the applicant herself did not want to live with him.

17. Although non-applicant Virendra Kumar has admitted that criminal case under Section 498A IPC is pending against them and application under Section 97-98 CrPC has been filed by father of the applicant before SDM, Sakti, but only on that basis it cannot be proved that the applicant was subjected to cruelty on account of demand of dowry because the evidence adduced by the applicant in this case does not prove that she has been subjected to cruelty for demand of dowry. In other words, it has not been proved that the applicant is living separately from applicant for sufficient reasons.

18. In view of the above discussion, in the opinion of this Court, the trial Court has not committed any illegality while rejecting the application filed by the applicant under Section 125 CrPC .

19. Accordingly, the revision being devoid of merit, deserves to be and is hereby dismissed.

Sd/-

(Naresh Kumar Chandravanshi)

JUDGE