

HIGH COURT OF CHHATTISGARH, BILASPUR

Cr.R. No.1587 of 2019

- Milan Kumar Bhaumik S/o Late Shri Tapas Kumar Bhaumik Aged About 34 Years Caste - Kayastha, R/o Plot No. B / 6 Street No. 6, Panchsheel Housing Society, Borsi, Durg, Tahsil And District - Durg (C.G.) (Petitioner Has Been Now Transferred From Another Address Mentioned In Cause Title)

---- Applicant

Versus

- Smt. Madhumita Bhaumik W/o Milan Kumar Bhaumik, Aged About 29 Years Caste - Kayastha, R/o Through - Father Shri Gopal Chand Sheel, 355, Priyadarshani Nagar, Raipur, Tahsil And District - Raipur Chhattisgarh. Mob. No. 9752242248

---- Non-applicant

For applicant : Mr. Rakesh Kumar Thakur along with Mr. Sourabh Potdar, Advocates.

For Non-applicant : Mr. Atul Kumar Kesharwani and Mr. Anish Tiwari, Advocates.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

12-03-2021

Heard.

1. This Criminal Revision has been brought challenging the legality, propriety and correctness of the order dated 06.04.2019, passed in M.J.C. No.421 of 2017, allowing the application of the respondent and granting maintenance of Rs.8,000/- per month to the applicant.

2. It is submitted by the learned counsel for the applicant, that the impugned order is erroneous and illegal. The respondent has herself deserted the applicant. The applicant filed a petition under Section 9 on Hindu Marriage Act, 1955, on which order dated 05.07.2019 was passed in H.M.A. No.364/2016, directing the respondent to restore the conjugal rights with the applicant, which has not been complied by the respondent. Therefore, the ground is clearly made out, that the respondent is living separate from the applicant without any sufficient cause. It is also submitted that the respondent herself is capable to earn her living regarding which the applicant submits, that the respondent is educated with B.Com degree and that she is running a business styled as Madhu Boutique, by which she was earning Rs.20,000/- per month. Therefore, the order granting maintenance in favour of the respondent is not at all sustainable. Therefore, the revision petition may be allowed and the impugned order may be set aside.
3. Learned counsel for the respondent opposes the submissions and submits, that the non-compliance of the judgment under Section 9 of Hindu Marriage Act, 1955 cannot be made on ground, that the wife is living separate from husband without any sufficient cause. This point has been decided by this Court in the case of **Pokhraj Sahu Vs. Smt. Saraswati Sahu & Anr.** In Cr.R. No.714 of 2019 vide order dated 17.02.2020. It is further submitted that the respondent has pleaded that she is unable to maintain herself, whereas the respondent is a man of means, who is neglecting her maintenance. Therefore, there is no ground for interference in the impugned order, hence, the revision petition may be dismissed.
4. I have heard learned counsel for the parties and perused the documents placed on record.

5. Considered on the submissions. The learned Family Court has in the impugned order held that the respondent is living separate from the applicant for which she has sufficient cause, as the applicant side has tortured her for demand of dowry. The impugned order was passed on 06.04.2019, whereas the application under Section 9 of the Act, 1955 has been decided on a later date of 05.07.2019 in H.M.A. No.364/2016, therefore, this order was not present for consideration before the learned Family Court, while deciding the application under Section 125 of Cr.P.C.
6. In the case of **Pokhraj Sahu** (Supra), this Court has held referring to the judgment of M.P. High Court in the case of **Babulal Vs. Sunita** reported in 1987 Cr.L.J. 525 that even in presence of decree for restitution of conjugal rights against the wife, she has entitlement to make a claim under Section 125 of Cr.P.C. therefore, this cannot be made a ground, that it is the respondent, who has deserted the applicant, otherwise there is finding in favour of the respondent in the impugned order which is found well supported with evidence.
7. Another submission is taken into consideration, the respondent has pleaded that she has no means of income and she is dependent upon her parents. Similar was her statement before the Court and she has clearly denied about being a proprietor of any boutique and having any income from the same. Her statement has been supported by Sunita Sheel (A.W.-2), mother of the respondent, however, there is admission in her cross-examination that prior to marriage, the respondent has worked in a private concern, where she used to get monthly salary of Rs.10,000/- and that the respondent is also capable to find a job. However, she has denied other suggestions regarding running of any business by the respondent. Similar is the statement of Gopal Chandra

Sheel (A.W.-3), the father of the respondent.

8. Applicant- Milan Kumar Bhaumik (N.A.W.-1) has stated about the business run by the respondent. In cross-examination, he has stated that he came to know about the business of his wife, but he does not know about her income. Apart from this oral statement, there is no other documentary evidence given.
9. Abhishek Pandey (N.A.W.-2) has stated that the respondent is running a business of herbal products in her house and he, on one occasion, made a purchase of a nutritional shake mix from the respondent. In cross-examination, there is no question put to him to contradict this statement given by him in examination in chief.
10. Similar is the statement given by Raunak Sachdev (N.A.W.-3) and Vandana Pandey (N.A.W.-4).
11. On perusal of the complete deposition of these witnesses examined by the applicant side, it appears to be a common statement that these witnesses have made some purchase from the respondent, but none of these witnesses have mentioned about the date they made the purchase and neither they have stated that the respondent is presently continuing that business.
12. The applicant's side had opportunity to file relevant documents by obtaining the same from the company or the stockist or the distributor for the purpose of showing that the respondent is working as a dealer or was working as a marketing chain of the said company. Statement of the witnesses showing making purchase of some article once in a while without there being reference of any date and time cannot be regarded as sufficient evidence to show that the respondent is running a

business, which is continuing till date. Hence, the evidence brought by the applicant side was not at all sufficient to draw conclusion that the respondent had some source and means of earning on the date and time when the application was filed, praying for grant of maintenance.

13. On the basis of the observations and discussions made hereinabove and the conclusion drawn, I am of this view that the revision petition is without any substance, which is dismissed at the motion stage.

14. Accordingly, the petition stands disposed off.

Sd/-

(Rajendra Chandra Singh Samant)

Judge

Monika