

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 1632 of 2019

Order Reserved On : 23.02.2021

Order Delivered On : 15.03.2021

Smt. Ajita Shukla, S/o Sanket Shukla, Aged About 26 Years, R/o Champa, Tahsil & Police Station- Champa, District- Janjgir- Champa (C.G.)

--- Applicant

Versus

Sanket Shukla (Vicky), S/o Late Anil Shukla, Aged About 30 Years, R/o Behind New RTO Office, Pathak Colony Gondia, Police Head Quarter Q.R.T. Force Gondia, Tahsil & District- Gondia (M.S.)

--- Respondent

For Applicant	:	Mr. Vinod Tekam & Mr. Ashwani Shukla, Advocates.
For Respondent	:	Mr. Parag Kotecha, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

CAV ORDER

1. Challenge in this revision petition is to the order dated 23.11.2019 passed by learned Judge, Family Court, Janjgir, District- Janjgir-Champa (C.G.) in Miscellaneous Criminal Case No. 193/2017, dismissing the application filed by the applicant under Section 125 of the Cr.P.C.

2. It is submitted by learned counsel for the applicant, that the impugned order is erroneous, which has been passed by totally ignoring the facts and evidence present in this case. The applicant had established by producing the evidence, firstly, that she has sufficient reason for living separate from the respondent and that she was incapable to maintain herself and also that the respondent is a man of sufficient means, who is neglecting her maintenance. Hence, she is entitled for grant of maintenance. The learned Family Court has not appreciated the evidence present on record and passed the impugned order, which is not at all sustainable. Hence, it is prayed that this revision petition be allowed and the impugned order be set aside and relief be granted to the applicant.
3. Learned counsel for the respondent opposes the submissions and submits that the applicant is living separately from respondent without any sufficient cause, which has been clearly established in the evidence present in the proceeding. The respondent had proposed to have the applicant back with him for residing together and living married life, but the same was denied by the applicant.
4. Relying on the judgment of the Supreme Court in the case of **Rajnish Vs. Neha and another**, reported in **AIR 2021 Supreme Court 569**, it is submitted that the Supreme Court has issued specific directions for providing information and according to that, no such information was provided by the applicant side.

Relying upon the judgment of the Madhya Pradesh High Court in **Anil Jain Vs. Smt. Sunita (Criminal Revision No. 829 of 2014 decided on 29.11.2016)**, it is submitted that in the similar circumstances, Madhya Pradesh High Court has held that the applicant wife was not entitled for grant of maintenance, therefore, the learned Family Court has not committed any error in passing the impugned order. Hence, it is prayed that this revision petition be dismissed.

5. In reply, it is submitted by learned counsel for the applicant, that the respondent has separately filed a divorce petition against the applicant, therefore, the submission he has made that he wants to receive the applicant in his household, is not genuine and intentional statement. It is the proposition made by the applicant side, that if the respondent wants her back, she is ready to go and reside with him.
6. Heard learned counsel for the parties and perused the documents place on record.
7. Considered on the submissions. It is to be examined whether the finding of the Family Court is supported with evidence or not. The applicant had stated that after performance of marriage on 17.02.2016, when she was residing in the matrimonial home in Gondia (Maharashtra), she was tortured, beaten and insulted for demand of dowry and when she wanted to visit her maternal grand mother, her gold ornaments was retained by her in-laws and she was also not allowed to come back to her matrimonial

house, because of which, she was compelled to come back to her parental house. In cross-examination, she has remained intact on her statement regarding torture and cruel treatment. Her statement that after she went to maternal grand mother, she was not allowed to come back to her matrimonial house, is unrebutted statement. This statement has been supported by Sunita Tiwari (AW-2) & Shivdayal (AW-3).

8. Respondent Sanket Shukla (NAW-1) has stated that the applicant used to frequently visit her maternal grand mother without the willingness of the respondent and when she left the house of the respondent for the last time on pretext of visiting her grand maternal, she took all her jewelery and ornaments with her and she did not come back again. The respondent made attempt for bringing her back, but he failed. He has denied the other allegations regarding torturing his wife. No specific question has been put in cross-examination of this witness to rebut the statement made by him in his examination-in-chief, regarding conduct of the applicant of frequently visiting her maternal grand mother without willingness and consent of the respondent and also regarding her living in the parental home making declaration that she will never come back. Further, this statement of the respondent has also not been rebutted, that he also made attempt to bring back the applicant in which, he failed. This statement of the respondent has been supported by Nikita Joshi (NAW-2) & Shekhar Tiwari (NAW-3).

9. After appreciating the evidence brought from both the sides, it would be seen that the requirement of proof is at the level of preponderance of probabilities in such quasi civil proceeding under Section 125 of the Cr.P.C., is set-out. The evidence of the applicant side has been equally rebutted by the respondent side stating that it was the conduct of the applicant herself, who used to frequently leave the matrimonial home on pretext of visiting maternal grand mother and thus, left the matrimonial home finally. Hence, the evidence of the applicant side does not have preponderance probability. Hence, the learned Family Court has not committed any error in coming to this conclusion and according to the provision under Sub-section 4 of Section 125 of the Cr.P.C. in such a case, the wife shall not be entitled for grant of maintenance. There is no need for further consideration, hence, this revision petition is without any substance, which is liable to be dismissed.
10. In view of the above, the instant revision petition is dismissed.

Sd/-
(Rajendra Chandra Singh Samant)
Judge