

(2021) 03 CHH CK 0008**Chhattisgarh High Court****Case No:** Criminal Revision No. 1154 Of 2019

Shiv Prashad Shrivastava

APPELLANT

Vs

Vijay Laxmi Shrivastava

RESPONDENT

Date of Decision: March 15, 2021**Acts Referred:**

- Code Of Criminal Procedure, 1973 - Section 125

Hon'ble Judges: Rajendra Chandra Singh Samant, J**Bench:** Single Bench**Advocate:** Pawan Kesharwani, Pravin Kumar Tulsyan**Final Decision:** Dismissed**Judgement**

Rajendra Chandra Singh Samant, J

1. This revision petitions has been preferred against order dated 24.07.2019 passed by the learned Judge, Family Court, Bastar at Jagdalpur (C.G.) in

Miscellaneous Judicial Case No. 88/2015, granting maintenance of Rs. 5000/- per month to the respondent.

2. The facts of this case, in brief, is this that, the respondent was married to this applicant in the year 1973. The applicant filed a divorce petition H.M.

No. 550/2015 in the Family Court Raipur, on which, a decree of divorce has been passed on 09.11.2017. The respondent then filed an application

under Section 125 of the Cr.P.C. on 05.12.2015, praying for grant of maintenance from the applicant, which has been allowed by the impugned order.

3. It is submitted by learned counsel for the applicant that the respondent has deserted him since year 1994 and it is on this ground as well as on the

ground of cruelty, the decree of divorce has been granted in favour of the applicant. The respondent is residing with her adult son, who is bearing the cost of her maintenance and further, she is in possession of the house from which, she is getting monthly rent of Rs. 5000/- . The respondent is also owner of one Jeep bearing registration No. MP.- 17 -7219 and another Jeep Mahendra bearing registration No. O.S.S. 4502 from which, she is earning Rs. 30,000/- per month. The applicant got retired from Government service and he is getting pension for the same and he is a pensioner.

Hence, looking to the old age and being a pensioner, he is not capable to provide the maintenance to the respondent. Further, the respondent had not entitlement for grant of maintenance. Hence, the impugned order suffers from infirmity, which is liable to be set aside.

4. Reliance has been placed on 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).

5. Learned counsel for respondent submits that the respondent herself is incapable to maintain herself. The submission regarding the incapability of the applicant side, has been denied. It is submitted that the applicant himself has deserted the respondent, who has performed second marriage and lives in Raipur. The respondent herself is old woman of age about 63 years, hence, the finding of her entitlement in the impugned order, is totally correct and there is no need of interference of this Court. Hence, It is prayed that this revision petition be dismissed.

6. In reply, it is submitted by learned counsel for the applicant that son of the respondent is maintaining her, regarding which, there is evidence present.

Hence, the applicant be released from the burden of maintenance.

7. Heard learned counsel for the parties and perused the documents place on record.

8. Considered on the submissions. The first ground raised by the applicant is taken into consideration. There are rival submissions of desertion made by both the sides. Respondent- Vijay Laxmi Shrivastava (AW-1) stated in her deposition that after performance of marriage with the applicant in the year 1973, she had three children, all of them are married and are living separately from her. The respondent resides in Jagdalpur, whereas, the

applicant was in service in Raipur and used to come now and then. The applicant stopped coming to the respondent since year 2015 and she came to know that the applicant had taken another wife. In cross-examination, she has denied that the applicant is living separate from year 2001 and there is no such suggestion given that she is living separate from her husband since 1994. Sangeeta Sharma (AW-2) has supported the respondent version.

9. Applicant- Shiv Prasad Shrivastava (NAW-1) has stated, that he has retired from Military Service in the year 1992 and resided with the respondent up to year 1994, then, he was driven out from the house, subsequent to which, he is residing in Raipur. He has stated that he has constructed a house in Jagdalpur, in which, the respondent and her son, are residing. In cross-examination, he has admitted that he has performed second marriage, but the same was performed after obtaining decree of divorce. Satyanand Shrivastava (NAW-2) has stated that the applicant and the respondent are living separately since about 20 years and it is the son of the respondent, who is maintaining her.

10. On appreciating the evidence from both the sides, it appears that the place where, the applicant and the respondent last resided, is Jagdalpur. The applicant is residing at Raipur since about more than 20 years, but he has never made any attempt to ask the respondent to come and live with him. On the question of desertion, it would be seen, that it is the applicant, who left the cohabitation with the respondent and did not come back. There is no evidence that the respondent has left the cohabitation with the applicant in the place, where they both last resided, as that place they last resided is Jagdalpur.

11. In the judgment dated 09.11.2016 passed in H.M. No. 550/2015, the issue was framed whether the respondent has deserted the applicant since prior to 12.10.2015, which was found proved on that basis, the decree of divorce was granted. There is no such ground pleaded or proved that the respondent has treated the applicant with cruelty. Section 125 of the Cr.P.C. gives entitlement to a divorced wife for getting maintenance until she is remarried. There is no such fact pleaded or proved that the respondent has remarried and she has thus lost her entitlement for maintenance. Hence,

even if, the question of desertion is left unanswered then, the situation that has developed is this that the respondent being divorcee wife and not having married again, is entitlement for grant of maintenance.

12. The another ground raised in this revision petition regarding capability of respondent for her own maintenance, mentioning about income of the respondent, is not entertainable, because the material, which has been placed in this revision petition had not been placed before the Family Court. The only statement of the applicant in the proceeding under Section 125 of the Cr.P.C. is this that he had constructed one house in Jagdalpur, in which, the respondent and her son, are residing since 1994 and there is no statement regarding any income of the respondent from any other source. It has been admitted by the applicant side that he is pensioner and getting pension, therefore, after considering on the proceeding before the Family Court, I am of this view that the learned Family Court has not committed any error in passing the impugned order and granting maintenance to the respondent. This revision petition is found without any substance, which is liable to be dismissed.

13. In view of the above, the instant revision petition is dismissed.