

Chattisgarh High Court

Shiv Kumar Yadav, S/O Videsi Yadav vs Smt. Santoshii Yadav, W/O Shiv ... on 15 February, 2004  
HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No.544 of 2003

Shiv Kumar Yadav, S/o Videsi Yadav

Aged about 27 years, Cultivator, R/o

Village Kanhera, Thana Khandsara,

Tehsil Saja, District Durg.

... Petitioners

Versus

Smt. Santoshii Yadav, W/o Shiv Kumar

Yadav, aged about 22 years, R/o village Bhinpuri, President Address: Navapara, Tehsil Bemetara, District Durg.

... Respondents

!Shri Sanjay S. Agrawal, counsel for the petitioner. ^Shri V.D. Bajpai, counsel for the respondent.

As per L.C. Bhadoo J.

Date: 15/02/2004

:O R D E R

The petitioner has preferred this revision under Section 397 read with Section 401 of the Cr.P.C. 1973, being aggrieved by the order dated 18- 10-2003 passed by the 3rd Additional District and Sessions Judge (F.T.C.), Bemetara whereby he reversed the order dated 8-1-99 passed by the Judicial Magistrate, First Class, Bemetara, in Misc. Criminal Case No.20/1997 whereby the learned Judicial Magistrate rejected the application of respondent Smt. Santoshi Bai filed under Section 125 of the Cr.P.C. for grant of maintenance.

2. Brief facts leading to filing of this revision petition are that the marriage of the petitioner and respondent ( hereinafter Shiv Kumar Yadav- husband will be referred as petitioner and wife Santoshi Bai will be referred as respondent) was solemnized one and half year before the filing of the application under Section 125 of the Cr.P.C. by respondent on 6-9-1996. After two months of the marriage Gauna ceremony took place and the petitioner took the respondent to his residence at village Kanhera. Both the parties lived together for 4 to 5 months and as per the allegations in the application the petitioner herein started harassing, ill-treating and subjected to cruelty to respondent for bringing dowry. Thereafter, on Teja festival the respondent was taken by her relatives to Bemetara. After celebration of Teja festival the maternal grandmother of respondent namely, Jhaman Bai and grandfather namely, Siyaram Yadav along with respondent came to her in-laws house at Kanhera for leaving the respondent at her in-laws' house. However, the petitioner started abusing them saying that he would not keep the respondent at his residence, but her grandmother and grandfather left her at her in-laws' house.

3. As per the allegations of respondent, five months prior to filing of the application under Section 125 of the Cr.P.C. the petitioner took the respondent along with him and left her at the Bus stand of Bemetara and disappeared. After waiting 3 to 4 hours she had left for her maternal grandmother's house. The parents of respondent are labourers and they are not able to maintain the respondent and the respondent is unable to maintain herself, whereas the petitioner's annual income from agricultural sources was said to be Rs.20,000/- and the applicant is earning round about Rs.900/- per month by doing the labour job.

4. The reply of the application was filed by the petitioner herein before the Magistrate in which he denied all the allegations and on the contrary he said that the respondent herself does not want to live with the petitioner and he was ready and willing to bring her at his residence and for that purpose he filed an application before the Sub Divisional Magistrate under Section 98 of the Cr.P.C. in which the learned S.D.M. recorded the statement of the respondent and before that Court the respondent categorically stated that she does not want to go to her in-laws house even if her husband gives assurance that he would not demand dowry and harass her. After recording the evidence of the parties, the learned Judicial Magistrate Bemetara, dismissed the application of the respondent under Section 125 of the Cr.P.C. on the ground that the respondent herself does not want to live with the petitioner without any sufficient reason. However, on a revision filed by the respondent the learned 3rd Additional Sessions Judge (F.T.C.), Bemetara reversed the finding of the Judicial Magistrate holding that the petitioner does not want to keep the respondent and the respondent was living separately for sufficient reasons and granted maintenance of Rs.500/- per month in favour of the respondent.

5. I have heard learned counsel for the parties.

6. Learned counsel for the petitioner while assailing the impugned order passed by the learned 3rd Additional Sessions Judge, argued only on one ground that the respondent disintitiled herself for the maintenance on the ground that she herself does not want to go to her in-laws house without sufficient reason. He further argued that the finding of the learned 3rd Additional Sessions Judge is perverse, incorrect, illegal and contrary to the evidence on record. Therefore, he submitted that the order of the learned 3rd Additional Sessions Judge be set aside and that of Judicial Magistrate First Class, be restored.

7. On the other hand, Mr. V.D. Bajpai, learned Sr. counsel for the respondent argued that as per the evidence on record the petitioner is responsible for neglecting the respondent to maintain her. Moreover, petitioner started harassing, ill-treating and subjected to cruelty to the respondent for not bringing the dowry i.e., Television, Radio, Cycle, Almirah and cash and as the petitioner used to ill-treat the respondent and beat her, therefore, it was not possible for the respondent to reside with the petitioner.

8. Therefore, in view of the points raised by the learned counsel for the parties a very limited point remains for consideration of this Court i.e. as to whether the respondent started residing separately without sufficient reason. In this connection the provisions of sub-section (4) of Section 125 of the Cr.P.C., are relevant which read as under:

"No wife shall be entitled to

receive an allowance from her

husband under this Section if she

is living in adultery or if,

without any sufficient reason, she

refuses to live with her husband,

or if they are living separately

by mutual consent".

Therefore, in order to attract the provisions of sub-section (4) of Section 125 of the Cr.P.C., the petitioner was required to prove that the respondent-wife started living separately with her maternal grand-mother without any sufficient reason and thereby she disentitled herself for maintenance allowance and in this connection, the learned counsel for the petitioner placed reliance on the decision reported in 1978 CRI. L. J. 1645 in the matter of Mammad Kunhi Vs. Rukhiya, in which Kerala High Court has held that;

"There are three circumstances under which the normal obligation of the husband to maintain the wife will stand negated. These are: (a) where the wife is living in adultery, (b) where the wife and husband are living separately by mutual consent and (c) where the wife refuses to live with her husband without sufficient reason. The burden of proving the existing of any of the three circumstances, as the case may be, lies on the husband. The wife's refusal can be proved by the husband indicating that he is willing to allow the wife to live with him, that he is ready to take her to his home for residence with him, but nevertheless she is not willing. But when one i.e., proved it would be for the wife to show that there are sufficient reasons for her living apart from the husband. The burden of proof of showing the justifiable reason must in such circumstances rest not on the husband".

9. Therefore, in the light of the above provision of sub-section (4) of Section 125 of the Cr.P.C., and the above judgment, if we look into the evidence adduced by the parties in the present matter, we have to examine that whether the petitioner herein has been able to discharge his burden as laid down in Kerala High Court judgment and whether the respondent has been able to rebut the evidence of the husband. If we look into the petition filed by the respondent in which she has categorically mentioned in para 4 and 5 of the petition that 4 - 5 months after Gauna ceremony, petitioner's husband started demanding dowry in cash and ill-treating her and subjected to cruelty and that was seen by one Lobin Yadav at village Kanhera that she continued to reside with her husband maintaining decorum looking to the back ground of her family. In para five of the petition, she has further stated that after celebrating Teeja festival when her maternal grand- mother - Jhaman Bai and grand-father - Siyaram Yadav went to drop her at her in-laws house, the non-petitioner, her husband started abusing and said that he would not keep her at his residence, but her grand-mother and grand-father left her at Kenhara whereas the evidence in order to prove these allegations against the husband led by the wife - respondent herein, is totally contrary. In her evidence she has stated that her husband started demanding Cycle, Almirah, Television and for that purpose he started subjecting her to cruelty and beating. In the application under Section 125 of the Cr.P.C., in para 4 of the petition, Santoshii Bai has simply stated that her husband started demanding rupees. She had not mentioned about the Cycle, Television and Almirah and in the evidence she has not stated that her husband demanded cash. Moreover, she has mentioned in para 4 of the application that this fact was seen by one Lobhin Yadav, but that Lobhin Yadav has not been produced in evidence in order to support the allegation made in the application. In her evidence before the Court she has stated that she had not disclosed this fact to any one. In the cross-examination she has stated that at village Kanhera her father's sister and her husband are residing and she used to visit regularly their house, why she had not disclosed this fact to them, itself shows that she was never subjected to cruelty or otherwise in the normal circumstances when she was regularly visiting their house, she ought to have disclosed the fact i.e., harassment, cruelty and beating. She has not produced any evidence to corroborate her evidence and stated that Siyaram Yadav , grandfather dropped her at her in-laws house after Teeja festival, but he has not been examined by her, on the contrary he had been examined by the applicant as Witness No.4 and Siyaram has specifically stated in his evidence that Santoshi Bai is his grand-daughter. In para 3 of his evidence, he has stated that he went to drop her at Kanhera after Teeja Festival and she remained there for 15 days and when he went to drop her at her in-laws house she started coming back and then he advised her to remain in her in-laws house and thereafter with very difficulty she remained in her in-laws house for 15 days and came back to Bemetara. He has further stated that in their caste the dowry is not given or taken. He is the real grandfather of Santoshii Bai and he has not stated anywhere that her husband Shiv Kumar was harassing or subjecting to

cruelty to Santoshii Bai for bringing dowry. In para 5 of the application it has been mentioned by Santoshii Bai that her husband Shiv Kumar started abusing Jhaman Bai and Siyaram Yadav when they went to leave her at her in-laws house. This fact has not been corroborated by Siyaram Yadav. Moreover, Siyaram Yadav in his evidence has stated that he does not know as to whether when she came from her in-laws house, she had said about the demand of dowry. He does not know whether Santoshi Bai had stated that if she will be sent back to her in-laws house, then there was a danger to her life. It is wrong to say that maternal grandmother of Santoshi Bai had ever told him that in-laws of Santoshi Bai were harassing her. In para 10 of his evidence, he stated that when he went to drop Santoshii Bai at her in-laws house, at that time only mother-in-law and father-in-law were at residence and Shiv Kumar was not at the residence. He was out of the house for the purpose of doing the work. Therefore, this evidence of the witness is totally contrary to the allegation levelled by respondent in para no.5 of her petition in which she has mentioned that Shiv Kumar abused her grandfather - Siyaram Yadav and grand-mother - Jhaman Bai, therefore, the ground taken by Santoshi Bai for living separately in para 4 and 5 of the petition has not been proved but a contrary evidence has been led by her in her statement. Even as mentioned above, her grandfather Siyaram Yadav and her real uncle have not supported her case. If she is being harassed by the husband then why she has not disclosed this fact to her grandfather and grand-mother and why she did not report the matter to the Police. No reasons have been assigned by Santoshi Bai. More-over if we look into the conduct of Santoshi Bai, her husband Shiv Kumar filed the petition under Section 98 of Cr.P.C., before S.D.M. Court in which her statement was recorded by SDM. She has categorically stated that now even if her husband undertakes not to beat her and not to demand of dowry, even then she was not prepared to go her in-laws house. This fact itself negated the claim of Santoshi Bai that there is apprehension of her life that is why she does want to go to her husband's house.

9. On the other hand, Shiv Kumar, husband of Santoshi Bai, has categorically stated that he had never asked for any dowry and he had never beaten her and when he went to village Bhinpuri to bring the respondent to his residence, she was not there and she was residing with her maternal grand-mother - Jhaman Bai. He further stated that their marriage took place in village Binpuri and the marriage of Santoshi Bai was arranged by her grand-father Siyaram Yadav. Therefore, he had gone to Bhinpuri to bring Santoshi Bai as their marriage took place at Bhinpuri. He filed an application before SDM Court to bring Santoshi Bai and in that application Santoshi Bai has stated that she does not want to go her in-laws house. He has further stated that Santoshi Bai asked him that she would go to Mungeli and instead of going to Mungeli she went to Bemetara and after leaving him at the bus stand, she went to her grand-mother's house. She has stated that she is being maintained by her maternal grandmother on her own will. His mother-in-law and his mother-in-law's sister are also residing with the grand-mother of Santoshi Bai. As he is handicapped that is why she does not like him and she says that he is not able to satisfy her.

10. In view of the above evidence on record, the petitioner herein Shiv Kumar filed the petition under Section 98 of the Cr.P.C., before the S.D.M. Court to bring Santoshi Bai to his house, but in that petition Santoshi Bai deposed before the SDM that she does not want to go to her in-laws house even if he assures that he will not demand of dowry, harass and beat. The charges levelled by Santoshi Bai have been denied by Shiv Kumar - husband of the respondent and specific charges levelled by Santoshi Bai for living separately, she has not been able to prove these charges. More-over she led evidence contrary to the allegations levelled against him in the petition itself. The petitioner has been able to discharge his burden as he filed the petition for bringing her to his house, but she had declined to come to his house. Moreover, he went to village Bhinpuri to bring his wife, but she was not there and even as per the evidence of Siyaram Yadav, the grand father of Santoshi Bai, he has stated that after Teeja festival, when he went to drop her at her in-laws house, she was not prepared to stay there and she started saying that she would not stay here, then he advised her to stay there. Thereafter, with great difficulty she stayed at her in-laws house for 15 days and came to Bemetara and she was residing with her maternal grandmother, where her mother was also residing.

11. In view of the above, Shiv Kumar, husband of Santoshi Bai has been able to discharge his primary burden that Santoshi Bai is residing separately without any sufficient reason and Santoshi Bai has not been able to establish and prove her case. Therefore, the finding of the learned 3rd Additional Sessions Judge that there is

sufficient reason for Santoshi Bai to live separately is perverse and contrary to the evidence available on record, which cannot be sustained for the reasons mentioned hereinbefore this order.

12. In the result, the revision of the petitioner is allowed and the impugned order of the learned 3rd Additional Sessions Judge (FTC) Bemetara dated 18.10.2003 is set aside and that of the learned Judicial Magistrate First Class, Bemetara, is restored.

JUDGE

/02/2004

Raju