2025:CGHC:21793

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRR No. 1322 of 2024

Judgment Reserved on 24.03.2025

Judgment Delivered on 09.05.2025

- [redacted]

--- **Applicant(s)**

versus

- [redacted]

--- **Respondent(s)**

CRR No. 58 of 2025

- [redacted]

---**Applicant(s)**

Versus

- [redacted]

--- **Respondent(s)**

For [redacted]/husband : Mr. P. Acharya, Advocate
For [redacted]/wife : Mr. Shubhank Tiwari, Advocate

Hon'ble Shri Arvind Kumar Verma, Judge
CAV Order

1. Since subject matter in the both the revision petitions being common, this Court proceeds to decide the matter by this common order.

2. This both revision petitions are preferred against the order dated 06.11.2024 passed in Mscl. Criminal case No. 637/2022 by the learned Additional Principal Judge, Family Court, Raipur (C.G.) whereby an application under Section 125 of CrPC filed by the applicant- Smt. [redacted] has been partly allowed and the Court had directed the applicant-[redacted] to pay an amount of Rs. 4000/- per month as maintenance to the applicant Smt. Suman Dewangan.

3. Brief facts of the present case is that the [redacted] (hereinafter referred as "applicant/wife") and [redacted] (hereinafer referred as "applicant/husband") are husband & wife and solemnized their marriage on 11.07.2019 as per Hindu rites and ritual. The applicant/wife filed an application under Section 125 of CrPC on the allegation that after few days of marriage, she was subjected to mental torture and her character was questioned by husband/applicant. She was also tortured by her in-laws by not providing meal on time. On 01.03.2021 she left the matrimonial home and went to her paternal home. During that period she lost her mother and since then she is residing with her brother. Thereafter, applicant/wife filed an application under Section 125 of CrPC for grant of maintenance as she is unable to maintain herself whereas the applicant/husband is working as Data

Entry Operator and earning Rs. 25,000/- per month and he is also receiving rent to the tune of Rs. 35,000/- and also he is living agricultural land around 2 acres and plot ad-measuring 3000 square feet from which he is earning Rs. 40,000/- per month and she prayed in the application for maintenance to the tune of Rs. 20,000/- per month.

4. The applicant/husband marked his appearance before the learned family Court and raised objection that after few months of marriage, her behaviour changed and she used to quarrel on every trivial issues. He further argued that applicant/wife had illicit relation with his younger brother and when he objects about the said relationship, she used to fight with him. She also threatens him to prosecute in false and frivolous cases due to which he was under duress. She herself left the matrimonial home. He is working as Data Entry Operator on Temporary Basis and earns Rs. 17,131/-. He has no alternate source of income. She used to live her life at her own will and left the matrimonial home without any sufficient reason.

5. After appreciating the facts, learned Family Court has passed the judgment and directed the applicant to pay maintenance to the tune of Rs. 4,000/- per month to the applicant/wife vide order dated 06.11.2024. Hence these criminal revisions.

6. ***In CRR No. 1322****,* learned counsel for the applicant/husband submitted that the family Court awarded the maintenance, which is a perverse order in the eye of law. He further submitted that the learned family Court has not considered the contention put forth by the applicant/husband in his statement on an affidavit under Order 18 Rule 04 of the Code of Civil Procedure 1908 that he earns Rs. 17,131 per

month as he works as contractual employ and he has also submitted the fact that the respondent has found doing adultery with younger brother of the applicant which has been legally proved before the Competent Court vide Order/Judgment/ decree dated 08.09.2023 passed by the Second Additional Principal Judge Family Court Raipur and the family Court concerned has granted the Decree of Divorce in favour of Husband.

7. Learned counsel for the applicant/husband further submitted that the learned Family Court passed the maintenance order without considering the statutory provision of Section 125(4) that no wife shall be entitled to receive interim maintenance from her husband. Specifically, a wife cannot claim maintenance if she is living in adultery, refuses to live with her husband without a sufficient reason, or if they are living separately by mutual consent. He further submit that it was the applicant/wife who left the house of the applicant/husband on her own wish, her wife was living adultery with his younger brother and financial condition of the applicant, these aspects were not considered by the family Court. The order dated 06.11.2024 for enhancement to tune of Rs. 4,000/- passed by the concerned family court may be set aside.

8. In support of his contention, learned counsel for the applicant-husband placed his reliance upon a decision of the Hon'ble Supreme Court in the case of ***Shanthakumari* v. *Thimmegowda*** reported in **2023 SCC OnLine Kar 66** and also in the case of ***Sanjivani Ramchandra Kondalkar Vs. Ramchandra Bhimrao Kondalkar & Anr.,*** in Criminal Writ Petition No. 2547 of 2016.

9. ***In CRR No. 58/2025***, learned counsel for the applicant/wife submitted

that the maintenance amount must be awarded to Rs. 20,000/- as the applicant/husband is earning handsome amount and he is having other source of income. The applicant/wife is having no means of livelihood, and the family Court allowed the application to the tune of Rs. 4000/- on lesser side which is not just and proper. He further submitted that applicant/wife is suffering since 2021 and the applicant/husband is not paying maintenance amount which has been awarded to her by the order of jurisdictional Court. The core issue and legislative intent of Section 125 of CrPC is completely missing in the impugned order. He further submitted that the learned family Court has only focused on the salary of the applicant/husband and completely ignored the other sources of income such as rent and income from agricultural activities. Further, the only ground raised by applicant-husband before this Court is with regard to Granting of Decree of Divorce in his favor on the basis of findings recorded by the Family Court. The Family Court has held that Wife has established physical/sexual relation with younger Brother of Husband i.e. Oman Dewangan and hence she lived in adultery and accordingly the Decree of Divorce was granted.

10. Learned counsel for the applicant-wife submitted that applicant - husband wants to take the shelter of S. 125 (4) of CrPC which states as under:

> **125. Order for maintenance of wives, children and parents.**
>
> (4) No wife shall be entitled to receive an [allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be,] [Substituted by Act 50 of 2001, Section 2 for "allowance" (w.e.f. 24-9-2001).] 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.

11. Learned counsel for the applicant-wife stated that the word used in S. 125 (4) of CrPC is "if she is living in adultery i.e. the act of Adultery must be present and the same must be continuous. The facts is admitted by both the parties that they both lived under the same roof on 01.03.2021 for the last time (Para No. 3 of Application U/s. 125 of CrPC admitted by Husband that she left on 01.03.2021). Husband also admits/pleaded in Para No. 6 of Written Statement/Reply of S. 125 of CrPC Application that she is living with her Brother and Sister-in-Law. This itself implies by the admission & pleadings of the parties that she is living with her Brother & Sister-in-Law and not living the adulterous life. There is fine line difference between the phrases i.e. "Living in Adultery" and "Once lived in Adultery" or "Once established physical relation with someone twice or thrice". It was not the Defense/case of applicant-husband that She/Wife is claiming Maintenance while living in adultery it is his defense stating that a Decree of Divorce is in his favor on the basis of Extra Marital Affair of his Wife with his Younger Brother. Having extra marital affair and living the adulterous life is completely different parameters. Even if the same is accepted, the divorce was granted stating that wife had extra marital affair with younger brother of Husband and hence she lived the adulterous life. That does not entitled her to claim maintenance from her husband as it is admitted in position that wife, at the time of presentation of Application U/s. 125 of CrPC was living with her Brother & Sister-in-Law. The learned Family Court has not at all appreciated the fact that all the Witness of Divorce proceedings was of Family members of Husband.

12. Learned counsel for the applicant-wife further submitted that so far as amount of maintenance is concerned, the learned Family Court has not

at all appreciated the fact that there are blocks from where the Husband is receiving the rent worth Rs. 70,000/. The father of the applicant-husband has given rent to one shop on Main Road at Birgaon from where he is receiving the rent of Rs. 15,000/-. There are agricultural lands available in the name of father of applicant- husband. The Applicant/Wife has filed the same before this Hon'ble Court with the prayer to admit the same as the same is Revenue Documents which are Public Documents and they are necessary for disposal of the instant petition and which are also in admitted in position. Therefore he prays for order of the family Court may be modified and allowed the application for grant of maintenance under Section 125 of CrPC in its entirety.

13. In support of his contention, learned counsel for the applicant-wife is relying upon the Judgments/Orders passed by this Hon'ble Court in Cr.R. No. 672 of 2006, Order dated 26.08.2014 in the matter of "***Shiv Kumar Netam Vs. Meena Devi & Another" & Order*** dated 28.01.2019 passed in Cr.R./27/2018 passed in the matter of "***Kamlesh Vs. Parwati***". The same allegation was levelled against the wife in both the cases and in the matter of Kamlesh (Supra), the Wife has admitted the fact that she had lived with one Yashwant Soni in many place but the same has not been considered as the legislative intent of S. 125 of CrPC was missing in entire scenario as the same with the facts and circumstances of the present case is concerned. The Hon'ble Court in the case of ***Shiv Kumar Netam Vs. Meena Devi & Another" & Order*** in *Cr.R. No. 672 of 2006* has held as under:-

> *7.At this stage, it would be proper to notice certain judicial decisions decided by the High Courts.*

(7.1) The Calcutta High Court in case of Jatindra v. Gouri Bala has held that the words "living in adultery" connotes a course of adulterous conduct more or less continuous

(7.2) The Bombay High Court in case of Rajani v. Prabhakar while considering "is living in adultery" employed in clause (i) of sub-Section 13 of the Hindu Marriage Act, 1955 (unamended) held as under:-

That for invoking the application of clause (i) of sub-Section (1) of Section 13, it must be shown that the period during which the spouse was living an adulterous life was so related from the point of proximity of time, to the filing of petition, that it could reasonable be inferred that the petitioner had a fair ground to believe that when the petition was filed, she was living in adultery"

(7.3) The Madras High Court in case of Pattayee Ammal Vs. Manickam Gounder and another while considering the phase "is living in adultery" held as under:-

"The word "is living in adultery" have been considered in Section 488 Cri.P.C. Many High Courts have held them to mean a continuous course of adulterous life as distinguished from one or two lapses from virtue. Living in adultery is wider than mere living as a concubine or as a kept mistress. The word "is living" cannot mean "was living". It is true that it would not be possible to lay down any hard and fast rule. Each case must be decided upon its own facts."

(8) The quintessence of all the judicial pronouncements is to the effect that when the husband challenges the claim of maintenance of his wife, alleging that his wife is living in adultery, the husband ought to begin his case and prove the allegation of such adulterous life on the part of the wife by letting in evidence adulterous conduct at of her continued or about the time of the application and then the wife against whom such a charge is made out to given an opportunity to rebut such allegation. The husband must prove the continuous adulterous conduct on her (wife) part in order to refuse maintenance to her under Section 125 (1) of the Code.

(9) At this stage, it would be proper to notice the evidence brought by the husband to prove the allegation that the wife is living in adultery.

(10) (NAW-1)- Shiv Kumar has stated in his evidence before the Court that non-applicant No.1 has started living with Lakhan Lal at Bhilai Nagar as husband and wife. His son Sudhir (NAW-2) has stated that he had

seen the non-applicant with the Lakhan Lal in his house in the compromising position twice. Whereas, Mukesh Kumar Markar (NAW-3), who is residing in the same vicinity has said that non-applicant/wife is staying with the Lakhan Lal for the last five years. Rambharosa (NAW-4), who is father of the non-applicant alleges that non-applicant is staying with the Lakhan Lal for last two years.

(11) Thus, taking into consideration the plea of applicant that the non-applicant No.1 is living in adultery is absolutely vague and the evidence brought by the appellant to this effect is also not very specific to prove the continuous adulterous conduct on the part of non-applicant No.1 as strong and unimpeachable evidence is required to hold that non-applicant No.1 "is living in adultery" within the meaning of Section 125 (4) of the Code and, therefore, the Family Court is absolutely justified in passing the order granting maintenance to the non-applicant No.1.

(12) As a fall out and the consequence of the aforesaid discussion, the criminal revision is held to be devoid of merit and is, therefore, dismissed.

14. He relied upon a decision of the Hon'ble Supreme Court in the matter of ***Kamlesh Vs. Parwati*** in Cr.R. No. 27 of 2018 has held as under:-

The third ground taken by the husband was that the wife is living in of Chhattisgarh. therefore, she is not entitled to get any maintenanceThe wife has admitted the fact that she made a report against the husband and his family members on the basis of which a case asuu under Section 498A of the IPC was prosecuted in which her statement was recorded which is Ex.P13. She has also admitted the fact that she also made a statement (Ex.P33). From bare perusal of her statements (Ex.P13 and P33), it is clear that the wife has admitted the fact that she had lived with one Yashwant Soni at Bilaspur, Korba and Mungeli for a total period of about 6 to 7 months. This fact is admitted by her in the present case also. She has also admitted that she had also carried a pregnancy from Yashwant Soni during living with him. She has categorically denied that she is still in relation with Yashwant Soni. From her present statement and her previous statements (Ex.P13 and P33), it is only established that in the year 2000 she had led an adulterous life with Yashwant Soni. At present, she is leading an adulterous life, there is no evidence on record to establish the same.

In 1987 CH.L.J. 655 (Smt. Rachita Rout v. Basanta Kumar Rout), it was observed by the Orissa High Court in paragraph 6 as under:

"6. The expression "if she is living in adultery" undoubtedly connotes a course of adulterous conduct more or less continuous. An occasional lapse would not be a sufficient reason for refusing maintenance within the ambit of sub-s. (4). Therefore, a Magistrate has to probe and find out whether at or about the time of the application, there has been an adulterous conduct on the part of the wife. Further, there must be clear proof of adultery. A suspicion nurtured by the adultery. Since sub-s. (4) is in the nature of an exception to the main section, it is for the husband claiming protection under the said provision to show that the said sub-section is applicable, that is to say, the husband must establish that the wife is living in adultery. Within the aforesaid parameter, let me now examine whether the conclusion of the learned Magistrate in this regard can be sustained in law or not.

13. In AIR 2009 (NOC) 212 (Gauhati) (Md. Abdul Sattar v. The State of Assam), it was observed thus:

"A bare reading of the provisions of Section 125(4) makes it more transparent that a husband has no obligation to maintain his wife if she is living in adultery. The expression "if she is living in adultery" occurring in S. 125(4) conveys present continuous tense. That is to say, a wife disentitles herself from receiving maintenance from her husband only during the period, when she lives in adultery. When she does not live in adultery, or when she ceases to live in adultery, even if she had lived in adultery in the past, the husband cannot refuse to maintain her on the ground that she had, in the past, lived in adultery. When the wife ceases to live in adultery, the husband cannot say that since she had lived in an adulterous relation with a man in the past, she is not entitled to receive maintenance from her husband, even though she has ceased to live in adultery. In the case at hand, even if the second party had lived in adultery, the fact remains that according to the evidence on record, she has been presently living, admittedly, with her parents and has no surviving ties with her abductor or paramour, as the case may be. In such circumstances, the present petitioner, as husband of the opposite party, was liable to maintain her, particularly when the opposite party does not admittedly, have any independent source of livelihood and she is dependent for her sustenance on her parents."

In the case in hand also, it is only established that in the year 2000, the wife was leading an adulterous life

> *with Yashwant Soni, but at the time of decision of the application under Section 125 of the t of Chhattisgarh sband did not take this ground. At the time of deciding the application under Section 127 of the Cr.P.C. filed by the wife also, the husband did not raise this ground. After passing aspor of the order on the application under Section 125 of the Cr.P.C, the wife is leading an adulterous life, there is no evidence on record to this effect. Therefore, she is still entitled to get maintenance from the husband.*
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> *From the above discussion, it is clear that the husband is suffering from epilepsy and/or mental disorder, there is no evidence on record to this effect. Due to suffering from a disease he is unable to work, there is also no evidence on record to this effect. The husband has been unable to establish that the wife has given her house on rent and is getting rent of Rs. 10,000/- per month from that house. The wife is still leading an adulterous life is also not established by the husband. Therefore, no change is established in the circumstances as a result of which the maintenance granted to the wife could be reduced.*
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> *16. Consequently, Criminal Revision No.27 of 2018 preferred by the husband is dismissed. Criminal Revision No.379 of 2018 moved by the wife is allowed and the impugned order dated 30.11.2017 which relates to reduction of monthly maintenance of the wife from Rs.2,000/- to Rs.1,000/- is set aside.*
>
> *17. Record of the Court below be sent back along with a copy of this Corder forthwith for information and necessary compliance.*

15. I have learned counsel for the parties and perused the record with utmost circumspection.

16. As far as factual matrix of the judgments relied by the learned counsel for applicant-wife namely ***Shiv Kumar Netam and Kamlesh*** (supra) is concerned, facts of these cases are different to present case as there was no decree of divorce in both the cases.

17. In the instant case, the applicant-husband has filed the divorced petitioner under the Hindu Marriage Act on 02.03.2021 and the divorce was granted under the Hindu Marriage Act by the Competent Court of

Law on 08.09.2023 on the ground of adultery. For ready reference, relevant portion of order/decree is being reproduced hereinunder:-

> अभिलेख में उपलब्ध साक्ष्य की उपरोक्तानुसार किये गये विवेचन से आवेदक यह तथ्य प्रमाणित करने में सफल रहा है कि अनावेदिका श्रीमती सुमन देवांगन, ओमन देवांगन के साथ जारता की दशा में रह रही थी। फलस्वरूप निम्नाशय की निर्णय एवं डिकी घोषित की जाती है

18. The Hon'ble Supreme Court in the case of ***Shanthakumari vs. Thimmegowda*** reported in **2023 SCC OnLine Kar 66** has held as under:-

> *7. The learned counsel for the revision petitioner would contend that the petitioner is a legally wedded wife of respondent and it is the duty of husband to maintain his wife. It is asserted that since he is having an illicit relationship with his relative, domestic violence is required to be inferred. Hence, he would contend that petition needs to be allowed.*
>
> *8. Per contra, the learned counsel for the respondent would contend that the marriage was dissolved by the Competent Court by granting a decree in M.C. No. 53/2016 on the ground of adultery as well as cruelty. He would also contend that evidence disclose that the petitioner had eloped with neighbor and all along, she refused to stay with her husband and showed her interest to stay with her paramour, which clearly discloses her mental state of mind. Hence, he would contend though she is legally wedded wife, looking to her conduct having illicit relationship, she is not entitled for any maintenance. He would also contend that since now divorce has been granted, the question of granting a residential order or protection order does not arise at all.*
>
> *9. Having heard the arguments and perusing the records, it is evident that there is no serious dispute of the fact that the petitioner was the wife of the respondent. She has filed a petition under Section 12 of the D.V. Act, claiming various reliefs. However, it is the specific contention of the respondent husband is that the petitioner has eloped with a neighbor by name Mahesh and he was compelled to lodge a complainant. In this context, the respondent has placed reliance on Ex.R1 statement given by the*

petitioner before the police and Ex.R2 is the complainant lodged by the husband. Ex.R3 is the endorsement issued by the police to the respondent, wherein they have specifically stated that the wife has refused to join the husband and she preferred to stay with her paramour Mahesh.

10. Ex.R1, R2 & R 3 are not at all challenged by the revision petitioner. Further, it is also submitted that, on the same ground, now the divorce has been granted by the family Court and this statement is also not challenged. The respondent was got examined himself as RW1 and he has reiterated the allegation regarding the petitioner being eloping with Mahesh. RW2 is the neighbor and he has also deposed to this fact. RW3 is the brother of the petitioner and he has specifically asserted that the respondent never subjected the petitioner to ill-treatment demanding dowry. He has also asserted that his sister-petitioner is staying along with Mahesh and they did conduct the panchayat and initially, the husband and wife were residing together, but again, she joined Mahesh. Though in the cross-examination it is suggested that petitioner is not having any income to maintain herself

but this witness specifically asserted that she is staying with Mahesh and Mahesh is taking care of her maintenance. Apart from that, the evidence of Hanumantha-RW3 is supported by the son of the parties by name Punith Kumar, who is examined as RW4. He has also specifically deposed regarding his mother eloping with Mahesh. Though he was cross-examined, nothing was elicited. Mahesh was also examined as RW5 by obtaining summons, but he has turned hostile and quite natural, which is expected. The oral and documentary evidence produced clearly establish that the petitioner is not honest towards her husband and she has got extramarital affairs with neighbor Mahesh and all along, she asserted that she used to stay with him. When the petitioner is staying in adultery, the question of she claiming maintenance does not arise at all. The contention of the petitioner that the petitioner is a legally wedded wife and entitled for maintenance cannot be accepted in view of the conduct of the petitioner, who is not honest and is leading adulterous life.

11. The learned counsel for the revision petitioner has also invited the attention of the admission given by RW1 regarding he is having illicit relationship with daughter of his sister-in-law. Though that aspect has been disputed, since the petitioner is claiming maintenance, she must prove that she is honest and when she herself is not honest, she cannot pin-point her fingers towards her husband.

> *12. The learned Magistrate has failed to appreciate any of these aspects and in a mechanical way, awarded the maintenance and compensation, which is a perverse order. The learned Sessions judge has re-appreciated the oral and documentary evidence and has rightly rejected the claim of the petitioner in view of the fact that she was leading an adulterous life. Considering there facts and circumstances no illegality or perversity is found in the order of learned Sessions Judge so as to call for interference by this Court. Hence, revision petition being devoid of any merits, does not survive for consideration and accordingly, I proceed to pass the following: The revision petition stands dismissed.*

19. Sub- Section 4 of Section 125 of the CrPC provides that if a woman lives in adultery, whose marriage is still subsisting, she is not entitled for maintenance from her husband. Suppose, a decree for divorce is granted on the ground of her living in adultery, can it be said that the said disqualification of which she was suffering from all along, during the subsistence of the marriage, will cease to exist, because of the decree for divorce?. The prudent answer to this question shall be an emphatic - "No". The decree obtained by the husband for divorce on proving the adulterous life of the wife cannot give a license to her to continue to live in illicit relationship and to get her right to claim maintenance revived. Therefore, I conclude that a divorced wife, who lives in adultery, viz., living in illicit relationship with man other than her former husband is disqualified from claiming maintenance, under Section 125 of the Code.

20. If once the decree for divorce is granted on the ground of adultery, such finding is relevant for deciding the issue of adultery in the present case. The decree is a decree passed on proof of the claim made by means of sufficient evidence which has not been challenged by the aggrieved

party.

21. Considering the aforesaid legal proposition of law and considering the facts of the case, this Court is of the opinion that the decree for divorce granted by the family Court in favour of the applicant-husband is sufficient proof that the applicant-wife was living in adultery. When once such a decree is in force, it is not possible for this Court to take a different view contrary to the decree granted by the Civil court. Therefore, this Court is of the considered view that the decree granted by the Family Court clearly goes to prove that the applicant-wfie is living in adultery and thus, applicant-wife suffers from the disqualification to claim maintenance from the petitioner.

22. As such, the impugned order dated 06.11.2024 passed by the Second Additional Principal Judge, Family Court, Raipur in Miscellaneous Criminal Case No. 637/2024 is set aside / quashed. The criminal revision i.e. CRR No. 1322/2024 filed by the applicant-husband is **allowed.** Consequently, the criminal revision i.e. CRR No. 58/2025 filed by the applicant-wife is **dismissed.**

23. Office is directed to send the records along with a certified copy of this Order to the concerned Family Court for necessary information and compliance forthwith.

Sd/-

(Arvind Kumar Verma**)**
Judge

Jyoti