
(2014) 12 CHH CK 0020
In the Chhattisgarh High Court
Case No : Cr. M.P. No. 682 of 2012

Fuleshwari Bai and Others

APPELLANT

Vs

Shashikant

RESPONDENT

Date of Decision : 03-12-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (2015) 1 CGLJ 576

Hon'ble Judges : Inder Singh Uboweja, J

Bench : Single Bench

Advocate : Janak Ram Verma, Advocates for the Appellant; Santosh Sahu, Advocates for the Respondent

Judgement

Inder Singh Uboweja, J.—By this petition under Section 482 of the Code of Criminal Procedure, 1973 (for short "Code") the petitioners have challenged the legality and propriety of the order dated 18.07.2012 passed by the Second Additional Sessions Judge, Baloda Bazar in Criminal Revision No. 46/2011, whereby the Court below rejected the prayer for maintenance of Fuleshwari Bai. Case in brief is that, marriage of petitioner No. 1 Fuleshwari Bai and respondent was solemnized on 14.09.2003 and out of their wedlock petitioner Nos. 2 & 3 were born. Petitioner No. 1 led happy married life with respondent in her matrimonial house for a period of six months. Thereafter, she was subjected to cruelty and torture on the ground of insufficient dowry brought by her. Resultantly, petitioner No. 1 was compelled to leave the matrimonial house and disputes arose between the parties. Petitioner No. 1 filed an application for maintenance of herself and her two children before the Judicial Magistrate First Class, Baloda Bazar.

2. The learned Magistrate has passed an order dated 24.04.2010 granting maintenance of Rs. 500/- per month to each of the petitioners, which was challenged by the respondent on the ground that he is a labourer and is earning only Rs. 1500/- per month. Aggrieved by the order dated 24.04.2010, the

petitioners also filed a revision petition for enhancement of the maintenance. The learned Additional Sessions Judge passed the order impugned to the effect that petitioner No. 1 was not entitled to receive maintenance whereas petitioners No. 2 & 3 were entitled to receive maintenance and thereby has partly affirmed the order dated 24.04.2010. It is the said order dated 18.07.2012 which is under challenge before this Court and by the instant petition, the petitioner prays for enhancement of maintenance to the tune of Rs. 3000/- to each petitioner.

3. I have heard learned counsel for the parties and perused the record including the order impugned.

4. It is not disputed that petitioner No. 1 is a legally married wife of respondent and petitioners No. 2 & 3 are their children. Statement of petitioner No. 1 Fuleshwari (P.W. 1) and Jitendra Kumar (P.W. 2) shows that respondent was demanding articles and pressurising the petitioner No. 1 for more dowry and thereby subjected Fuleshwari to harassment for bringing sufficient dowry. Petitioner No. 1 lodged a report in this regard at Police Station Sarsiwa. There is sufficient evidence on record to show that respondent never tried to call her back for cohabitation. The evidence on record further shows that respondent has not filed any petition for restitution of conjugal rights.

5. In the facts and circumstances of the case and also evidence on record, I am of the opinion that the learned Additional Sessions Judge erred in holding that petitioner No. 1 Fuleshwari was not entitled for receiving maintenance as for no reason she has left the matrimonial house. Therefore, order dated 18.07.2012 in so far as it relates to declining maintenance to petitioner No. 1 is not sustainable in law.

6. Consequently, petition is allowed. Order dated 18.07.2012 in so far as it relates to declining maintenance to petitioner No. 1 is hereby set aside. Order dated 24.04.2010 passed by the Magistrate is upheld. The petitioner No. 1 may file an application for enhancement of maintenance before the trial Court in accordance with law. The trial Court shall reconsider the case of petitioner No. 1 for enhancement of maintenance in the light of the observation made herein above. Record of the trial Court be sent back forthwith. No order as to costs.