

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Criminal Revision No. 571 of 2016**

Kartik Kumar Gain S/o Anil Gain, aged about 32 years, C/o Manmohan Sharma, Sector - C, Vivekanand Colony, House No. 332, Ujjain, Madhya Pradesh, At present R/o. Street No. 1 House No. 1, Ashok Nagar, Freeganj Police Station & Post Ujjain, Civil & Revenue District Ujjain, Madhya Pradesh

---- Applicant**Versus**

1. Smt. Hema Gain W/o Kartik Kumar Gain, aged about 31 years, C/o S. P. Vishwash, C - 46 Rishabh Nagar, Raipur, Police Station & Post Raipur, Civil & Revenue District Raipur Chhattisgarh
2. Reansh Gain, aged about 11 years Minor, through its Guardian/mother namely Smt. Hema Gain, W/o. Kartik Kumar Gain, C/o S. P. Vishwash, C - 46 Rishabh Nagar, Raipur, Police Station & Post Raipur, Civil & Revenue District Raipur, Chhattisgarh

---- Respondents

For Applicant : Shri Vikram Dixit, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****24/06/2016**

Challenge in the present Revision is the order dated 06.05.2016 passed by the Family Court, Raipur in Misc. Criminal Case No.127 of 2013 whereby the Court below has allowed the application under Section 125 CrPC preferred by the respondents and directed the applicant to pay an amount of Rs.10,000 per month as maintenance to the respondents.

2. Respondent no.1 is the wife and respondent no.2 is the child born from the marriage of the applicant with respondent no.1. Counsel for the applicant submits that the impugned order is bad in law for the reason that the Court below has not appreciated the fact that there is already an order in favour of the applicant under Section 9 of the Hindu Marriage Act whereby there is a specific order directing the respondents for restitution of the conjugal rights. But the respondent/wife has not honoured that order

which is sufficient indication for the respondent no.1 living away from the applicant for no justified and satisfactory reason. He argues that the amount awarded by the Court below to the respondents is also on the higher side. According to the counsel for the applicant, admittedly, the applicant is a Loco Pilot in the Railway and he gets salary to the tune of Rs.31,000/- out of which he has to pay large amount towards insurance premium, Provident Fund, house loan, Mutual Fund etc. and after all these deductions, he hardly gets an amount of Rs.12,000/- in his hand. He submits that if Rs.10,000/- is awarded to the respondents, it would be difficult for the applicant to survive himself and therefore, prays that the impugned order needs to be quashed.

3. However, a perusal of the impugned order clearly indicates that though there is an order under Section 9 of the Hindu Marriage Act passed in favour of the applicant, there was sufficient evidence which has come before the Court below to show that the respondent no.1 had made several efforts for staying in the house of the applicant but there was a negative response from the applicant side in as much as whenever she made an effort, every time she would find lock on the house of the applicant and on other occasions, the applicant simply chased her out of the house. From the record it reflects both the attitude as well as the conduct of the applicant in showing negligence towards his wife and children. If the Court below has taken all these facts and circumstances of the case while granting maintenance to the respondents, in the opinion of this Court, the Court below has not committed any error on facts or on law nor can it be said that the order is contrary to the evidence which has come on record.

4. So far as the amount of maintenance being exorbitant is concerned, admittedly, the applicant is a Loco Pilot in the Railways and his gross salary, according to the applicant himself, is more than Rs.40,000/- out of

which if the Court below has awarded an amount of Rs.10,000/- to the respondents, by no stretch of imagination can it be said to be either exorbitant or on the higher side. From the finding of the Court below it appears that the order under Section 9 of the Hindu Marriage Act has been obtained with a deliberate intention of avoiding the payment of maintenance to the respondents. For all these reasons, this Court does not find any infirmity or illegality in the impugned order warranting interference.

5. Accordingly, the present criminal Revision being devoid of merit deserves to be and is dismissed.

**Sd/-
(P. Sam Koshy)
JUDGE**