

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 709 of 2016

Rajendra S/o Suresh Harijan Aged About 31 Years R/o Village Sonpur, Police Station Surajpur, Tahsil Ramanujnagar, District Surajpur Chhattisgarh.

---- Petitioner

Versus

Smt. Shanti Bai W/o Rajendra Aged About 26 Years Caste Harijan, R/o Village Beltikari, Police Station And Tahsil Surajpur, District Surajpur Chhattisgarh.

---- Respondent

Ms. Nandkumari Kashyap, counsel for the petitioner/s.

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

27/02/2017

This petition is directed against order dated 12/05/2016 passed by the Second Additional Sessions Judge, Surajpur by which, the learned Revisional Court has set aside the order passed by the Magistrate and remanded the matter for due consideration of respondent's application for grant of maintenance.

2. Learned counsel for the petitioner submits that the Magistrate has rightly dismissed the application filed by the respondent taking into consideration that a decree was passed in favour of the petitioner on the application of restitution of conjugal rights filed by the petitioner. Therefore, in such a situation, no maintenance can be claimed by the wife.

3. The submission made by learned counsel for the petitioner cannot be accepted. Even in a case where there is a decree of restitution of conjugal rights passed by the Family Court on the application under Section 9 of the Hindu Marriage Act, the application for grant of maintenance under Section 125 of CrPC is required to be examined independently and such an order could only be a relevant consideration while examining case of the parties. The

application under Section 125 of CrPC could not be rejected outright on this ground.

4. The Revisional Court has not committed any illegality so as to warrant interference by this Court. The petition is, accordingly, dismissed.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Deepti