

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 990 of 2015**

- Omprakash Vaishnav S/o Uttamdas Vaishnav Aged About 47 Years R/o 22 A, Street 32, Sector 4, Bhilai, Presently Residing At W M R 14 B 4 Bhilai District Durg Chhattisgarh P.S. & Tah. & Civil & Rev. Distt. Durg Chhattisgarh.

---- Applicant**Versus**

1. Smt. Snehlata Vaishnav W/o Omprakash Vaishnav Aged About 36 Years R/o Champa Tahsil Champa District Champa-Janjgir Chhattisgarh
2. Ku. Anupama Vaishnav D/o Omprakash Vaishnav Aged About 16 Years Minor Through Natural Guardian Mother Smt. Snehlata Vaishnav R/o Champa Tahsil Champa District Champa - Janjgir Chhattisgarh
3. Ku. Sunidhi Vaishnav D/o Omprakash Vaishnav Aged About 14 Years Minor Through Natural Guardian Mother Smt. Snehlata Vaishnav R/o Champa Tahsil Champa District Champa - Janjgir Chhattisgarh

---- Non-applicants

For Applicant:

Mr. Saleem Kazi, Advocate

For Non-applicants:

Mr. Akash Pandey, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order on Board****01.03.2017**

1. The present Petition has been preferred by the Petitioner assailing the order dated 30.09.2015 passed in Misc. Criminal Case No. 94/2012 passed by the Family Court Janjgir-Champa. Vide the said order the Court below entertaining the application under Section 125 of the Cr.P.C. have ordered for payment of Rs. 6000/- to the Non Applicant No.1 and like wise 6000/- each to the Non Applicant No.2 & 3.
2. At the outset the Counsel for the Petitioner assailing the impugned order submits that he has no grievance so far as the

order of maintenance having been granted to the Non applicants No.2 & 3 i.e the children born to the Non applicant No.1 from the relationship with the Applicant. He intends to challenge only the payment of maintenance ordered by the Court below to the Non Applicant No.1 wife of the present Applicant. According to the Applicant the Non Applicant No. 1 was living in adultery and therefore as per the provision of section 125 Cr.P.C. since the wife was living an adulterous life she is not entitled for maintenance. Therefore the order of maintenance granted to the Non Applicant No. 1 is bad in law.

3. Learned Counsel for the Applicant emphasized the fact that his wife Non Applicant No. 1 was having relationship with more than a couple of men. He submits that the applicant had in fact caught his wife having relationship with someone and when she was caught she immediately left matrimonial home and started staying separately.
4. Learned Counsel for the Applicant further submits that since the applicant himself in his evidence before the Court below has categorically deposed about the relationship, the Non applicant No. 1 had with different persons is sufficient proof which have not been accepted by the Court for denial of maintenance.
5. From the evidence which has been adduced by the present Applicant there does not appear any strong evidence brought on record by the present Applicant so far as the Non applicant No. 1 living in adultery. The applicant was not able to give details in respect of the people with whom she was alleged to have relationship. Like wise there was also no cogent

supporting corroborative evidence adduced by the Applicant to substantiate his contention. So far as allegation of adultery is concerned mere allegation would not suffice for holding a person to be living in adultery. There has to be strong cogent substantive piece of evidence available duly corroborated from the independent witnesses in this regard. In the absence of which the contention can not be accepted.

6. In the instant case the evidence which have come on record shows that the Non applicant 1 was an educated girl and was engaged in a chain marketing business, in course of which she was required to meet many persons and which is not disputed by the Applicant. Apart from this the applicant has not been able to produce any other evidence. Merely because the Non-applicant No.1 wife used to meet some male members of the society by itself can not be presumed that she was living a life of adultery. For proving adultery there has to be something more than mere allegation.
7. To further support the case of the wife, non-applicant No.2 Ku. Anupama Vaishnav who is 16 years old daughter of the Applicant has also given evidence against the present Applicant. It is difficult to imagine and believe that a grown up daughter of the present applicant would leave the company of the present Applicant and would prefer living with the Non applicant No.1. If at all if she was living adultery no grown up children would have accepted that. Thus the allegation made by the Applicant is difficult to accept. The Court below has also rightly refused to accept the same. On the contrary the sheer

allegation wife living adultery by itself is an act of cruelty on part of the husband and that itself can be a strong ground for wife to leave the company of the husband.

8. Under the said circumstances this Court does not find any strong case made out by the Non applicant calling for interference. The finding of the family Court in passing of the impugned order also does not appear to be infirm so far as the amount of maintenance being awarded taking into consideration the salary of the present Applicant.
9. Thus the Revision Petition being devoid of merits the same deserves to be and accordingly rejected.

Sd/-

(P. Sam Koshy)
JUDGE