

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Cr.M.P. No. 211 of 2017**

Amit Kumar Roopanwal, S/o Shri Arun Kumar Roopanwal,
aged about 32 years, R/o House No.406, Sector-14,
Vasundhara, District Ghaziabad (U.P.)

---- Petitioner**Versus**

Smt. Anubha Roopanwal, D/o Shri Virendra Kumar
Saxena, aged about 28 years, R/o D-268, M.R. Colony,
Tagore Nagar, Raipur, Tahsil and District Raipur (C.G.)

---- Respondent

For Petitioner : Mr. B.P. Singh, Advocate
For Respondent : Mr. Shikhar Sharma, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****04/04/2017**

(1) Respondent-wife has filed an application under Section 125 of the Code of Criminal Procedure (for short "CrPC") before the Additional Principal Judge, Family Court, Raipur claiming maintenance/interim maintenance for the petitioner/husband, in which the petitioner has been noticed.

(2) Feeling aggrieved against the order receiving notice and the challenging the entire proceedings stating that the same is contrary to the law, petitioner has preferred this petition challenging the same.

(3) Learned counsel for the petitioner would submit that the Additional Principal Judge, Family Court, Raipur has no

jurisdiction to proceed against the petitioner under Section 125 of the Code of Criminal Procedure as he never resided with his wife at Raipur. He further submits that as the respondent/wife has sufficient income to maintain herself, she is not entitled for maintenance/interim maintenance from the petitioner. He also submits that the aforesaid fact has also been admitted by the respondent before the Supreme Court of India in . He relied upon the judgment of Supreme Court in the matter of **Shri Bhagwan Dutt Vs. Smt. Kamla Devi and another** reported in (1975) 2 SCC 386 in support of his case.

(4) Per contra, counsel for the respondent/wife opposes the writ petition.

(5) I have heard learned counsel appearing for the parties at length and considered their rival submissions made hereinabove with utmost circumspection.

(6) Question of jurisdiction under Section 125 of the Code of Criminal Procedure has to be decided during the proceeding under Section 125 of the Cr.P.C. as there is serious dispute between the petitioner/husband and the respondent/wife about the place where they last resided. According to the wife, husband last resided with her at Noida whereas according to the petitioner/husband, he last resided with his wife at Raipur. Therefore, that question has to be decided after recording evidence of the parties and it cannot be decided in the proceedings under Section 482 of the Code of Criminal Procedure before this Court.

(7) The petitioner has even not raised this point before the Family Court, Raipur and straightway has approached before this Court under Section 482 of the Code of Criminal Procedure.

(8) This Court would not preempt the issue, which is to be decided by the Family Court, Raipur in the proceeding under Section 125 of the Cr.P.C. No application under Section 125 of the Cr.P.C. has been granted in favour of the respondent/wife and only notice has been issued to petitioner for securing presence before the Family Court, Raipur in the proceedings under Section 125 Cr.P.C.

(9) After hearing learned counsel appearing for the parties, this Court is of the opinion that it is an extreme proposition to hold that the respondent/wife would not be entitled for maintenance/interim maintenance even before the issue of maintenance is considered by family court, therefore, the Cr.M.P. is liable to be dismissed.

(10) Accordingly, the Cr.M.P fails and is hereby dismissed. However, the petitioner is at liberty to raise the aforesaid plea before the Family Court in accordance with law.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-