

HIGH COURT OF CHHATTISGARH, BILASPUR**Cr.M.P. No.474 of 2017**

Vishnu Prasad Mishra, aged about 53 years, S/o late Manharan Mishra, R/o Ganjpara Ward No.14, Mahasamund, District Mahasamund (CG).

Petitioner

VERSUS

Smt. Santoshi Mishra, aged about 41 years, W/o Vishnu Mishra, R/o Village Mandabharri, Tahsil Narharpur, District Uttar Bastar, Kanker (CG).

---- Respondent

For Petitioner : Mr. Sudeep Johri, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal
Order On Board

13/04/2017

(1) The respondent herein is the wife of the petitioner. She was granted maintenance amount in duly maintenance proceedings by order dated 07.05.2015. Thereafter, application was filed by the petitioner under Section 9 of the Hindu Marriage Act for restitution of the conjugal rights which was dismissed by judgment and decree dated 22.7.2016 in Civil Suit No.46-A/2015. Thereafter, the petitioner has filed the application under Sections 126 & 127 of CrPC for cancellation of order of maintenance granted in favour of the respondent, which has been rejected by the impugned order against which, this petition under Section 482 of CrPC has been filed by the petitioner.

(2) Learned counsel appearing for the petitioner would vehemently submit that since the Family Court has clearly held that there is no relationship between the petitioner/husband and respondent/wife, therefore, the impugned order is liable to be quashed.

(3) After hearing learned counsel for the petitioner, I am of the considered opinion that rejection of the petitioner's application for restitution of conjugal rights will not be ground to set aside the order for maintenance granted under Section 125 of CrPC. The order for maintenance under Section 125 of CrPC has been passed after hearing of both the parties and after recording a finding that respondent/wife is unable to maintain herself. The Family Court is absolutely justified in rejecting the application filed under Sections 126 & 127 of CrPC. I do not find any jurisdictional error in the impugned order.

(4) Consequently, the petition deserves to be and is hereby dismissed.

Sd/-

(Sanjay K. Agrawal)
Judge

L/-