

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 455 of 2017**

Ramesh Kumar Yadav S/o Chubhulal Yadav, Aged About 55 Years R/o Assistant Teacher, Balak Higher Secondary School, Manpur, Tahsil & District Rajnandgaon, Chhattisgarh.

Petitioner**Versus**

- Smt. Jyoti Rani Yadav W/o Ramesh Kumar, Aged About 52 Years R/o Pachripara, Durg, Thana Durg, City Kotwali, Tahsil & District Durg, Chhattisgarh. --- **Respondent**

For the applicant	:	Mr. Shrawan Agrawal, Advocate
For the respondent	:	Mr. B.P. Singh, for the respondent.

Hon'ble Shri Justice Goutam Bhaduri**Order on Board****09.07.2017**

1. This revision is against the order dated 30.01.2017 passed by the 3rd Additional Principle Judge, Family Court, Durg, Distt. Durg (C.G) in M.J.C. No.317/2016 whereby the objection raised with respect to the tenability of recovery proceeding has been rejected.
2. It was stated by the applicant that in earlier civil proceeding by an order dated 28.11.2011 both the husband and wife agreed to separate and permanent maintenance of Rs.1,05,000/- was settled and out of that, initially Rs.50,000/- was to be paid and remaining Rs.55,000/- was to be paid after getting the decree of divorce. Consequently the petition for divorce was filed and at that time, Rs.50,000/- was paid and the remaining amount of Rs.55,000/- was to be paid at the time of decree of divorce. The decree of divorce could

not be passed, therefore, the rest of the amount of Rs.55,000/- could not be paid.

3. Learned counsel for the applicant submits that since the chapter of maintenance of amount already stands closed, the same cannot be reopened.
4. Per contra, learned counsel for the respondent opposes the contention of learned counsel for the applicant.
5. A perusal of the orders sheet of the court below and the document would show that in a Misc. Criminal Case bearing No. 280 of 2009 an order was passed on 26.09.2010 directing the applicant to pay Rs.1000/- towards monthly maintenance and accordingly an application was filed by the wife seeking direction for payment of arrears i.e., Rs.10,000/- for the period of ten months. Subsequently the record would show that in Civil Suit No.25-A/2009 a compromise has been effected between the parties and it was decided that at the time of filing of divorce petition, Rs.50,000/- would be paid and at the time of decree, the remaining Rs.55,000/- was to be paid. Since the divorce petition was filed, Rs.50,000/- was paid. However, when the decree of divorce could not be passed, the rest of amount was not paid. Therefore, the fact remains that the divorce decree was not passed. In a proceeding for maintenance, separate order for recovery has been passed which cannot be subject of challenge and when such recovery proceeding was initiated, the primary objection was raised which has been dismissed. The same being in interlocutory nature and further taking into consideration the facts situation of this case, I am not inclined to interfere in the impugned order passed by the

learned court below as prima facie no perversity or illegality is shown to have been committed.

6. The petition has no merits and is dismissed.

**Sd/-
GOUTAM BHADURI
JUDGE**

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