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HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Misc. Petition No.370 of 2018**

- Dipak Sharma (In Person) S/o Late Kailash Chand Sharma Aged About 35 Years Present Address Primary School, Mundgaon, Block Dongargarh, Dist. Rajnandgaon Chhattisgarh.

---- **Petitioner****Versus**

1. Smt. Saroj Sharma, W/o Dipak Sharma Aged About 32 Years R/o In front Of Shri Ram Sangit Vidyalaya, Bawla Gali, Budhapara, Raipur C.G. Present Address Nathmal Sharma Bhagwa Mandir Gali, Awadhiya Para, Raipur Chhattisgarh.
2. Giriraj Sharma S/o Mr. Dipak Sharma Aged About 5 Years R/o In front Of Shri Ram Sangit Vidyalaya Bawla Gali, Budhapara, Raipur C.G. Present Address Nathmal Sharma Bhagwa Mandir Gali, Awadhiya Para, Raipur Chhattisgarh.
3. Ku. Kritika Sharma D/o Mr. Dipak Sharma Aged About 3 Years R/o In front Of Shri Ram Sangit Vidyalaya Bawla Gali, Budhapara, Raipur C.G. Present Address Nathmal Sharma Bhagwa Mandir Gali, Awadhiya Para, Raipur Chhattisgarh.

---- **Respondents**

For Petitioner	: Petitioner present in person
For respondents	: None present

Hon'ble Shri Justice Ram Prasanna Sharma**Order****23.02.2018.**

1. This is an application under Section 482 of the Code of Criminal Procedure, 1973 for reversing order dated 15.11.2017 passed by this Court in Criminal Revision No.868/2015.
2. As per the petitioner, the petitioner is husband of Smt. Saroj Sharma, she is living separately without cause and therefore, not entitled for maintenance, but maintenance is granted to her by this Court which is liable to be reversed.

3. This Court has granted maintenance to the wife on the ground that she has reason to live separately from the petitioner and serious issues cannot be decided in an application filed for maintenance under Section 125 of CrPC. If the wife is living separately without reasonable excuse, the petitioner has all the rights to file application for restitution of conjugal rights as per Section 9 of the Hindu Marriage Act, 1955 which reads as under:

“9. Restitution of conjugal rights.- When either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other, the aggrieved party may apply, by petition to the district court, for restitution of conjugal rights and the court, on being satisfied of the truth of the statements made in such petition and that there is no legal ground why the application should not be granted, may decree restitution of conjugal rights accordingly.

[*Explanation.-* Where a question arises whether there has been reasonable excuse for withdrawal from the society, the burden of proving reasonable excuse shall be on the person who has withdrawn from the society.]”

4. The petitioner is under obligation to prove that the wife has withdrawn from his society without reasonable excuse and for that he has to take legal recourse as mentioned above and to prove the facts to the satisfaction of the Court.

5. Order of maintenance is granted for daily needs like food, clothing and shelter and the petitioner is under obligation to pay the same till relation between them exist. There is no scope for alteration or modification of the order mentioned in the application and it is not a case of abuse of process invoking the jurisdiction under Section 482 of CrPC.

6. The application is thus liable to be and is hereby dismissed at the motion stage itself.

Sd/-

(Ram Prasanna Sharma)

JUDGE

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