

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (227) No. 553 of 2013**

Bhaktvatsal Singh Rajput S/o Shri Jagdish Singh Aged About 36 Years R/o Village Newari, Ps And Tah Kawardha, Distt Kabirdham, Civil And Revenue Distt Kabirdham, Chhattisgarh

---- Petitioner

Versus

Mrs. Vandana Rajput W/o Bhaktvatsal Singh Rajput Aged About 35 Years R/o Village Naewari, At Present C/o K.S.Thakur, Teacher, Baijnathpara, Near Mukund Bhawan, Durg, Civil And Revenue Distt Durg, Chhattisgarh

---- Respondent

For Petitioner	:	None appears for the Petitioner.
For Respondent	:	None appears for the Respondent.

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice

Order on Board**09.03.2018**

1. This is an application under Article 227 of the Constitution of India. The matter arises from a Family Court established under the Family Courts Act, 1984; hereinafter referred to as 'FC Act'.
2. Petitioner applied for divorce under the provisions of Hindu Marriage Act, 1955; for short 'HM Act'; on the ground that the Respondent/wife has committed adultery; she having illicit relations with Tarun, whose address is mentioned in paragraph 8.4 of this writ petition. Pending that application, the Respondent/wife filed an application under Section 24 of the HM Act seeking an order for payment of maintenance *pendente lite* and expenses of the proceedings. That application was allowed by the Family Court as per the impugned order directing payment of the amounts fixed therein. The Court below also directed that the aforementioned Tarun be impleaded as a respondent in the proceedings. This is under challenge.

3. The order for payment of maintenance *pendente lite* and for payment towards litigation expenses, including food and travelling expenditure, has been issued by the Court below on due and fair application of mind to the facts and circumstances of case. The amounts so awarded cannot be treated as exorbitant; or, as not allowable under law. Therefore, there is no ground to interfere with the impugned order, to that extent, in exercise of power under Article 227 of the Constitution.
4. The question that remains for consideration is as to whether the Court below acted without jurisdiction or illegally, in directing impleadment of the person-Tarun as co-respondent in the application for divorce filed by the writ petitioner alleging that his wife has committed adultery with the said person.
5. The plea of the petitioner before the Court below is that Tarun is the person with whom the respondent has committed adultery. This plea of the writ petitioner is reiterated in this writ petition as well, as noted above.
6. Sections 14 and 21 of the HM Act include conferment of rule making power on the High Court. The Chhattisgarh High Court has framed rules to regulate the proceedings under the HM Act. That bunch of rules under the HM Act are included as Rule 366 in the High Court of Chhattisgarh Rules, 2007. Clause (vii)(e)(ii) in sub-rule (2), among those rules provide, *inter alia*, that if the petition is for divorce on the ground of adultery, the name and address of all persons with whom such acts were committed have to be stated in the petition. Thus, the applicable statutory rules themselves provide for impleadment of the alleged adulterer as a co-respondent in proceedings for divorce under the HM Act in any proceeding in any Court in the State of Chhattisgarh.
7. If one were to look at the provisions of the Divorce Act, 1869; Section 11 of that Act specifically provides that the adulterer or adulteress shall be made a co-respondent unless the petitioner is excused by the Court from doing so in

situations which are mentioned in that Section. However, the HM Act does not make it obligatory to implead the alleged adulterer on the ground of adultery.

8. What would be the situation where the rules do not require impleading of the alleged adulterer as co-respondent?
9. The Court below, being a Family Court, is governed by, among other things, Section 10 of the FC Act. That Section has three sub-sections. Sub-section (2) applies to proceedings under Chapter IX of Code of Criminal Procedure before a Family Court. Sub-section (1) of Section 10 applies to all suits and proceedings before a Family Court, other than the proceedings under Chapter IX of the Code of Criminal Procedure. The provisions of Code of Civil Procedure, and of any other law for the time being in force, shall apply to suits and proceedings before a Family Court and for the purposes of the said provisions of the Code of Civil Procedure, the Family Court shall be deemed to be a Civil Court and shall have all the powers of such Court. Sub-section (3) of Section 10 of the FC Act, provides that nothing in sub-section (1) or (2) of Section 10 shall prevent a Family Court from laying down its own procedure, *inter alia*, with a view to arrive at the truth of facts alleged by one party and denied by other.
10. Order I of Rule 10(2) of Code of Civil Procedure reads as follows:

"(2) **Court may strike out or add parties**—The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added."

It has been laid down by the Apex Court in **Anil Kumar Singh v. Shivnath Mishra**; (1995) 3 SCC 147, that the object of Order I Rule 10(2) of the Code of

Civil Procedure is to bring on record all persons who are parties to the dispute relating to the subject matter, so that the dispute may be determined in their presence and at the same time without any protraction, inconvenience and to avoid multiplicity of proceedings. It was laid down that a person may be added as a party-defendant to the suit, though no relief may be claimed against that person provided the presence of that person is necessary for a complete and final decision on the question involved in the suit.

11. In a proceeding where the Court has to decide whether a person had voluntary sexual intercourse with another person, the Court would be in a better position to effectually and completely adjudicate upon the controversy, by adding such person (alleged adulterer) as a respondent in the proceedings. The alleged adulterer is a proper party to the proceedings under Section 13(1)(i) of the HM Act. The alleged adulterer would be a proper party even if that person is not a necessary party. See for support: **Arun Kumar Agrawal v. Radha Arun**; (AIR 2003 Karnataka 508). I am in respectful agreement with the *ratio decidendi* of the said judicial precedent, which was rendered, also referring to the decision of the Apex Court in **Razia Begum v. Sahebzadi Anwar Begum**; (AIR 1958 SC 886). Contextually, it is apposite to quote the following from **Arun Kumar Agrawal** (supra), as follows :

"7. But what if the rules do not require the impleading of the alleged adulterer as co-respondent, though named in the petition? In the absence of any rule, we have to fall back upon Rules 3, 5 and 10(2) of Order 1 of the CPC. Rule 3 provides that all persons against whom any right to relief in respect of or arising out of the same act/s or transaction/s is alleged to exist, whether jointly or severally or in the alternative, may be joined as defendants in a suit. Rule 5 makes it clear that it shall not be necessary that every defendant shall be interested as to all the relief claimed in any suit against them. Rule 10(2) inter alia provides that the Court may at any stage of the proceedings, order that the name of any party improperly joined as defendant be struck out; or order the addition of any person who ought to have been joined as defendant, or whose presence before the Court may be necessary in order to enable the Court effectively and completely to adjudicate upon and settle all the questions involved in the suit."

12. In view of the aforesaid, there is no illegality in the direction of the Court below to implead 'Tarun' as an additional Respondent in the application for divorce, otherwise that application may fail. Hence, there is no ground to interfere with that direction.

In the result, this petition under Article 227 of the Constitution of India fails. The same is accordingly dismissed.

Sd/-
(Thottathil B. Radhakrishnan)
Chief Justice