

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 1717 of 2018

- Gopal Yadav S/o Naka Yadav Aged About 35 Years Caste- Aheer, R/o- Village- Chutiya, Hatdohar, Police Station-Ranka, District- Gadhwa, (Jharkhand)

---- Petitioner

Versus

1. Smt. Pramila Devi W/o Gopal Yadav Aged About 35 Years R/o- Village- Kanakpur, Police Station- Ramanujganj, District- Balrampur-Ramanujganj, Chhattisgarh., District : Balrampur, Chhattisgarh
2. Himanchal Yadav S/o Gopal Yadav Aged About 9 Years Monor, Represented Through Mother Pramila Devi, R/o- Village- Kanakpur, Police Station- Ramanujganj, District- Balrampur-Ramanujganj, Chhattisgarh, District : Balrampur, Chhattisgarh

---- Respondents

For Petitioner : Shri Rahul Mishra, Advocate

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

23/08/2018

Heard.

This petition under Section 482 CrPC is directed against order dated 24/05/2018 passed in Revision whereby petitioner's revision against order of grant of maintenance has been dismissed.

2. Learned counsel for the petitioner argued that the respondent filed an application seeking maintenance, though she is not the legally wedded wife of the petitioner and in abuse of the proceedings, at the instance of respondent No.1, the Magistrate passed an order of maintenance by the Revisional Court.

3. According to learned counsel for the petitioner, the Magistrate has made very slipshod enquiry against the legality and validity of marriage between the parties and has accepted respondent's statement of she having performed '*Churi*' marriage with the petitioner. It is also submitted that the Court below has not taken into consideration that the respondent / wife is not justified in living separately. Therefore, for this reason

also, no maintenance could be awarded.

4. The order passed by the Revisional Court shows that the Revisional Court has taken into consideration the evidence on record, particularly the established circumstances that the appellant and respondent were living like husband and wife and out of their relation, they are blessed with a child. The aspect of marriage that they had performed '*Churi*' marriage, in the considered opinion of this Court, in summary proceedings under Section 161 CrPC, that much of exercise done by the Magistrate fulfills the legal requirement before granting maintenance. Learned counsel for the petitioner also stated that infact, the petitioner has submitted an application for restitution of conjugal rights before the Family Court.

5. The Court below has also taken into consideration the statement of the respondent that physical violence, act of assault and beating the wife compelled the respondent to live and reside separately. Therefore, it does not appear to be a case of finding recorded without evidence.

6. The power under Section 482 CrPC needs to be exercised only to prevent abuse of the process of law and this Court does not usurp jurisdiction of the appellate authority or for that matter, Revisional Authority as such. I do not find any ground so as to make out a case of abuse of the process of law warranting interference by this Court under Section 482 CrPC. The petition is accordingly dismissed.

7. Learned counsel for the petitioner further submits that he is inclined to get the matter resolved through amicable settlement.

For this purpose, the appellant has to seek mediation before the Family Court at Ramanujganj.

As a matter of law, before the matrimonial dispute is taken up for adjudication on merits, the Family Court should explore all possibilities for resolution of the dispute by all alternative modes of conciliation / mediation. If an application is made, the case shall be referred for mediation.

Sd/-
(Manindra Mohan Shrivastava)
Judge