

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 295 of 2019

- Varunchandra Madhani S/o Shri Vijendra Madhani Aged About 28 Years R/o Rahna- 304, Kupalya Apartment, Venkatpuram, Alwal, Telangana , At Present As Per The Cause Title Central Jail, Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh

---- Applicant

Versus

- Smt. Ayasha Vilasuttarwar, W/o Varunchandra Madhani, Aged About 26 Years B/102, Om Garden Parijat Extension , Bilaspur, Police-Station Civil Line, Tahsil & District-Bilaspur, Chhattisgarh.,

---- Respondent

For Applicant : Mr. Vijay Kumar Deshmukh, Advocate.

For Respondent : Mr. Lav Sharma, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

05/11/2019

1. This criminal revision is brought against the order dated 22.5.2018 passed by the learned Additional Principal Judge, Family Court, Bilaspur in MJC No.98/2018.
2. It is submitted that the learned Family Court has passed the impugned order without proper application of mind. The applicant had challenged the application for grant of interim maintenance on ground that the respondent herself is capable to earn livelihood and has having her own source of income, whereas the applicant is unemployed and not having any source of income. Despite these pleadings the Family Court only on the basis of assumption has allowed the application for grant of interim maintenance and directed the applicant to pay Rs.20,000/- per month to the respondent. It is submitted that the order is arbitrary, without any basis and contrary to law and therefore, it should be set aside.

3. Learned counsel appearing for respondent submits that after proper application of mind, the learned Family Court has passed the order, which does not call for any interference in exercise of revisional jurisdiction. The Supreme Court in its various judgments has deprecated the grant of stay on the order of maintenance passed by the Family Court. Relying on the judgment of Supreme Court in the matter of ***Reema Salkan v. Sumer Singh Salkan*** reported in ***AIR 2018 SC 4606***, it is submitted that where the husband is well educated and able bodied person, he is under obligation to maintain his wife and children.
4. While contesting the application for grant of interim maintenance, the only dispute raised by the applicant before the Family Court was to this extent that the respondent is capable to maintain herself, which is a question of fact and can be determined on the basis of evidence in the proceedings. The quantum of interim maintenance is mainly assailed by the applicant on the ground that the Family Court without there being any basis has wrongly assumed that applicant may be having an income of Rs.50,000/-per month.
5. The learned Family Court has held in the impugned order that the applicant is working as 'Manager' regarding which there is no definite proof. However, it is held that since applicant is working as Manager in some private company in the State of Telangana, his monthly income must not be less than Rs.50,0000/-. The only document presented from the side of respondent shows that the applicant is employed as Manager in some private company but it does not show the monthly income of the applicant. It was the statement of the respondent that applicant works as 'Marketing Manager' and his monthly income is Rs.70,000/-. This statement should have been either accepted or rejected by the Family Court, which could not have been modified in the way it has been modified in the impugned order and reduced the monthly income from Rs.70,000/- to Rs.50,000/-. After holding, that the statement regarding income of the applicant being Rs.70,000/- per month, was not supported with definite proof, the order was passed by the learned Family Court below and, further, there is no consideration of the ground raised by the applicant that respondent is capable of

maintaining herself. In these circumstances, I am of this view that the order passed by the learned Family Court neither appropriate nor correct and being so, it is liable to set aside.

6. Accordingly, the revision petition is allowed, the impugned order is set aside and the matter is remitted to the learned Family Court for fresh consideration and disposal of the application filed by the respondent herein for grant of interim maintenance by considering all the facts and circumstances of the case in accordance with law.
7. Certified copy as per rules.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Nisha