

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Reserved on 10-7-2019****Delivered on 12-7-2019****CRMP No. 780 of 2019**

Jayanto Mitra S/o. Shri R.N. Mitra, aged about 37 years, R/o. 61
K/3, Pushpanjali Nagar, Bhavapur, Allahabad (UP)

---- Petitioner**Versus**

1. Smt. Namita Mitra, W/o. Jayanto Mitra, aged about 46 years, D/o. Shri Chitranjan Dey
2. Sushanto Mitra D/o. Shri Jayanto Mitra, aged about 10 years
through natural guardian Smt. Namita Mitra
Both R/o. R.D.A. Colony, Block No. A, Tikrapara, Raipur, District Raipur (CG)
Presently residing at Block No. 1, LIG Flat No. 507, 5th floor Sector, Kamal Vihar, Raipur, Distt. Raipur (CG)

---- Respondents

For petitioner	:	Ms. Smita Jha, Adv.
For respondents	:	Mr. Malay Bhaduri, Adv.

Hon'ble Shri Sharad Kumar Gupta, Judge**CAV ORDER**

1. Petitioner has preferred this CRMP under Section 482 of the Code of Criminal Procedure (in brevity Cr.P.C.) for setting aside the application under Section 125(3) of the Cr.P.C. in case No. 265/2018 pending before the Family Court, Raipur and discharging him from the liability of maintenance.
2. In brief petitioner's case is that respondent No. 1 is his legally wedded wife, in their wedlock respondent No. 2 was born. Family Court had ordered him to give the allowance for maintenance at the rate of Rs. 10,000/- per month to respondent No. 1 and Rs. 6,000/- per month to respondent No. 2. Both the parties have preferred revisions before

this Court which were dismissed. Respondent No. 1 has filed an application under Section 125(3) of the Cr.P.C., further proceedings in that application are pending before the Principal Judge Family Court, Raipur. He had also filed an application under Section 127 of the Cr.P.C. which is also pending.

3. In brief, the respondents' case is that the proceedings are pending before Family Court, no such order has passed by Family Court which caused grievance to the petitioner, thus this CRMP is not maintainable.

4. Counsel for the petitioner submitted that the petitioner has apprehension that warrant of arrest may be issued against him. There is change of circumstances, thus respondents are not entitled for maintenance.

5. Counsel for the respondents submitted that application for issuance the warrant of arrest against petitioner is still pending before the Family Court and no cause of action arises to him hence instant petition may be dismissed.

6. In **Parbatbhai Aahir v. State of Gujarat**, [(2017) 9 SCC 641], the Hon'ble Supreme Court has had an occasion to consider whether the High Court can quash the FIR/complaint/criminal proceedings, in exercise of the inherent jurisdiction under Section 482 Cr.P.C. Considering a catena of decisions on the point, the Hon'ble Supreme Court summarised the following propositions:

“(1) Section 482 CrPC preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognises and preserves powers which inhere in the High Court.

(2) xxx xxx xxx

(3) In forming an opinion whether a criminal proceeding or

complaint should be quashed in exercise of its jurisdiction under Section 482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power.

(4) While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised (i) to secure the ends of justice, or (ii) to prevent an abuse of the process of any court.

- (5) xxx xxx xxx
- (6) xxx xxx xxx
- (7) xxx xxx xxx
- (8) xxx xxx xxx
- (9) xxx xxx xxx
- (10) xxx xxx xxx”

7. In the matter of **Narinder Singh v. State of Punjab** [(2014) 6 SCC 466], after considering the decision in **Gian Singh v. State of Punjab**, [(2012) 10 SCC 303], in para 29.1, Their Lordships summed up as under:

“29.1. Power conferred under Section 482 of the Code is to be distinguished from the power which lies in the Court to compound the offences under Section 320 of the Code. No doubt, under Section 482 of the Code, the High Court has inherent power to quash the criminal proceedings even in those cases which are not compoundable, where the parties have settled the matter between themselves. However, this power is to be exercised sparingly and with caution.”

8. In the case in hand, it appears that application for issuance of warrant of arrest against the petitioner is pending before the Family Court. Thus, it cannot be said that petitioner has some grievance against any order of family Court passed in that application. Moreover, the matter regarding discharging the petitioner from the liability of maintenance, may be decided by same Court which had passed the order, on his application filed under the relevant provisions of Cr.P.C.

9. In the case in hand, it does not appear that there is an abuse of process in the proceedings of Family Court or intervention is necessary to secure ends of justice. Thus, looking to the aforesaid judicial precedent laid down by Hon'ble Supreme Court in the matters of

Parbatbhai Aahir (supra) and **Narinder Singh** (supra), this court finds that on the ground of abuse of process and to secure ends of justice, this Court cannot intervene in the matter which is pending before the Family Court, Raipur.

10. Looking to the above mentioned facts and circumstances of the case, this Court finds that it is not a fit case where the extra ordinary jurisdiction of Section 482, Cr.P.C. can be invoked which is invoked sparingly with care and circumspection. Consequently, the instant CRMP is dismissed at motion stage without entertaining it for final hearing.

11. In view of above, I.A. No. 1/2018 for grant of stay stands disposed of.

Sd/-
(Sharad Kumar Gupta)
Judge