

HIGH COURT OF CHHATTISGARH, BILASPUR

Order Reserved on : 14.11.2019

Order Passed on : 04/12/2019

Cr.R. 407 of 2018

- Dilip Sharma S/o Ram Lochan Sharma Aged About 49 Years R/o Flat No. 101 Vaishanodevi Niwas Plot No. 385 And 386, Sarsole Sector, -6 Police Station Nerul West Navi Mumbai 400706 Present Address R/o Flat No. 202, Chaman Heights, Chadda Badi, Nehru Nagar, Bilaspur Police Station Civil Line, District Bilaspur Chhattisgarh

---- Petitioner

Versus

1. Smt. Madhulika Sharma W/o Dilip Sharma Aged About 46 Years
2. Ku. Swati Sharma D/o Shri Dilip Sharma Aged About 17 Years
3. Shashank Sharma S/o Dilip Sharma Aged About 13 Years

(respondent No.2 and 3 minor through Natural Gaurdian Mother Madhulika Sharma)

(All are r/o H.No. HIG 1/128, Sector- 1, D.D.U. Nagar, Police Station D.D.U. Nagar, Raipur, Tahsil And District Raipur Chhattisgarh)

---- Respondents

For Petitioner	:	Mr. Vaibhav A. Goverdhan, Advocate.
For respondents	:	Mr. Pravesh Sharma, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

C A V Order

04/12/2019

1. This petition has been brought being aggrieved by the order dated 22.03.2018 passed by the learned Family Court, Raipur in M.J.C. Case No.279/2013 for allowing the application of respondents for grant of monthly maintenance.
2. Learned counsel for the applicant submits that the marriage of respondent No.1 with the applicant was performed on 26.01.1999 and out of this wedlock, respondents No.2 and 3 were born. Respondent No.1 left the house of the applicant in the year 2008 and she filed an

application under Section 125 of Cr.P.C. before the Family Court, Bilaspur and then the applicant also filed a divorce petition. Subsequently on the basis of the compromise, both the petitions were withdrawn and the applicant and respondents again started living together from April, 2012. However, respondent No.1 along with other respondents left the house of the applicant again and on May, 2013 and filed application under Section 125 of Cr.P.C. for grant of maintenance of Rs.34,000/- per month, which is the instant case. The learned Family Court has allowed the application and granted maintenance of Rs.6,000/- to respondent No.2 & 3 each, however, the prayer of respondent No.1 was rejected

3. It is submitted that the learned Family Court has not appreciated this fact that the respondent No.1 is capable to maintain herself as she is working as a teacher and has an income of Rs.20,000/- per month. This fact was also not appreciated that applicant is unemployed since 2012. Therefore, he is unable to pay maintenance as ordered. Apart from that the respondent no.1 is living separately from applicant without sufficient reason regarding which the finding of Family Court is perverse. Therefore, the impugned order suffers infirmity with illegal, incorrect and improper. Hence, it is prayed that this order be set aside.
4. Learned counsel for respondents opposes the petition and the submissions made in this respect. It is submitted that the learned Family Court has not committed any error in passing the order of maintenance against the applicant, which is based on evidence present in the record. Applicant is making false pretext of his unemployment, whereas he is a qualified person and capable to earn and provide for maintenance of the respondents. Even though the respondent No.1 has employment and source of income but her income is not sufficient for maintenance of all the respondents. Therefore, all the respondents have entitlement for

grant of maintenance and they have been granted accordingly. The impugned order which does not suffer any infirmity. Therefore, the petition be dismissed.

5. Heard learned counsel for both the parties and perused the documents on record.
6. The first ground raised by the applicant is this that he is unemployed and he has no source of income.
7. Respondent No.1 Madhulika Sharma (A.W.1) has stated before the Family Court that the applicant is qualified as I.I.T. engineer and he is given his services in Karnawat Classes in Thane having monthly income of Rs.50,000/- to Rs.60,00/- per month. She has further made this statement that she herself is working as Shiksha Karmi Grade II but her earning is not sufficient for maintenance of all the respondents. In cross-examination, she has admitted that applicant has resigned from his job in the year 2012 and expressed her ignorance regarding the unemployment of the applicant.
8. Applicant Dilip Sharma (N.A.W.-1) has stated that at the time of marriage, he was employed, however, he has left the employment in July, 2012. He has also stated that respondent No.1 has monthly income of Rs.20,000/-. In cross-examination, he has remained firm on this statement, however, he has also admitted that he is a qualified engineer.
9. The learned trial Court has dismissed the prayer of respondent No.1 and ordered payment of maintenance to respondent No.2 and 3. I do not find any reason to interfere with this finding simply because the applicant's statement about unemployment shows that he is unemployed by his choice, although he admits that he is a qualified engineer. Therefore, he has all the capability to earn and provide to his minor children, who are respondent No.2 & 3. Therefore, the ground

raised in the revision petition regarding the inability of the applicant cannot be entertained and sustained. The applicant has liability to maintain his minor children and he has capability to do so. Therefore, the finding of the learned Family Court in this respect is totally rational, correct, proper and legal.

10. The other ground raised, that the respondent No.1 is living separately without any sufficient cause, needs no consideration because there is no issue for grant of maintenance to the respondent No.1 as her prayer was dismissed in the impugned order and the respondent No.1 has not filed any revision petition challenging the same. Therefore, revision petition is without any merit which is dismissed.

11. Accordingly, the petition stands disposed off.

Monika

Sd/-
(Rajendra Chandra Singh Samant)
Judge