

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No. 852 of 2019

- Dr. Sheikh Shahid S/o Late Sheikh Majid Aged About 42 Years R/o Near Bajrang Akhara, Behind Head Post Office, Chatapara, Bilaspur, Tahsil Bilaspur And Civil And Revenue District Bilaspur Chhattisgarh

---- Petitioner

Versus

1. Smt. Shahina Tarannum D/o Iqbal Hussain Aged About 30 Years R/o Mudapar, Near Subhash Block Post Office, Korba Chhattisgarh
2. Presiding Judge Family Court, Korba

---- Respondents

For Petitioner	: Mr. K.M. Ansari & Mr. R.L. Bajpayee, Advocates.
----------------	--

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

26-11-2019

Heard.

1. This petition has been brought being aggrieved by the order dated 26.08.2019 by which the application under Section 13 of Family Courts Act, 1984 (for short 'the Act of 1984') filed by the petitioner was rejected by the learned Family Court.
2. Learned counsel for the petitioner submits that the petitioner had filed application on the ground that he is not aware of the legal law and legal procedure and he will not be able to present his case properly to defend himself. Therefore, he may be allowed to engage the counsel on his behalf. The learned Family Court held that the matter against the applicant is under Section 125 of Cr.P.C., which is not very much of technical nature and on this ground the application was dismissed.

Section 13 of Family Courts Act although restrains the parties from engaging counsel but the proviso of the same Section provides that the Court may in his own discretion appoint amicus curie to assist any of the parties. It has been noticed and discussed in the judgment of this Court in Criminal Revision No.538 of 2015 decided on 09.07.2015 placing reliance on the various judgments of High Court and Supreme Court and it was held that Section 13 of the Act does not put total embargo upon the assistance of counsel in the matters before the Family Court and it is left to the discretion of the Court to exercise the power under the proviso of Section 13 of the Act, 1984.

3. Rule 14 of Family Court Rules, 2002 also provides that the Court may permit the parties to be represented by a lawyer in Court. Such permission may be granted if the case involves complicated question of law or fact and if the Court is of the view that the party in person is not in a position to conduct his or her case adequately or for any other reasons. The reason for granting permission shall be recorded in the order.
4. The petitioner has very clearly mentioned in his application that he is unable to represent his case on the grounds of law and also unable to defend himself on the grounds of fact which has not at all been given consideration by the learned Family Court. The only reason assigned is this that the proceeding under Section 125 of Cr.P.C. is not very much technical in nature. Therefore, the inability of the petitioner/applicant has not been given any consideration, which is a necessity under Rule 14 of the learned Family Court Rules, 1984. Therefore, the application of the petitioner has not been decided by the learned Family Court in accordance with law. Hence, the petition is disposed off at motion stage. The impugned order to the extent of dismissing the application filed by

the applicant under Section 13 of Family Court Act is set aside and the learned Family Court is directed to reconsider on the same application and pass a fresh order in accordance with law as discussed hereinabove.

5. Accordingly, the petition stands disposed off.

Sd/-

(Rajendra Chandra Singh Samant)
Judge

Monika