

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (227) No. 962 of 2018**

Aminuddin S/o. Nazuddin, aged about 32 years, Technician, R/o. Near Dalla Bhawan, Jarhabhatha, Bilaspur, Tahsil and District Bilaspur (Chhattisgarh).

---Petitioner

Versus

1. Smt. Bursa Khan, aged about 30 years, W/o. Aminuddin.
2. Mohd. Rehan Khan, aged about 04 years, S/o. Aminuddin.
3. Mohd. Arham Khan, aged about 02 years, S/o. Aminuddin.

Both minor, through natural mother Smt. Bursa Khan.

All R/o. New Bus Stand, Pendra, Tahsil Pendra, District Bilaspur (Chhattisgarh)

---Respondents

For petitioner	:	Mr. K. M. Ansari, Advocate.
For State	:	Mr. A. N. Bhakta, Dy. Advocate General.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

10.01.2019

1. The respondents filed an application before the court of Judicial Magistrate Class-I, Pendra Road under Section 125 of Code of Criminal Procedure, 1973 claiming maintenance against her husband, the petitioner herein. He, after appearing in the said proceeding, filed an application under Section 7 of the Family Courts Act, 1984 read with Section 151 Code of Civil

Procedure, 1908 stating *inter alia* that the Court (JMFC, Pendra Road) has no jurisdiction to entertain the application for maintenance in view of constitution of Family Court under Section 7 of the Act and jurisdiction of this Court is barred. That application was rejected by the learned Judicial Magistrate holding that it is a case transferred by Chief Judicial Magistrate, Bilaspur as per distribution memo (criminal) and therefore application has no force and accordingly rejected that application by the impugned order. Questioning that order the instant writ petition has been preferred.

2. Mr. K. M. Ansari learned counsel for the petitioner would submit that the learned Magistrate is absolutely unjustified in rejecting the application as that Court has no jurisdiction to entertain the application, he would further submit that in view of constitution of Family Court under Section 7 of the Act that Family Court alone has jurisdiction to entertain the proceeding for maintenance by virtue of Section 7(2)(a) of the Act and by virtue of Section 8(b) of the Act jurisdiction of the learned Magistrate is barred, therefore learned Magistrate is absolutely unjustified in rejecting the application filed by the petitioner. As such the impugned order is liable to be set aside.

3. I have heard the learned counsel for the petitioner on the question for admission and went through the record with utmost circumspection.

4. The Family Courts Act, 1984 has been constituted to provide for the establishment of Family Courts with a view to promote conciliation in, and secure speedy settlement of disputes relating to marriage and family affairs

and for matters connected therewith.

5. Sections 7 and 8 of the Act, 1984 provides as under:-

“7. Jurisdiction.”- (1) Subject to the other provisions of this Act, a Family Court shall-

- (a) have and exercise all the jurisdiction exercisable by any district court or any subordinate civil court under any law for the time being in force in respect of suits and proceedings of the nature referred to in the explanation; and
- (b) be deemed, for the purposes of exercising such jurisdiction under such law, to be a district court or, as the case may be, such subordinate civil court for the area to which the jurisdiction of the Family Court extends.

8. Exclusion of jurisdiction and pending proceedings- Where a Family Court has been established for any area,-

- (a) xxx xxx xxx
- (b) no magistrate shall, in relation to such area, have or exercise any jurisdiction or power under Chapter IX of the Code of Criminal Procedure, 1973.”

6. A careful perusal of the aforesaid provision would show that where the Family Court has been constituted for an area under Section 7 of the Act, 1984, the Family Court shall have exercised all the jurisdiction exercisable by any District Court including the jurisdiction exercisable by Magistrate of First Class under Chapter-IX (relating to order for maintenance of wife, children and parents) of Code of Criminal Procedure, 1973, then by virtue of provisions contained in Section 8(b) of Act no Magistrate shall in relation to such area, have or exercise any jurisdiction or power under Chapter IX of the Code of Criminal Procedure, 1973 and jurisdiction of Magistrate is expressly barred in that respect.

7. The question is whether Family Court has been constituted under

Section 7 of the Act for Pendra Road Area, where the application for maintenace under Section 125 of the Cr.P.C. was filed by respondents.

8. Mr. Bhakta, leanred Dy. Advocate General has brought to my attention the order dated 22.08.2007 issued by the government of Chhattisgarh constituting Family Court for Bilaspur District which states as under:-

**GOVERNMENT OF CHHATTISGARH
LAW & LEGISLATIVE AFFAIRS DEPARTMENT, MANTRALAYA
MAHANADI BHAWAN, NAYA RAIPUR (C.G.) 492002**

ORDER

Raipur, dated 22.08.2017

F.No.7797/2432/XXI-B/C.G./2007, In exercise of the powers conferred by sub-section (2) of Section 4 of the Family Courts Act, 1984 (No. 66 of 1984) and in constitution with the High Court of Chhattisgarh, the State Government, hereby, makes the following further amendment in this Department's Notifications No. 1507/D-397/XXI-B/C.G./05, dated 24.02.2005, 6232/D-2011/XXI-B/CG./09, dated 05.09.09, 8269/2675/XXI-B/C.G./15, dated 25.08.2015 and hereby specifies the jurisdiction of the Courts established vide this department order No. 6857/2154/XXI-B/C.G./2017 dated 22.07.2017, namely:-

AMENDMENT

In Schedule-II of the said notification,-

1. After serial No.6 and 18, the following is hereby added, namely:-

S. No.	Name of the Court and District	Headquarter	Jurisdiction
(1)	(2)	(3)	(4)
6-A	Additional Principal Judge, Family Court, Bilaspur	Bilaspur	Revenue District Bilaspur (Except the jurisdiction of Civil Court Pendra Road) Note: He shall try cases transferred by the Principal Judge, Family Court, Bilaspur.
19	Judge, Family Court, Bemetara	Bemetara	Revenue District, Bemetara

By order and in the name of the
Governor of Chhattisgarh.

Sd/-

(Ravishankar Sharma)
Principal Secretary

Government of Chhattisgarh
Law and Legislative Affairs Department

9. From the careful perusal of the aforesaid order it appears that Family Court has been constituted for the Bilaspur District Headquarter at Bilaspur for the Revenue District Bilaspur under Section 7 of the Act, 1984 but the jurisdiction of the Civil Court Pendra Road has been excluded meaning thereby for the Pendra Road area no Family Court under Section 7 of the Act, 1984 has been constituted to try the application under Section 125 of CrPC and as a necessary corollary the Judicial Magistrate at Pendra Road shall have the jurisdiction to try the application under Section 125 of Cr.P.C. and therefore the learned Magistrate Pendra Road is absolutely justified in rejecting the application filed under Section 7 of the Family Courts Act, 1984.

10. I do not find any perversity or illegality in the impugned order warranting interference under Article 227 of the Constitution of India and the instant writ petition deserves to and accordingly dismissed leaving the parties to bear their own cost(s).

11. A copy of this order be sent to the concerned Magistrate for needful & compliance by E-mail / FAX.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-