

HIGH COURT OF CHHATTISGARH, BILASPUR

Cr.R. No.308 of 2019

- Mohammed Hussain S/o Ahmed Hussain Aged About 34 Years
Occupation Railway Servant, R/o New Loco Colony, Bilaspur Office
Address Singla And Telecom (M And T) Construction Office, Near
Railway Zone, South-East Mid. Railway, Bilaspur, Police Station Torwa,
Tahsil And District Bilaspur Chhattisgarh

---- Petitioner

Versus

- Smt. Jaismin Hussain @ Jyotsana Lal c/o Ushalal, behind S.B.R.
College, near Prabhat Thekedar, Jarhabhata, Omnagar, Bilaspur, Thasil
& District, Bilaspur, C.G.

---- Respondent

For Petitioner : Mr. Syed Ishhadil, Advocate.

For Respondent : Mr. Harshal Chouhan, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

10/02/2020

1. This petition has been brought the against the order dated 18.01.2019
passed in M.J.C. No.219/2017, by the Family Court, Bilaspur, District-
Bilaspur, C.G., ordering the applicant to pay maintenance of Rs.6,000/-
to his wife, the respondent.
2. Learned counsel for the petitioners submits that the impugned order is
erroneous and is based on conjuncture and surmises. The grounds
raised by the applicant is that the respondent has left the company of
the applicant and is residing with her parents without any sufficient
cause. Section 22 of the Special Marriage Act, 1954 very clearly
provides that when either the husband or the wife has without

reasonable excuse withdrawn from the society of the other, the other party may apply for restitution of conjugal rights. The applicant had filed such application in which the learned Family Court, Bilaspur has held in the order dated 09.01.2020 that respondent is living separately without any sufficient cause and thus has deprived her company to the applicant. That being the finding of a civil nature has a binding effect on the order which may be made in the proceeding under Section 125 of Cr.P.C., therefore, it is prayed that the impugned order be set aside.

3. Learned counsel for the respondent opposes the submissions and submits that the respondent is intending to file appeal against the order of Family Court passed in Civil Suit No.355A/2017 decided on 09.01.2020. It is further submitted that the passing of this order has no effect on the present order passed in the proceeding under Section 125 of Cr.P.C.
4. Heard learned counsel for both the parties and perused the documents present on record.
5. In the impugned order, the learned Family Court has held that according to evidence present that this applicant had relations with other women because of which their living together was not possible and on that basis, the order of maintenance was passed. This order has been passed on 18.01.2019 whereas the order in the application under Section 22 of Special Marriage Act has been passed on 09.01.2020 that is almost after one year. Therefore, the finding which has been given in the order dated 09.01.2020 was not before the Family Court at the time of the decision of application under Section 125 Cr.P.C. However, if the applicant intends to make use of the grounds available to him, subsequent to the passing of order under Section 22 of Special Marriage Act, in that case, he has option to file an application under

Section 127 of Cr.P.C. before the same Court. A Revision Court cannot travel beyond the sum and substance of the case which was present at the time of the passing of impugned order. Therefore, for this reason, this petition having been argued only on the basis of the subsequent events, it is found that this argument cannot be entertained in this petition.

6. After examining the other evidence present on record of the proceedings, I am of this view that the learned Family Court has not committed any error in passing the impugned order, therefore, this revision petition is without any substance which is dismissed at motion stage.
7. Accordingly, the petition is disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge