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HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 882 of 2019

- Manoj Chaurasiya S/o Bedram Chaurasiya, Aged About 31 Years, R/o Infront of Bedulu Auto Centre, Old Police Station, Pahadi Chowk, Gudhiyari Raipur, District - Raipur Chhattisgarh. Present Address – M.I.G. 65, Street No. 03, Nehru Nagar, Police Station - Civil Lines, Bilaspur District - Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh

---- Applicant

Versus

- Smt. Preeti Chaurasiya W/o Manoj Chaurasiya, Aged About 32 Years, D/o Shri B.R. Manhar (Retired from Army), Presently residing at Amba Niwas, House No.492, Ward No.40, Swami Vivekanand Nagar, Near Old Railway Pump House, Torwa, Police Station - Torwa, Bilaspur District - Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh

---- Non-applicant/Respondent

For Applicant : – Shri Sabyasachi Bhaduri, Advocate.
For Respondent/Non-applicant: – Shri Vivek Kumar Shrivastava, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant
Order on Board

04/03/2020

1. This criminal revision has been brought challenging the order dated 03-06-2019 passed by the Family Court Bilaspur in Criminal MJC No.674/2015 directing the applicant to pay maintenance of Rs.7000/- to the respondent/non-applicant.

2. The non-applicant/respondent claiming herself to be wife of the applicant filed an application under Section 125 of the Cr.P.C. stating her inability to maintain herself and capability of the applicant to pay maintenance, praying for grant of maintenance. The learned Family Court after completion of the inquiry passed the impugned order.

3. It is submitted that the learned Court below has not appreciated the

facts and circumstances and evidence present and passed the impugned order. The applicant was earlier employed as Constable in Railways Police Force, but subsequent to that, the applicant has suffered severe accident and is bed ridden, hence, he is not getting any salary regarding which salary slips had been produced before the Family Court. Learned Family Court has not taken into consideration incapability of the applicant to pay maintenance to the non-applicant/respondent and passed the erroneous order in an arbitrary manner.

Placing reliance on the judgment of Hon'ble the Supreme Court delivered in the matter of **Manik Kutum Vs. Julie Kutum**, 2019 SCC OnLine 336, it is submitted that Hon'ble the Supreme Court has held that remand of any case is required only when some factual inquiry is required to be held to decide any factual issue involved in the case which cannot be undertaken at the revision stage. It is submitted that in this particular case such inquiry is required, therefore, the revision petition be allowed and the matter be remanded back to learned Family Court with a direction to make inquiry of the capability of the applicant to pay maintenance to the respondent/non-applicant.

4. Learned counsel for the respondent opposes the petition.

5. Heard learned counsel for the parties and perused the documents.

6. It is not disputed by the applicant that the respondent/non-applicant is his married wife. Although grounds are raised on the point of incapability of the respondent/non-applicant to maintain herself, but there is no such conclusion in the impugned order and also that the respondent/non-applicant has herself deserted the applicant was not

considered in the impugned order. The main ground in issue in this revision petition is based on capability of the applicant to pay maintenance.

7. On perusal of the evidence present in the record of the proceeding, it is found that the respondent/non-applicant has stated before the Court regarding reasons why she was living separately, her incapability to maintain herself and the income of the applicant in capacity of Constable of RPF. In her cross-examination she has denied knowledge that her husband has become disabled due to accident and is on continuous medical leave and that he has been declared unfit by his department. She has also denied knowledge that the applicant is not getting any salary. She has denied the suggestion about her earnings.

The applicant has stated in his examination-in-chief contradicted the statement of the respondent/non-applicant side and there is also mention regarding disablement of the applicant and also that he has been declared unfit for duties and not getting any salary. In cross-examination the applicant was questioned regarding non-production of the documents, on which he replied that he has produced the same, but the documents produced by him were not exhibited.

8. On perusal of the record of the proceeding, it is found that the documents to which the applicant is referring are filed, but the applicant himself did not make any offer to prove the documents filed by him. Looking to the possibility on the part of the applicant that he could have brought evidence if properly advised for the purpose of proving his case, hence, this appears to be a matter in which the case should be remanded, so that the applicant who is claiming to be in a

particular situation, he should able to prove the same. Hence, the revision petition is allowed at motion stage. The impugned order is set aside. In the meanwhile, the interim order that was earlier existing shall continue until the case is concluded before the Family Court. The Family Court is directed to afford opportunity to the applicant to produce evidence regarding his disability and income and subsequent to that, the respondent/non-applicant side may also be given the opportunity to rebut the evidence brought by the applicant side and then a fresh order be passed in accordance with law.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Aadil