

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CR.R. No. 1456 of 2019

Ashish Agrawal, S/o. Shri Harishchandra Agrawal, Occupation Service, Sukunat - A - wig, Flat No. 208, Mark - 1, Society Wakad Pune Maharashtra.

---- Applicant

Versus

1. Smt. Richa Agrawal, W/o. Shri Ashish Agrawal Aged About 35 Years
2. Minor Ayansh Agrawal (Special son with disability of artistic spectrum disorder), S/o. Shri Ashish Agrawal, aged About 03 Years, Through Natural Guardian Smt. Richa Agrawal,

Both presently R/o. Father Shri K.B. Gupta, Flat No. 207, Grand Tower, Akalantika, Nearby T.V. Tower, Shanker Nagar, Raipur, District Raipur Chhattisgarh.

-----Respondents

For Applicant	: Mr. H.B. Agrawal, Sr. Advocate with Mrs. Preeti Yadav, Advocate
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For Respondents	: Mr. Lukesh Kumar Mishra, Advocate
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Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

18/11/2020

1. This criminal revision has been brought against the order dated 17.10.2019, passed by the learned First Additional Principal Judge, Family Court, Raipur, District – Raipur (C.G.) in M.J.C.

Case No.137/2019, passing orders for grant of maintenance of Rs.15,000/- per month to respondent No.1 and Rs.10,000/- per month to respondent No.2 during the pendency of maintenance proceeding.

2. It is submitted by the counsel for the applicant that the order passed by the learned Family Court is erroneous. This fact was overlooked that the respondent No.1 is living separately without any sufficient cause. As decree has been passed in favour of the applicant under Section 9 of Hindu Marriage Act against the respondent No.1, granting relief of restitution of conjugal rights on 25.06.2018, the respondent No.1 has refused to comply with that order in the decree. It is further submitted that the learned Family Court has made erroneous assessment regarding the income of the respondent No.1, regarding which, the applicant had pleaded that respondent No.1 is employed as Assistant Professor in Disha College, Raipur and getting a salary of Rs.45,000/- per month. Therefore, the order passed is unsustainable. Interference is prayed for.
3. Counsel for the respondents submits that the learned Family Court has correctly passed the order, which needs no interference. In fact the petitioner has created a ground for obtaining divorce from the respondent No.1, as he has filed divorce petition immediately after the decree in the civil suit for restitution of conjugal rights was passed. This decree was obtained ex-parte without notice to the respondent No.1. Hence,

it is a false claim made by the petitioner. The respondent No.1 has made clear allegation against the petitioner of the ground and the reasons because of which she is compelled to live separately. As regards the income of the respondent No.1, it is submitted that she is not having any permanent employment. She is summoned as guest lecturer in Disha College and for that she is getting only Rs.300/- for per lecture. Hence, the income received by her is not sufficient for her maintenance. This fact has been discussed by the learned Family Court in the impugned order. Reliance has been placed on the judgment of Supreme Court in **Sunita Kachawaha Vs. Anil Kachhwaha**, reported in **(2014) 16 SCC 715**, the judgment of M.P. High Court in **case of Rambali Saket Vs. Anju Saket**, in **Cr.R. No.2917 of 2015 decided on 20.06.2017** and the judgment of Andhra Pradesh High Court in case of **Maddina Subbamma Vs. Maddina Venkateshwarlu & State**, reported in **1992 (2) ALT 433** and submitted that merely because a decree has been passed for restitution of conjugal rights, the entitlement of the wife to receive maintenance from her husband does not come to an end. Hence, it is prayed that the petition be dismissed.

4. I have heard the learned counsel for the parties and perused the documents placed on record.
5. Considered on the submissions and perused all the documents present in the record. It has been observed by the High Court of Madhya Pradesh in **Rambali Saket (supra)** and in the judgment

of Andhra Pradesh High Court in case of **Maddina Subbamma (supra)** that passing of a decree of restitution of conjugal rights against the wife by itself is not a bar for her claiming maintenance under Section 125 of Cr.P.C.. The respondent No.1 has disputed the decree against her by making a statement that this decree was passed ex-parte without notice to her, which may be established by her in the proceeding. Therefore, this statement made by the applicant side does not have any force and it will be premature to draw a conclusion that the respondent No.1 is living separately without any sufficient cause and therefore, it is a case under exception as provided under Section 125 (4) of Cr.P.C., which can be decided only after the parties lead evidence in the case.

6. Considered on the other grounds regarding monthly income of respondent No.1 raised by the applicant. The claim made by the applicant that respondent No.1 is drawing a salary of Rs.45,000/- per month is not supported with any documentary evidence, which has been discussed in the impugned order, that respondent No.1 is engaged as guest faculty and she received only Rs.300/- for per lecture delivered by her, therefore, there is nothing to suggest that respondent No.1 has any permanent employment and that she received a monthly salary of Rs.45,000/-. It is open for the applicant to bring evidence in support of his pleading in the proceeding but for the present, there appears to be nothing on the basis of which, it can be held

that respondent No.1 has sufficient source of income to maintain herself. The applicant has admittedly made a statement that he has monthly income of Rs.87,000/- per month, therefore, his capability to pay the interim maintenance is found to be established for the present.

7. After considering on the submissions and on the basis of the discussion made herein above, I am of this view that this petition is without any substance, which is dismissed accordingly.

Sd/-
(Rajendra Chandra Singh Samant)
Judge