

HIGH COURT OF CHHATTISGARH, BILASPUR**Cr.M.P. No. 2741 of 2019**

Ramkumar Chandra, S/o- Nehrulal Chandra, Aged about 35 years, caste – Chandra, R/o Village – Pihreed, P.S.- Malkharouda, District Janjgir-Chama, (C.G.)

-----Petitioner/Non-applicant

Versus

Smt. Malti Chandra, W/o – Ramkumar Chandra, Aged about 26 years, R/o- Village – Pihreed, P.S.- Malkharouda, District – Janjgir-Champa (C.G.)

----- Respondent/Applicant.

For Petitioner	:	Mr. Pawan Shrivastava, Advocate.
For Respondent	:	None present.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

03/01/2020

1. Heard on admission as well as on I.A. No. 1, application for grant of stay.
2. Learned counsel appearing for the petitioner/husband would submit that trial Magistrate has committed illegality in granting interim maintenance under Section 125 of the Code of Criminal Procedure, 1973 (henceforth "Code") to the respondent/wife herein ignoring the fact that decree of divorce has already been granted between them and application under Section 9 of the Hindu Marriage Act for restitution of conjugal rights has already been allowed by the Family Court, Shakti vide order dated 05.04.2016 passed in Civil Suit No. 44-A of 2015, as such, order granting maintenance is liable

to be dismissed. He placed reliance upon the order of this Court dated 18.07.2018 passed in FAM No. 199 of 2018 (Smt. Malti Chandra Vs. Ramkumar Chandra) in support of his submission.

3. I have heard learned counsel appearing for the petitioner/husband and perused the material available on record.

4. Learned Family Court has only granted application for interim maintenance to the tune of Rs.2,500/- per month from the date of its order and has also considered the plea of petitioner that the divorce has already been taken place between them and rejected the application in view of the explanation appended to Section 125 (1) of the Code, by which, wife includes divorced wife; and also recorded a finding that respondent has not remarried and, therefore, she is entitled for interim maintenance.

5. The trial Magistrate, while considering all aspects of the matter, has only recorded a *prima facie* finding that respondent being the wife of the petitioner is entitled for interim maintenance during the trial of original main maintenance proceedings, which cannot be said to be perverse or contrary to law. However, all the contentions are open to be raised by the petitioner/husband during the trial of main maintenance proceeding. The said finding has been affirmed by the revisional Court, on a revision preferred by the petitioner, as such, I do not find any illegality or

perversity in the impugned order warranting interference under Section 482 of the Cr.P.C.

6. Consequently, the petition, being devoid of substance, is liable to be and is hereby dismissed. However, the petitioner is at liberty to raise all the pleas by filing reply during the trial of main maintenance proceeding, if already not filed, and that will be considered by the trial Magistrate in accordance with law.

Sd/-
(Sanjay K. Agrawal)
Judge

D/-

