

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No.62 of 2021

- Smt. Yogeshwari Verma @ Puja Verma W/o Bhagirathi Verma, Aged About 25 Years R/o Village Kandai, Tahsil Saja, District- Bemetara, Chhattisgarh

---- Petitioner

Versus

- Bhagirathi Verma S/o Shri Pekharam Verma, Aged About 28 Years R/o Village Sajan, Tahsil Thankhamaria, District- Bemetara, Chhattisgarh

--- Respondent

For Petitioner

– Mr. Varun Sharma, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

04-02-2021

Heard.

1. This Writ Petition has been filed being aggrieved by the order dated 15.12.2020 passed by the learned Family Court in Civil Suit Class A/61/2019 dismissing the application of the petitioner praying to close the opportunity of cross-examination of the respondent.
2. It is submitted by the learned counsel for the petitioner that on her application under Section 125 of Cr.P.C. filed as M.J.C. No.8/2018, the petitioner has granted maintenance, according to which, the respondent has been directed to make payment of maintenance of Rs.3,000/- per month. The respondent is not making any payment on the basis of that order, therefore, the application was filed praying that because of the default of the respondent side, his opportunity to cross-examine the witnesses of the petitioner in the divorce petition be closed. The learned Family Court has held that proceedings under Section 125(3) Cr.P.C. is

a separate proceeding and, therefore, on the ground of default of the respondent and that the order mentioned in the application cannot be passed in the present case and the application was rejected.

3. It is submitted by the learned counsel for the petitioner that in the case of **Rajnish Vs. Neha and another** reported in 2020 SCC OnLine SC 903, in which it has been held that in enforcing the order of maintenance passed by the Court, the order for striking off the defence of the respondent can be passed as a last resort. Therefore, the present case is a similar case, in which the application of the petitioner should have been allowed by the learned Court and the opportunity of respondent to present his case may have been closed.
4. Considered on the submissions, the respondent has filed a separate petition under Section 13 of Hindu Marriage Act, praying for decree of divorce against the petitioner, in which this application was filed by the petitioner which has been rejected by the impugned order. The proceeding under Section 125 of Cr.P.C. was a separate proceeding in M.J.C. No.8/2018 decided on 30.10.2018. Therefore, it is clear that there is no order passed in the present divorce case against the petitioner for making any compliance. The provisions of C.P.C. are applicable to a proceeding before the Family Court, according to Section 10 of the Family Courts Act, 1984. It appears that the petitioner has not moved any application in the divorce petition for grant of maintenance.
5. In the case of Rajnish Singh (supra), the matter before the Court was under Section 125 Cr.P.C. in which order of interim maintenance passed was not complied by the non-applicant husband. In the present case, no such order of maintenance is passed in the divorce petition filed by the respondent, hence, the scope of exercising the power to strike off the

defence of the respondent side is not available in this case. The grievance of the petitioner is with respect to the order passed in a separate proceeding the M.J.C. No.8/2018, for which the petitioner has remedy of filing application under Section 125(3) of Cr.P.C., which has already been filed and pending. Hence, the remedy being available to the petitioner in that form, the prayer made in this case of divorce petition by the petitioner side could not have been entertained. Thus, I am of the view that the order passed by the learned Family Court is correct. There is no need of interference. The revision petition being sans merit is liable to be dismissed at motion stage and it is accordingly dismissed.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Monika