

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 87 of 2021

Gaurav Agrawal S/o Ashok Kumar Agrawal Aged About 31 Years R/o Ward No. 34, Tikarapara, Mannu Chowk, Police Station City Kotwali, Bilaspur Chhattisgarh.

---- Petitioner/ Applicant

Versus

Smt. Sneha Agrawal S/o Shri Om Prakash Agrawal Aged About 29 Years R/o Ward No. 03, Kantabhanji, Balangir (Odisha), District : Balangir, Orissa.

---- Respondent/ Non-applicant

For Petitioner	: Shri Syed Majid Ali, Advocate.
For the Respondent	: Shri Ishwar Jaiswal, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

15-2-2021

Heard.

1. By this petition under Article 227 of the Constitution of India, the petitioner seeks indulgence of this Court to interfere with the impugned order dated 4.1.2021 passed by the Family Court, Bilaspur in Civil Suit No.177A of 2020.
2. The petitioner and the respondent have filed an application under Section 13B of the Hindu Marriage Act, 1955 praying for divorce on mutual consent. This application was filed on 18.9.2020. Although the same was entertained by the Court, which was not registered, therefore, W.P.(227) No. 456 of 2020 was filed by the petitioner and the respondent jointly before this Court, which was disposed of on 5.11.2020 directing the Family Court to register the application. Subsequent to this order, the petition has been registered. An application was filed making a prayer to waive the mandatory period of

six months as provided under Section 13B of the Hindu Marriage Act, 1955 (for short 'the Act, 1955), which has been dismissed by the impugned order.

3. It is submitted by counsel for the petitioner that the judgment of the Supreme Court in the case of **Amardeep Singh vs. Harveen Kaur**, reported in **(2017) 8 SCC 746** was cited before the Family Court but the ratio laid down in that judgment was not followed and the order of rejection has been erroneously passed. It is further submitted that the Coordinate Bench of this Court, in the order dated 23.4.2018 passed in W.P.(227) No.353 of 2018, referring to the judgment of **Amardeep Singh** (supra) has passed the order to waive the cooling-off period of six months under Section 13B of the Hindu Marriage Act, 1955. Hence, it is submitted that the application for waiving off the cooling-off period deserves to be allowed and therefore, this petition may be allowed by quashing the impugned order and relief be granted to the petitioner.
4. Learned counsel for the respondent has no objection.
5. Considered the submissions. Sub-section (2) of Section 13B of the Hindu Marriage Act, 1955 is as follows:

'13B. Divorce by mutual consent.--(1) xxxx

(2) On the motion of both the parties made not earlier than six months after the date of the presentation of the petition referred to in sub-section (1) and not later than eighteen months after the said date, if the petition is not withdrawn in the meantime, the court shall, on being satisfied, after hearing the parties and after making such inquiry as it thinks fit, that a marriage has been solemnised and that the averments in the petition are true, pass a decree of divorce declaring the marriage to be dissolved with effect from the date of the decree.'

6. In the case of **Amardeep Singh** (supra), the Supreme Court has held in paragraph 18 is as follows:

'18. Applying the above to the present situation, we are of the view that where the Court dealing with a matter is satisfied that a case is made out to waive the statutory period under [Section 13B\(2\)](#), it can do so after considering the following :

- i) the statutory period of six months specified in [Section 13B\(2\)](#), in addition to the statutory period of one year under [Section 13B\(1\)](#) of separation of parties is already over before the first motion itself;
- ii) all efforts for mediation/conciliation including efforts in terms of Order XXXIIA Rule 3 CPC/[Section 23\(2\)](#) of the Act/[Section 9](#) of the Family Courts Act to reunite the parties have failed and there is no likelihood of success in that direction by any further efforts;
- iii) the parties have genuinely settled their differences including alimony, custody of child or any other pending issues between the parties;
- iv) the waiting period will only prolong their agony.'

7. As per the ratio laid down and as per the directions in **Amardeep Singh** (supra), on the first date of motion the statutory period of one year under Section 13B(1) of the Act, 1955 and the statutory period of six months under Section 13B(2) of the Act, 1955 must be over and it is only after that the further waiting period has been directed to be cut short. Hence, the present case has to be examined accordingly.
8. On perusal of the documents and the petition, it would be seen that the marriage of the petitioner with the respondent was performed on 25.1.2019. The application for divorce by mutual consent was filed on 18.9.2020. On this date, the duration of marriage of the petitioner with the respondent was about 20 months. The requirement for filing a

petition under Section 13B(1) of the Act, 1955 is that one year of marriage must have completed. Further, the cooling-off period prescribed under Section 13B(2) of the Act, 1955 is six months. This petition for divorce by mutual consent was filed after completion of duration as prescribed under Section 13B(1) and 13B(2) of the Act, 1955.

9. Hence, in this case, the circumstances were present to follow the directions given by the Apex Court in the case of **Amardeep Singh** (supra). Hence, I am of this view that the learned Court has erred in not following the ratio laid down by the Supreme Court in the case of **Amardeep Singh** (supra). Therefore, the petition is allowed and disposed of at motion stage. The impugned order is quashed and the prayer of the applicant and the petitioner for waiving off the cooling-off six months as provided under Section 13B(2) of Hindu Marriage Act, 1955 is allowed. Learned Family Court is now directed to proceed with hearing of the case in accordance with law.

Sd/-
(**Rajendra Chandra Singh Samant**)
Judge