



**MADHYA PRADESH STATE JUDICIAL ACADEMY  
HIGH COURT OF M.P., JABALPUR**

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## *Restitution of conjugal rights*

### **1. POINT INVOLVED**

Section 125 of the Criminal Procedure Code, 1973  
– Decree for restitution of conjugal rights.

**Parties** – *Madhu @ Sanjeev Kumar v. Smt. Lalita Bai*

**Reported in** – 2000 (1) MPLJ 76

Decree for restitution of conjugal rights obtained by husband on 19-3-1997. In petition by wife filed in 1995 for interim maintenance passed by Magistrate on 16-4-1998. Non-compliance of decree for restitution alleged. Question of maintenance to the wife after decree for restitution of conjugal rights is passed in favour of the husband against the wife and non-compliance by her generally depends on the circumstance whether the husband is creating such a situation that the wife is unable to comply with the decree or whether the wife is deliberately not complying the decree instead of husband's wish to live with the wife. Paragraph 6 of the judgment is reproduced:- The law, as seen, appears to be that even after decree of conjugal rights is obtained by the husband and it is he who is creating situation that the wife is not in a position to comply with the decree, then the right of the wife for maintenance cannot be taken away. But if the wife is in fault, which may appear from non-compliance of the decree of conjugal rights, then she may be disentitled. But those aspects will be tried during the hearing of the petition under section 125, Criminal Procedure Code. In the present case the impugned order is of interim maintenance. The question would be whether the wife is actually not complying with the decree or the husband is complying with the decree or creating conditions where compliance is not possible. All these would be decided by the trial magistrate. But in these circumstances it would be just and proper that a husband pays maintenance to the wife Rs. 200/-. By so paying he will be showing his bona fides, to maintain his wife even when during conjugal relationship is restored. After all a husband spends on the wife

when she lives with him. Considering these aspects, this court feels that the justice of the matter would not require that the impugned order should be interfered with. But at the same time this situation should not be allowed to keep on running indefinite to the woe of the husband. It is therefore directed that while this petition is being dismissed, it is ordered that the trial magistrate shall proceed with the trial and complete it within 6 months. Neither the husband or the wife would be entitled to delay the trial in any manner or to seek adjournment for mere absence of lawyers and they will see that their witnesses are present on the dates fixed for hearing of the petition. The trial magistrate shall not adjourn the matter for more than 1 month for any hearing and complete it within 6 months after receiving a copy of this order. If the wife deliberately delays, the trial the husband will be entitled to approach the magistrate for reconsideration of the order of interim maintenance.

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## **2. POINT INVOLVED**

Section 125 of the Criminal Procedure Code, 1973  
– Wife not complying with the decree of restitution of conjugal rights whether entitled to maintenance u/s 125? Held, No.

**Parties** – *Balakram v. Smt. Durga Bai and others*

**Reported in** – 2007 (1) MPWN 10

Non-appellants No. 1 to 4 filed a petition under section 125 of the CrPC for grant of maintenance against the petitioner. Respondent No. 1 claims herself to be the wife and other respondents claim themselves to be the children of the petitioner. The petition was combated by the petitioner. After trial, the trial Court recorded the findings that the petitioner having sufficient means neglected or refused to maintain his wife and children and granted maintenance @ Rs. 500/- per month to wife and @ Rs. 300/- per month to each of respondents No. 2, 3 and 4. Being aggrieved by the judgment of the trial

Court, petitioner filed a revision before IIIrd Additional Sessions Judge, Chhindwara which was also dismissed. It is this order of the revisional Court which is the cause of grievance of the petitioner. The counsel for the petitioner submits that a plea was raised by the petitioner before the trial Court that he is prepared to maintain his wife on condition of her living with him. He also obtained a decree for restitution of conjugal rights vide judgment and decree dated 3.5.1994, passed by District Judge, Chhindwara. Despite this decree respondent No. 1 did not come to live with him. In this view of the matter the orders of both the Courts below are liable to be set aside. ... The petitioner filed a copy of decree for restitution of conjugal rights which was exhibited as document D-1. But this document was not considered at all either by the trial Court or by the revisional Court. Where the decree for restitution of conjugal rights was passed in favour of the applicant and against the wife and despite this decree the wife did not go to live with the husband, the husband was not under an obligation to maintain her (wife)....

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### **3. POINT INVOLVED**

Section 18 of the Family Courts Act, 1984 –  
Decree for restitution of conjugal rights, execution of - Reasonable cause to live separately because of bitter relations - Court can refuse to execute decree.

**Parties** – *Shailendra Koshti v. Smt. Kavita Koshti*

**Reported in** – 2006 (4) MPHT 391

Decree of restitution of conjugal rights can be executed as against the property of party refusing to comply with it without there being reasonable cause. The Apex Court in *Smt. Saroj Rani vs. Sudarshan Kumar Chadha, AIR 1984 SC 1562* held thus:-

"17. It is significant to note that unlike a decree of specific performance of contract, for restitution of conjugal rights, the sanction is provided by Court where the disobedience to such a decree is wilful, i.e. is deliberate, in spite of the opportunities and there are no other impediments, might be enforced by attachment of property. So the only sanction is by attachment of property against disobedience of a decree for restitution of conjugal rights where the disobedience follows as a result of a wilful conduct, i.e., where conditions are there for a wife or a husband to obey the decree for restitution of conjugal rights but disobeys the same in spite of such conditions, then only financial sanction, provided he or she has properties to be attached, is provided for. This is so as an inducement by the Court in appropriate case when the Court has decreed restitution for conjugal rights and that the Court can only decree if there is no just reason for not passing decree for restitution of conjugal rights to offer inducement for the husband or wife to live together in order to give them an opportunity to settle up the matter amicably. It serves as social purpose as an aid to the prevention of break up of marriage. It cannot be viewed in the manner the learned Single Judge of Andhra Pradesh High Court has viewed it and we are therefore, unable to accept the position that Section 9 of the said Act is violative of Art. 14 or Art. 21 of the Constitution if the purpose of the decree for restitution of conjugal rights in the said Act is understood in its proper perspective and if the method of its execution in cases of disobedience is kept in view."

In view of the aforesaid dictum, it is clear that in case there is reasonable cause not to live together after restitution of conjugal rights decree, parties cannot be forced to live together and execution of the decree can be declined. In the instant case, when facts are considered, case of dowry prohibition has reached the advance stage against the petitioner, his parents and brother, evidence has already been recorded, yet another case under Section 306 of IPC is pending consideration against husband and husband has also filed case under Sections 420, 467 and 468 against the wife and case for divorce filed by wife is also pending. Thus, in the circumstances it cannot be said that refusal to live together is not based on reasonable cause. There is reasonable cause to live separately, hence the learned Family Court is right in not executing the decree, thus I find no merit in this petition...

#### **4. POINT INVOLVED**

Section 9 of the Hindu Marriage Act –Decree for restitution of conjugal rights.

**Parties** – *Madhu @ Sanjeev Kumar v. Smt. Lalita Bai*

**Reported in** – 2000 (1) MPLJ 76

Decree for restitution of conjugal rights obtained by husband on 19-3-1997. In petition by wife filed in 1995 for interim maintenance passed by Magistrate on 16-4-1998. Non-compliance of decree for restitution alleged. Question of maintenance to the wife after decree for restitution of conjugal rights is passed in favour of the husband against the wife and non-compliance by her generally depends on the circumstance whether the husband is creating such a situation that the wife is unable to comply with the decree or whether the wife is deliberately not complying the decree instead of husband's wish to live with the wife. Paragraph 6 of the judgment is reproduced:- The law, as seen, appears to be that even after decree of conjugal rights is obtained by the husband and it is he who is creating situation that the wife is not in a position to comply with the decree, then the right of the wife for maintenance cannot be taken away. But if the wife is in fault, which may appear from non-compliance of the decree of conjugal rights, then she may be disentitled. But those aspects will be tried during the hearing of the petition under section 125, Criminal Procedure Code. In the present case the impugned order is of interim maintenance. The question would be whether the wife is actually not complying with the decree or the husband is complying with the decree or creating conditions where compliance is not possible. All these would be decided by the trial magistrate. But in these circumstances it would be just and proper that a husband pays maintenance to the wife Rs. 200/-. By so paying he will be showing his bona fides, to maintain his wife even when during conjugal relationship is restored. After all a husband spends on the wife when she lives with him. Considering these aspects, this court feels that the justice of the matter would not require that the impugned order should be interfered with. But at the sae

time this situation should not be allowed to keep on running indefinite to the woe of the husband. It is therefore directed that while this petition is being dismissed, it is ordered that the trial magistrate shall proceed with the trial and complete it within 6 months. Neither the husband or the wife would be entitled to delay the trial in any manner or to seek adjournment for mere absence of lawyers and they will see that their witnesses are present on the dates fixed for hearing of the petition. The trial magistrate shall not adjourn the matter for more than 1 month for any hearing and complete it within 6 months after receiving a copy of this order. If the wife deliberately delays, the trial the husband will be entitled to approach the magistrate for reconsideration of the order of interim maintenance.

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## **5. POINT INVOLVED**

Section 9 of the Hindu Marriage Act – Restitution of conjugal rights – Decree for restitution of conjugal rights challenged by wife – Wife did not agree to live with husband and not even agree to live with her sons – It can be presumed that there is something panic which compelled her to live abandoned life – She cannot be compelled to live together against her wishes – A decree for restitution of conjugal rights to give a tool to husband to harass her through the process of Court – Therefore, decree is set aside.

**Parties** – *Milan v. Sunil*

**Reported in** – I.L.R. (2008) M.P. 36

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## 6. POINT INVOLVED

Section 9 of the Hindu Marriage Act – Restitution of conjugal rights – Plaintiff filed suit for restitution of conjugal rights on the ground of desertion – Defendant denied the factum of marriage – Plaintiff proved by oral and documentary evidence that marriage was solemnized in accordance with customary rites and usage including Saptapadi and also proved that defendant deserted the plaintiff without any sufficient cause – Defendant did not appear for cross examination after filing his examination in chief on affidavit – Defendant's evidence cannot be read in evidence – Fails to rebut evidence of plaintiff – Suit rightly decreed.

**Parties** – *Devendra Kumar Patle v. Manjushri Patle*

**Reported in** – I.L.R. (2008) M.P. 6

## \*7. POINT INVOLVED

Section 9 of the Hindu Marriage Act – Restitution of conjugal rights, when cannot be ordered?

*Facts of the case:*

Husband filed an application for restitution of conjugal rights on the ground that his wife left the matrimonial home without any sufficient reason and that she is compelling him to live with her at

her maternal home – The wife denied such allegations and pleaded that it is the husband who deserted her and that she was subjected to cruelty for demand of dowry and also to black magic – The Trial Court passed the decree of restitution of conjugal rights – Held, wife had stayed at her matrimonial home for about 15 days and she was sent to her maternal home alone by bus – There is no attempt to bring her to her matrimonial home on the part of the husband showing the indifferent behaviour towards her – She was maltreated and harassed by him and black magic was also applied on her – Therefore, she had reasonable apprehension of being unsafe in her husband's house – Allowing the appeal, it was held that decree for restitution of conjugal rights ought not to have been passed in favour of the husband as the wife was living separately with sufficient reason.

**Parties** – *Mamta v. Rajesh*

**Reported in** – 2014 (4) MPHT 130 (DB)

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