

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Criminal Revision No. 332 of 2015**

- Rajesh Juneja S/o. Shri Harbansh Singh Juneja, Aged About 52 years R/o. Nirala Nagar, Near Motilal Petrol Pump Bilaspur, Civil And Revenue District- Bilaspur, Chhattisgarh

---- Appellant.**Versus**

1. Mukesh Juneja S/o Shri Harbansh Singh Juneja Aged About 55 Years R/O Nirala Nagar, Near Motilal Petrol Pump Bilaspur, Civil And Revenue District- Bilaspur,
2. Harbansh Singh Juneja S/o. Late S.S. Juneja Aged About 84 Years R/O Nirala Nagar, Near Motilal Petrol Pump Bilaspur, Civil And Revenue District- Bilaspur, Chhattisgarh.
3. Smt. Rajrani Juneja W/o. Shri Harbansh Singh Juneja Aged About 79 Years R/O Nirala Nagar, Near Motilal Petrol Pump Bilaspur, Civil And Revenue District- Bilaspur, Chhattisgarh.
4. State of CG, through Collector, Bilaspur (CG)

---- Respondents

For applicant	: Shri KA Ansari, Sr. Advocate with Shri Devesh Kela, Advocate.
For Respondent No.4.	: Shri Arvind Shukla, Panel Lawyer.

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order On Board****27/04/2015**

The applicant has preferred this revision against orders dated 26.3.2015 and 08.4.2015 passed by Judge, Family Court, Bilaspur in MJC No.278/2014.

2. As per the facts regarding criminal revision, respondents 2 & 3 preferred a petition under Section 125 of the Code of Criminal Procedure against respondent No.1 Mukesh Juneja which is pending before Family Court, Bilaspur. In the said petition (MJC No.278/2014) on 24.3.2015, the non-applicant No.1 has filed an application and prayed that the present applicant may be made a party. The non applicants 2 & 3 have also filed a written objection stating that for the

last six years, the applicant is maintaining them and also he financially helped respondent No.2 to undergo bypass surgery and also protested to make him as non applicant in the said maintenance proceedings. On 26.3.2015, without any notice to the applicant and in the back of the applicant, the learned trial Court in its order dated 26.3.15 observed that only respondent No.1 is made party and the applicant is not made party as both are the sons and it would be appropriate to include the applicant as party in the proceedings. After the impugned order, the applicant appeared before the trial Court and has raised the objection that without hearing him, he was made a party and the said order is against law, hence, the impugned order may be set aside. The said objection was dismissed by the trial Court on the same day as it is a subject matter of the evidence as to who is having how much income to maintain and it is the duty of all the sons to maintain their parents and as the proceedings is quasi civil and quasi criminal the trial Court dismissed the objection and called for reply to the petition.

3. To dispose of this criminal revision without hearing to the respondent, the Court is expected to examine what illegality, impropriety or incorrectness is committed by the trial Court on the face of the record.

4. On minuted observation, it emerges that the applicant and respondent No.1 are younger and elder son of respondents 2 & 3. Respondents 2 & 3 are presently living with the applicant and he is maintaining them and also taking care of them. Respondents 2 & 3 preferred a petition for maintenance against respondent No.1. In the said petition, respondent No.1 has filed an application for making the applicant party to the petition before the trial Court and as above

mentioned the trial Court entertained the petition and also ordered that the applicant be made party in the said petition. The petitioner was not heard before including him as non-applicant by the trial Court. It is also a point to note that respondents 2 & 3 who have moved the application for maintenance before the trial Court have not made the applicant as non-applicant. They are satisfied that the applicant is maintaining them in his limits and also taking care of them for their treatment. Thereby respondents 2 & 3 have not made the applicant party to their petition. Also the applicant was not having any opportunity to be heard before any order. As this is quasi civil and quasi criminal proceedings right of the parties as to whom they want to implead as a party may not be taken away but for the exceptional circumstances as in the eye of law it is required to do so. But in the present case, i.e. in the maintenance petition, after assessment of the facts respondents 2 & 3 have chosen respondent No.1 only as non-applicant as he is not making any efforts for their maintenance. On the other hand, the applicant is maintaining them and also taking care of their treatment, hence, respondents 2 & 3 have chosen and prayed before the Court to award maintenance only from respondent No.1. If respondents 2 & 3 succeed to prove that they are unable to maintain themselves, respondent No.1 is able to maintain them and having sufficient means and respondents 2 & 3 are having no sufficient means to maintain themselves then only the trial Court may allow the petition and order for any maintenance. If before the trial Court, respondents 2 & 3 failed to prove the case against respondent No.1 then the Court was duty bound to dismiss the petition and thereafter it was respondents 2 & 3 to file any further proceedings against anybody as per law under Section 125 of the Cr.P.C.

5. Without hearing the applicant as to why he may be made party as non-applicant and also when the respondents 2 & 3 have not filed any maintenance petition against the present applicant and also having raised objection for making the applicant as a party in the maintenance proceedings, the trial Court passed order making the applicant as a party which is perverse on the face of the record. The trial Court is expected to dispose of any prayer in the maintenance proceedings strictly as per law. The order dated 23.6.15 which is in continuance with order dated 08.4.2015 in the eye of law requires interference.

6. Consequently, the petition is allowed without hearing the respondents. Orders dated 26.3.15 and 08.4.15 passed by the Court below so far as it relates to make the applicant as party is hereby set aside.

(Chandra Bhushan Bajpai)
J U D G E