

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (227) No.528 of 2015**

1. Maheshwari Sonkar, W/o. Pawan Sonkar, aged about 31 years, Caste Sonkar
2. Ku. Nomin D/o. Pawan Sonkar, Caste Sonkar, aged about 2 years, minor through legal guardian mother Maheshwari Sonkar, Both are R/o. Village Newarikala, Post Naewarikala, Tahsil Police Station and District Balod (CG)

---- **Petitioners****Versus**

Pawan Kumar, S/o. Of Late Shri Chaitram Sonkar, Caste Sonkar, aged about 36 years, R/o. Khudmuda, Police Station Amleshwar, Tahsil and District Durg (CG)

---- **Respondent**

Shri BP Singh, counsel for the petitioners.
None for the respondent, through served.

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order****29.10.2015**

Heard.

2. By this petition under Article 227 of the Constitution of India , the petitioners have challenged the legality and propriety of order dated 10.12.14 passed by Principal Judge Family Court (Link Court Balod) whereby and whereunder in a matter under Section 125 of the Cr.P.C. filed by the petitioner/applicant for maintenance, the court directed the applicant/petitioners to make arrangement for translator as the non-applicant/respondent is deaf and dumb.

3. By filing the instant petition, it is submitted on behalf of the petitioners that they are before the family court for maintenance as they are enable to maintain themselves. If the respondent is deaf and dumb it is none of their duty to arrange for translator as they are not in sound

financial position. He further submitted that they are also not aware from where they can get the translator, hence they be given relief by setting aside the impugned order and direct the trial Court to make arrangement in this regard.

4. Heard learned counsel for the petitioners present before the Court. Learned counsel duly supported the contention and submitted that the impugned order is bad in law, the petitioners are not be asked to arrange for the translator. It is the bounded duty of the court to either ask for the non-applicant/respondent to make arrangement for his evidence as he has to prove his own case on its merits, burden to prove the case that the applicants are not entitled to get the maintenance is on non-applicant. The Court has to make arrangement by calling a translator, who is working in any government deaf and dumb school as teacher or other subordinate staff and the expenses in this regard may be born as per the provisions of the rules and orders criminal.

5. Since the respondent is not represented, though served, there is no any objection to rebut the petition and the oral arguments submitted on behalf of the petitioners.

6. To appreciate the arguments advanced in this behalf, I have perused the material available in the matter.

7. On close scrutiny, it surfaced that the petitioners has filed application under Section 125 of the Cr.P.C. for maintenance as petitioner No.1 claims to be the wife of the respondent and petitioner No.2 is daughter of the respondent. Proceedings of the Court below is quasi criminal proceedings. As per the case of the petitioners, they are unable to maintain themselves, hence, they prayed for an order of maintenance from the Court. It is up to the petitioners to prove their

case by adducing evidence. If the respondent/non-applicant wants to rebut by adducing his evidence it shall be his duty to take the service of translator if he is not in a position to adduce his evidence in normal way. If the non-applicant is deaf and dumb, the court can very well necessarily take recourse to the provisions of the Code of Criminal Procedure regarding assistance from the translator by requesting any qualified staff, teacher or other authorities working in any Government Deaf and Dumb school and if there is no any such school in the vicinity or nearby, then the Court can call any such staff from any private institution running deaf and dumb school and expenses of the service may be born by the State or by the non-applicant as per the facts.

8. On due consideration, order passed by the court below is not sustainable under the law. The same is improper and liable to be set aside. Consequently, instant petition is allowed. Order dated 10.12.14 passed by the court below is hereby set aside. The trial Court is directed to act upon as per the observations made in the present order and record evidence of the parties as expeditiously as possible as the petitioners are praying for maintenance for their livelihood which is required to be disposed of as early as possible. With this observation, petition is allowed. No order asto cost.

Sd/-
(Chandra Bhushan Bajpai)
JUDGE