

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 1065 of 2015

1. Teshram Sahu S/o Budhram Sahu (Retired Teacher), aged about 65 years, R/o Village Madeli, Chowki, Brejher, Tah. Police Thana Kurud, Civil and Revenue District Dhamtari (Chhattisgarh)

---- Petitioner

Versus

1. Sumitra Sahu W/o Teshram, aged about 60 years, R/o Indra Niwash Bhatagaon, Tahsil Kurud, District Dhamtari (Chhattisgarh)

---- Respondent

For Petitioner – Shri Sanjeev Kumar Sahu, Advocate.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Order On Board

17/12/2015

1. Heard on admission.
2. Facts, in brief, of the instant WP(227) are that in Misc. Criminal Case No.295/07 the First Additional Principal Judge, Family Court Raipur, Camp Court Dhamtari, C.G. vide order dated 11-01-2008 directed the petitioner for the amount towards maintenance to the respondent Rs.1000/- per month. The same is not altered or reversed by any higher Court. The respondent had filed an application under Section 125(3) of the Cr.P.C. for maintenance amount from October 2014 to September, 2015. Vide order dated 24-11-2015, while rejecting the objection made in this behalf by the petitioner that he gave Rs.3, 50,000/- for construction of the house to the respondent on a compromise deed (Annexure-P/5) and the respondent is not complying with the terms of the compromise, the Court below held that the respondent is entitled for the said Rs.12,000/- as maintenance amount, hence, the same

may be deposited within a month as directed failing which the Court shall issue levy kurki warrant and will proceed further in the matter.

3. The petitioner has challenged the order dated 24-11-2015 and has taken the grounds that as both the parties entered into a compromise on 21-05-2014 and as per the compromise, he had given Rs.3,50,000/- for construction of the house of the respondent; the petitioner in his reply to the application under Section 125(3) of the Cr.P.C. filed by the respondent stated those facts and in support of that contentions he had also filed affidavit of one Badrinarayan Gandhi and one Bhagwat Ram Bais, they duly supported the facts mentioned in the reply of the petitioner. The petitioner further taken ground that the petitioner is presently aged about 65 years, both residing separately without any interference and they have entered into the compromise and in terms of the compromise he given Rs.3,50,000/-, also he had given amount in addition to Rs.3,50,000/-, hence, the order dated 24-11-2015 is illegal and improper. He further prayed that the order be set aside and relief as prayed be given.

4. Learned counsel for the petitioner while submitting his argument on admission duly supported the grounds and the facts mentioned in the petition and as demonstrated in the documents annexed along with the petition and submitted that the petition may be allowed and the impugned order may be set aside after admitting the petition on motion and hearing the petition bi-parte.

5. The consider the petition for admission, present petition and other annexed documents are perused.

6. From close scrutiny, it appears that in the Misc. Cr. Case No.295/07 vide order dated 11-01-2008 the First Additional Principal Judge, Family Court Raipur, Camp Court Dhamtari, C.G. directed the petitioner to give

Rs.1000/- per month as maintenance. The same order till date is neither reversed nor set aside. Hence, the same is still enforceable. It is not mentioned in the said Annexure P/5 that the petitioner will give Rs.3,50,000/- to the respondent towards full and final settlement of the compromise. The reply and the affidavits filed before the Court below while hearing the M.J.C. No.111/15. The respondent had not admitted the facts for the compromise and receipt of Rs.3,50,000/- or any of the amount. There is no any receipt for such amount by the respondent. With the above facts, and as the order passed in Misc.Criminal Case No.295/07 is enforceable, as per provision of Section 125(3) of the Cr.P.C. for arrears of 12 months the respondent by filing the application prayed that the same be given before the Court below on the point of law and facts. Before this Court, the petitioner has failed to demonstrate whether any illegality or impropriety has been committed in the order impugned dated 24-11-2015.

7. Consequently, in the considered view of this Court, the petitioner is not having any prima facie case for the admission of the instant WP(227) for issuance of any direction after admission of this petition.

8. As there is no illegality or impropriety in the impugned order dated 24-11-2015, the instant WP(227) is not maintainable and therefore, the same is dismissed at the motion stage itself.

9. No order as to cost.

Sd/-
(Chandra Bhushan Bajpai)
JUDGE