

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No.492 of 2008**

1. Urmila Bai, wife of Dashrath Sahu, aged about 35 years,
2. Minor Suraj, S/o Dashrath, aged about 7 years, through Natural Guardian Mother Urmila Bai, wife of Dashrath Sahu, R/o Village Kirari, P.S. Baradwar, Tahsil Sakti District Janjgir-Champa, Chhattisgarh, at present Mithumuda (Hira Nagar) Raigarh, Post Jutmil, Tahsil and District Raigarh, Chhattisgarh

---- Petitioners**versus**

Dashrath Sahu, S/o Shri Dwarika Sahu, aged about 38 years, occupation Agriculture and Business, R/o Village Kirari, P.S. Baradwar, Tahsil Sakti and District Janjgir-Champa, Chhattisgarh

---- Respondent

For Petitioners	:	Shri Manoj Kumar Sinha, Advocate
For Respondent	:	None

Hon'ble Shri Deepak Gupta, Chief Justice**Order on Board****4.8.2016**

1. This revision petition by the wife and minor son is directed against order dated 24.6.2008 passed by the Family Court, Raigarh in Case No.117 of 2007, an application filed under Section 125 of the Code of Criminal Procedure by the wife claiming maintenance for herself and for her minor son, who was aged less than 7 years at that time.
2. The undisputed facts of the case are that out of the wedlock of the parties Petitioner No.2 was born. The Family Court found that the wife had not shown any cause for residing separately from the husband and, therefore, awarded no maintenance in her favour, but awarded maintenance of Rs.250/- per month in favour of the minor son.
3. I am shocked at the callous manner in which the application for maintenance has been decided. Even if it is considered for the sake of argument that the wife had not shown any reason for living separately from the husband, how can it be expected that with a meager maintenance of Rs.250/- per month, a minor boy, aged about 7 years,

could survive even in the year 2008. This shows that the Family Court was insensitive to the needs of a minor child. A child has to be educated. His education involves incurring of expenditure of his admission in a school, purchase of school uniform, books and stationery.

4. As far as the claim of the wife is concerned, the wife had appeared in the witness box and stated that she had been married to the husband 15 years back and she was residing in the matrimonial home in Village Kirari. 3 children were born and out of them, two children, i.e., the elder two children were living with the husband. According to her, she was forced to leave the matrimonial house due to the ill-treatment of the husband and, therefore, she claimed maintenance for herself and her minor son. The claim of the wife is that she was being beaten-up by her husband and, therefore, she left the matrimonial house. This claim has been rejected by the Family Court only on the ground that no independent witness had been produced in this regard.

5. This Court can take judicial notice of the fact that in Indian society, the wife especially living in rural area will not leave her matrimonial house unless she is virtually forced to leave. In the instant case, the wife was living in the matrimonial house with three children. She would not leave her matrimonial house without any rhyme or reason. Therefore, in my view, her claim was wrongly rejected.

6. So far as quantum of maintenance is concerned, even in the year 2008, an able bodied person would have been earning at least Rs.150/- per day, i.e., Rs.4,500/- per month. There are two children who are living with the husband. Keeping all these facts into mind, an amount of Rs.1,000/- per month is awarded in favour of the wife and an amount of Rs.800/- per month is awarded in favour of the minor son living with the wife from the date of filing of the instant revision petition, i.e., 24.7.2008 till date. Obviously, the son is entitled to maintenance only till he attains

majority. The wife, if so advised, may file a petition under Section 127 of the Code of Criminal Procedure for enhancement of the maintenance if she can prove that the husband is earning more.

7. The amount of maintenance is to be paid on or before 15th day of every month. The arrears of maintenance is to be paid in 12 equal monthly installments on or before 15th day of every month. The order under challenge is modified to the extent indicated above. The criminal revision is disposed of in the aforesaid terms.

Sd/-

(Deepak Gupta)
CHIEF JUSTICE