

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**FAM No. 53 of 2016**

- Smt. Sweta Kedia W/o Shri Pravin Kumar Kedia, Aged About 35 Years D/o Shri A.K. Goenka, R/o C/o A.K. Goenka, 275, Samta Colony, Raipur, Chhattisgarh

---- Petitioner**Versus**

- Shri Pravin Kailashnath Kedia S/o Shri Kailashnath Kedia, Aged About 38 Years

Residence Address- B-801, Sai Simran Co-operative Housing Society Limited, Near Metal Box Factory, Deonar Village Road, Deonar, Mumbai (Maharashtra), Pin Code- 400088,

Office Address- Senior Big Data & Information Architect IBM India Pvt. Ltd., 4th Floor I.L. & F.S. Financial Centre, Plot C-22, Bandra Kurla Complex, Bandra (West), Mumbai (Maharashtra), Pin Code- 110051

---- Respondent

For Appellant
For Respondent

Shri Raza Ali, Advocate
Shri Shivendu Pandya, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra
Hon'ble Shri Justice Chandra Bhushan Bajpai

Order On Board**05/08/2016**

1. In a matrimonial suit preferred by the appellant/wife for grant of decree of divorce the Family Court has rejected her application for grant of interim maintenance on the ground that in a separate

proceeding under Section 125 of the Code of Criminal Procedure ('the Cr.P.C. ' in short) the Family Court has already granted maintenance of Rs.20,000/- per month to minor son Kinshuk and Rs.15,000/- per month to the appellant.

2. It is argued that the jurisdiction under Section 125 of the Cr.P.C. is separate and distinct than the jurisdiction under Section 24 of the Hindu Marriage Act, 1955 ('the Act' in short), therefore, the Family Court should have applied its mind and decided the matter on merits rather than dismissing the same on technical grounds.
3. It is settled law that once an order of maintenance has been granted in favour of either of the party to the marriage in any proceeding, whether under Section 24 of the Act or under Section 125 of the Cr.P.C., the Court deciding the later application has to bear in mind and taken notice of the previous order.
4. In the present impugned order, the Family Court has taken note of the fact and has concluded that the amount of maintenance granted to the wife and her minor son is sufficient enough to meet the expenses, therefore, no separate order need be passed. The Court below has also observed that since maintenance has already been allowed under Section 125 of the Cr.P.C., it cannot be said that the appellant has no independent source of income.

5. In other words, the maintenance granted by the Family Court under Section 125 of the Cr.P.C. is presently her source of income, therefore, no separate order is necessary. Moreover, the appellant has already filed a criminal revision before this Court seeking enhancement of amount of compensation granted in the proceeding under Section 125 of the Cr.P.C. The said proceeding shall be decided on its own merits.
6. There is no substance in this appeal, which fails and is hereby dismissed.

Sd/-

Judge

Prashant Kumar Mishra

Sd/-

Judge

Chandra Bhushan Bajpai

Gowri