

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRIMINAL REVISION NO. 312 OF 2016

Ritesh Kumar Sharma, aged about 32 years, S/o Late Chandrakant Sharma, R/o in front of Anand Samaaj Wachnalaya, Kankali Talab Road, Bramhanpara, Raipur (C.G.)

... Applicant

Versus

Kuber Sharma, aged about 6 years, S/o Shri Ritesh Kumar Sharma, through guardian Smt. Laxmi Tiwari (maternal grand mother), W/o Shri Narayan Prasad Tiwari, R/o Village Sakri, Police Station Chakarbhata, District Bilaspur (C.G.)

... Non-applicant

For Applicant	:	Mr. Y.C. Sharma, Advocate.
For Non-applicant	:	Mr. J.A. Lohani, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

01/07/2016

1. Challenge in the present revision petition is to the order dated 2.3.2016 passed by the Family Court, Bilaspur in Misc. Criminal Case No. 601 of 2014. By way of the impugned order dated 2.3.2016, the Court below has in a proceeding under Section 125 of CrPC initiated by the Non-applicant who is minor son of the Applicant has granted monthly maintenance amounting of Rs. 1000/- in his favour.

2. Assailing the impugned order, learned Counsel for the Applicant submits that the impugned order is bad in law not the quantum of maintenance awarded by the Court below but on the reasoning given by the Court below more particularly the case itself being initiated at the behest of the Non-applicant minor through his grand-mother and not by the legal and the natural guardian i.e., the mother of the Non-applicant.

3. According to the Counsel for the Applicant, the Court below has failed to take note of the fact that the mother has deliberately not filed the present case as a guardian of the Non-applicant for the reason that admittedly she is a government employee and is having sufficient means to maintain herself, but only to harass the present Applicant she has moved the present case through the maternal grand-mother of the Non-applicant, minor child.

4. Learned Counsel for the Applicant further submits that the impugned order has been passed by the Court below in spite of there being a specific finding that the mother of the Non-applicant being a government employee had sufficient means to maintain herself. The Court below has taken a reasoning of the fact that in the event if the Non-applicant would have been in the custody of his father, i.e., the present Applicant, he (the Applicant) would have definitely had to incur certain expenses for the upbringing of his son, i.e., the Non-applicant and it is for this reason that the Court below has awarded an amount of Rs.1000/- per month as maintenance to be paid to the Non-applicant, minor son, which is an absurd reasoning.

5. Learned Counsel for the Applicant next submitted that this observation made by the Court below appears to have been made more in the form of an order being passed giving charity to the Non-applicant and is not an order passed on the legally sound principles. He further assails that it is not the quantum which matters but it is the manner in which the petition has been initiated by the Non-applicant and which has been prosecuted, more particularly the fact that the mother has deliberately not initiated the proceedings and has filed the present case through the maternal grand-mother of the Non-applicant.

6. True it is that the proceeding under Section 125 of CrPC has been initiated by the Non-applicant through his grand-mother but the admitted fact in the instant case is that the Non-applicant is ultimately the son of the Applicant and under any circumstances the son should not be deprived of any benefit which he is otherwise entitled for from his biological father, i.e., the present Applicant, though there may be differences between the husband and wife and that the child should not suffer at the hands of the differences between the husband and wife. It is precisely this which has weighed more on the mind of the Court below while ordering the grant of maintenance to the Non-applicant. In the opinion of this Court, it is only a sort of a token amount being ordered to be given to the son from his father only by which the relationship of the father and son shall be continued and maintained or else the amount awarded definitely is neither exorbitant or justified nor can it be in any manner said to be on the higher side.

7. For the foregoing reasons, in the opinion of this Court, there is no illegality or infirmity committed by the Court below while passing the impugned order.

8. The present Criminal Revision accordingly being devoid of merits the same is dismissed.

Sd/-
(P. Sam Koshy)
Judge