

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 26 of 2016**

Khilawan Sahu S/o Mohan Sahu Aged About 45 Years R/o Village Amora,
Police Station Patewa, Tahsil & District Mahasamund Chhattigarh

---- Applicant**Versus**

1. Smt. Dhaneshari Sahu & Ors. W/o Khilawan Sahu Aged About 39 Years R/o Ward No. 2 Imlibhatha Mahasamund, Thana Tahsil & District Mahasamund Chhattisgarh
2. Minor Bhupendra Sahu S/o Ramkhilawan Sahu Aged About 17 Years Through Legal Guardian Mother Smt. Dhameshwari Sahu R/o Ward No. 2 Imlibhatha Mahasamund, Thana Tahsil & District Mahasamund Chhattisgarh
3. Minor Monika Sahu D/o Ramkhilawan Sahu Aged About 15 Years Through Legal Guardian Mother Smt. Dhameshwari Sahu R/o Ward No. 2 Imlibhatha Mahasamund, Thana Tahsil & District Mahasamund Chhattisgarh
4. Minor Ku. Kavita Sahu D/o Ramkhilawan Sahu Aged About 14 Years Through Legal Guardian Mother Smt. Dhameshwari Sahu R/o Ward No. 2 Imlibhatha Mahasamund, Thana Tahsil & District Mahasamund Chhattisgarh

-----Non-Applicants

For Applicant:

Shri CR Sahu, Advocate.

For Non-Applicants:

Shri Sunil Sahu, Advocate.

Single Bench: **Hon'ble Shri P. Sam Koshy, J**
Order On Board

18.7.2016

1. By way of the present Revision Petition, the Applicant has assailed the impugned order dated 15.12.2015 passed by the Family Court, Mahasamund in Misc. Criminal Case No.15/2015. Vide the said impugned order, the Court below has, in a proceeding under Section 125 Cr.P.C, allowed the same and had ordered for maintenance of Rs.2,000/- each to Non-Applicants No.1, 3 & 4.

2. However, the Court below has refused to grant maintenance to Non-Applicant No.2 on the ground that pending the dispute before the Court below, he has attained the age of majority and therefore, it was held that he is

dis-entitled for maintenance.

3. Learned Counsel for the Applicant submits that the order passed by the Court below is bad in law for the reason that firstly, the Court below has not properly appreciated the fact that the Applicant himself has given a house for the Non-Applicants to stay and in addition, the Non-Applicants have also been provided with more than 4 acres of land which was sufficient for sustaining themselves. He further submits that these 4 acres of land was in fact given at the instance of the village elders so that Non-Applicant/wife and her children can sustain themselves by cultivating the said 4 acres of land. He further submits that the Court below has not appreciated the fact that the present Applicant was working only as a chowkidar and was just getting a salary of Rs.5,000/- per month and the maintenance amount awarded by the Court below is much higher than what he earns and therefore, the order deserves to be quashed.

4. So far as the agricultural income is concerned, the Court below has not properly taken into consideration the yield that is received from the said agricultural land belonging to the Applicant and therefore, the order of maintenance is bad in law on that count also.

5. Learned Counsel for the Respondents submits that all the submissions put forth by the Applicant have already been duly placed before the Court below. The Court below having appreciated all these contentions and had reached to the conclusion that Non-Applicants No.1, 3 & 4 are entitled for maintenance of Rs.2,000/- each and therefore, since the order is a speaking order, it does not warrant any interference and that it was based on the evidence which has come on record.

6. Having considered the rival contentions put forth by both the sides, if

the record is perused and the impugned order is taken note of, what is reflected is that Non-Applicant No.1 has been able to produce sufficient evidence in the course of the trial before the Court below that the present Applicant was in the habit of consuming liquor and regularly assaulting Non-Applicants. This submission of Non-Applicant/wife has been corroborated by the statement of a neighbour i.e. Pushpa Sahu, PW-2, who has specifically stated that the present Applicant used to continuously assault and ill-treat the Non-Applicant/wife and on various occasions, the Non-Applicant/wife as well as her children had taken shelter at her house during night time. In the year 2012 also there was a report lodged by Non-Applicant/wife against the present Applicant before the Family Counselling Center, Mahasamund wherein also the present Applicant has admitted the fact that he is in a habit of consuming alcohol and thereafter misbehaved with the Non-Applicant/wife and children.

7. These facts are sufficient indications of there being compelling circumstances for the Non-Applicants to live separately. So far as quantum of maintenance awarded by the Court below is concerned, if we peruse the record, there is a specific statement by the present Applicant/husband before the Court below that he is a daily wage employee working as a chowkidar and is getting Rs.5.000/- every month. In addition, in his cross-examination, he has further admitted that he has got about 10 acres of agricultural land which he has given for cultivation and from the said agricultural land as is reflected from para-29 of the impugned order, the source of income of the present Applicant is more than Rs.25,000/- as has been claimed by Non-Applicant No.1/wife.

8. Taking into consideration the agricultural income of the present Applicant and also the income from the institution where the present Applicant

is working i.e. Rs.5,000/- per month, in the opinion of this Court, if an amount of Rs.2,000/- each is awarded as maintenance to Non-Applicants No.1, 3 & 4, by no stretch of imagination, the same can be said to be exorbitant or on the higher side. Moreover, Non-Applicants No.3 & 4 are children in the teen age and taking into consideration the expenses for their studies also, the amount of Rs.2,000/- awarded to each of them also cannot be said to be contrary to the evidence which has come on record.

9. In view of above, there is no illegality or infirmity committed by the Court below by reaching to the said conclusion and the Revision Petition, being devoid of merits, the same is accordingly dismissed.

Sd/-

(P. Sam Koshy)

JUDGE