

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL REVISION NO. 1166 OF 2016

Rohit Verma, S/o Rekhilal Verma, aged about 38 years, R/o Village Jamgaon, Tahsil Patan, District Durg (C.G.)

... Applicant

Versus

1. Ganga Sagar, S/o Rohit Verma, aged about 9 years.
 2. Kumari Bhumika, D/o Rohit Verma, aged about 4 years.
- Both are minor through natural guardian mother Madhuri Verma, W/o Rohit Verma, R/o Village Julum, Post Tekari, P.S. Abhanpur, District Raipur (C.G.)

... Non-applicants

For Applicant : Mr. Praveen K. Dhurandhar, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

20/12/2016

1. The present Criminal Revision has been preferred by the Applicant assailing the order dated 1.10.2016 passed by the First Additional Principal Judge, Family Court, Durg in Misc. Criminal Case No. 78 of 2015, whereby the Court below in a proceeding under Section 125 of CrPC has allowed the application and has ordered for payment of Rs.1500/- each as monthly maintenance to Non-applicants No. 1 and 2.
2. Learned Counsel for Applicant very fairly submits that the present revision has been preferred only assailing the grant of maintenance to Non-applicant No.1 in whose favour the Applicant has already an order under the Guardianship Act and the mother of Non-applicant No.1 was not letting the Applicant the guardianship over Non-applicant No.1 and therefore he should not be forced to provide maintenance as has been ordered by the Court below. He submits that it is a case where both Non-applicants No. 1 and 2 are the children of Applicant and the Non-applicant No.2 being a minor daughter was under the guardianship of the mother and as far as the Non-applicant No.1 is concerned there was an order of

guardianship in favour of the present Applicant vide Exhibit D-2 produced before the Court below.

3. Counsel for the Applicant further submits that he had made efforts for getting the said order executed, however, on each occasion the mother of Non-applicant No.1 would create hurdles and obstacles from getting the custody of Non-applicant No.1. According to him, even today the present Applicant is willing to keep Non-applicant No.1 as per the order of the Court below and take care of him and would be able to provide him better sustenance, but it is the mother who is refusing to part with the Non-applicant No.1 forcefully.

4. It is further contended by the Counsel for the Applicant that the grant of maintenance of Rs.3000/- to the two children is on the higher side taking into consideration the fact that the present Applicant is a handicapped person and is physically handicapped of about 40% and therefore he would not have sufficient source of income left to sustain himself well in case, if he has to provide Rs.3000/- to both the Non-applicants.

5. Having considered the submissions put forth by the Counsel for the Applicant and on perusal of the record, this Court is of the opinion that even assuming the contention of the Applicant that he has an order of guardianship over Non-applicant No.1 in his favour, but so far as the Non-applicant No.1 is concerned as long as he is in the custody of his mother, he cannot be deprived sustenance because of the strained relationship of the Applicant with his wife i.e., the mother of Non-applicants. True it is that the present Applicant has an order of guardianship in his favour so far as the Non-applicant No.1 is concerned. The Applicant so far as obtaining the custody of the said child is concerned, will have to take appropriate steps in accordance with the law governing the field, but that cannot be a ground for non-granting of maintenance which is provided only with an object of

sustaining of person who is unable to sustain themselves on their own. Denial of maintenance amount to Non-applicant No.1 at this juncture would be detrimental in the overall growth and sustenance of Non-applicant No.1.

6. So far as the quantum of maintenance amount is concerned, this Court does not find that Rs.1500/- awarded by the Court below to each of the Non-applicants, which if distributed between the 30 days of a month would only reach to around Rs.50/- per day, to be an exorbitant amount or on the higher side so as to interfere with the same.

7. For the aforesaid reasons, this Court does not find any strong case made out by the Applicant and the present revision therefore deserves to be rejected.

8. It is made clear that the rejection of the present revision would not preclude the Applicant from moving appropriate application before the Court below for modification of the order in case, if the custody of the Non-applicant No.1 is handed over to the present Applicant as thereafter the maintenance part would automatically be on the Applicant.

9. With the aforesaid liberty, the Criminal Revision is dismissed.

Sd/-
(P. Sam Koshy)
Judge