

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRIMINAL REVISION NO. 1042 OF 2015

Rajesh Kumar Rathore S/o Ram Singh Rathore, aged about 28 years, R/o Village Janjgir Bhagat Chowk, Naaipara, Police Station and Tahsil Janjgir, District Janjgir-Champa (C.G.)

... Applicant

Versus

1. Smt. Priti Rathore, aged about 21 years, W/o Rajesh Kumar Rathore, R/o Bhagat Chowk, Naaipara, Janjgir, at present R/o Village Tendibhata, Tahsil Janjgir, Police Station Outpost Naila, District Janjgir-Champa (C.G.)

2. Saomya Rathore, aged about 02 years, D/o Rajesh Kumar Rathore, through her natural guardian (mother) Smt. Priti Rathore, R/o Bhagat Chowk, Naaipara, Janjgir, at present R/o Village Tendibhata, Tahsil Janjgir, Police Station Outpost Naila, District Janjgir-Champa (C.G.)

... Non-applicants

For Applicant	:	Mr. Kalyan Kalamkar, Advocate.
For Non-applicants	:	None for the Non-applicants, though served.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

27/06/2016

1. By way of the present Criminal Revision, the Applicant has challenged the order dated 31.10.2015 passed by the Family Court, Janjgir in Misc. Criminal Case No. 115 of 2015, whereby in a proceeding under Section 125 CrPC the Family Court has awarded a sum of Rs. 3000/- to Non-applicant No.1-wife and an amount of Rs.1000/- to the minor Non-applicant No.2 as monthly maintenance.

2. Counsel for the Applicant submits that the impugned order is bad in law and is required to be interfered for the reasons that firstly the amount awarded is on the higher side and secondly the Applicant is not in a position to bear the said amount awarded by the Family Court. It is also contended that the Court below has not properly appreciated the fact that

there was no justified and satisfactory reason for Non-applicant No.1-wife to leave the matrimonial home and stay separately and this fact has not been properly appreciated in spite of sufficient evidence being produced by the present Applicant before the Family Court.

3. Counsel for the Applicant further submits that the present Applicant is an Auto Rickshaw driver and he does not have sufficient means for meeting the expenses of Rs.4000/- every month as awarded by the Family Court as there would be very little money left for him to survive if the said amount is honoured and paid to the Non-applicants.

4. Having considered the contentions and on perusal of the record what is reflected is that the case of the Applicant before the Family Court, i.e., Non-applicant No.1-wife, has been sufficiently appreciated by the witnesses of the Non-applicant, i.e., NAW-2 Pramod and NAW-3 Santosh, who have specifically admitted in their evidence that they had heard the quarrel and fight that took place between the present Applicant and Non-applicant No.1 and thereafter it is said that the Non-applicant No.1-wife had called her brother and went to her parental home to stay. Likewise, other factor which has come on record is that an application under Section 9 filed by the present Applicant has already been rejected which by itself gives sufficient indication that there was justified reason for Non-applicant No.1-wife to leave the matrimonial home. Further, the finding of the Family Court is that though the present Applicant had made an averment before the Court below that he had made efforts both at his personal level as well as at the village level for bringing the Non-applicant No.1-wife to stay with him but the Applicant-husband was not able to substantiate the same by producing any cogent evidence before the Court in this regard.

5. So far as the financial viability of the present Applicant to meet the maintenance awarded by the Court below is concerned, Counsel for the Applicant admits the fact that the Applicant is earning around Rs.8000 to 10,000/- per month and of which he has to pay insurance premiums and further he has to sustain himself for the said amount and after that there is not much left for him to pay the amount of Rs.4000/- to the Non-applicants as awarded by the Court below. Further, he says that so far as the allegation of 8-9 acres of agricultural land available to the present Applicant, the same is in the name of his father and family partition has not taken place and therefore at present he does not have any source of income from the said land. But the fact that the Applicant himself admits that he is earning more than Rs.8000 to 10,000/- per month by itself is sufficient that he can bear the expenses of Rs.4000/- as awarded by the Court below. The amount of Rs.3000/- ordered to be paid to Non-applicant No.1-wife comes to only Rs.100/- per day which cannot be said to be on the higher side. Similarly, an amount of Rs.1000/- to the minor Non-Applicant No.2 also cannot be said to be on the higher side. Admittedly, when the Non-applicants No. 1 and 2 are the wife and child respectively of the present Applicant, there is no reason why the present Applicant should shy away from maintaining his wife and child.

6. For the foregoing reasons, this Court does not find any illegality either of facts and in law to have committed by the Court below while awarding the said maintenance amount in favour of the Non-applicants.

7. Accordingly, the Criminal Revision being devoid of merits, the same is dismissed.

Sd/-
(P. Sam Koshy)
Judge