

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 517 of 2011**

1. Smt. Kusum Sao W/o Shri Ashok Sao, aged about 23 years
2. Akash Sao S/o Shri Ashok Sao, aged about 2 years
3. Dipansu Sao S/o Shri Ashok Sao, aged about 8 months

Being minor the Petitioner no. 2 & 3 through their natural guardian mother

R/o at present behind the Siddharth School, Baikunthnagar, Camp-2 Bhilai, Tahsil & District Durg (C.G.)

---- Petitioners**versus**

Ashok Sao S/o G.M. Nuthun Sao, R/o Contractor Colony, Supela Bhilai, (Near Dharmendra Kirana Store Paach Rasta) Tahsil & District Durg (C.G.)

---- Respondent

For Petitioners	:	Shri Punit Ruparel, Advocate
For Respondent	:	Shri Vipin Punjabi, Advocate

Hon'ble Shri Deepak Gupta, Chief Justice**Order on Board****14/12/2016**

1. This revision petition is directed against the order dated 30.7.2011 passed by Second Additional Principal Judge, Family Court, Durg in M.J.C. No. 96/2011, whereby she rejected the claim of wife Smt. Kusum for grant of maintenance, but awarded maintenance at the rate

of Rs.500/- per month each to the minor children namely Akash Sao and Dipansu Sao.

2. Admitted facts are that the Petitioner Kusum was married to the Respondent Ashok Sao as per Hindu rites on 1.5.2004. Out of this marriage, two children were born. Younger child was born on 4.9.2009. Wife had filed a petition under Section 125 of the Code of Criminal Procedure claiming maintenance on the ground that the husband used to beat her, he used to demand dowry and due to cruel treatment meted out to her by the husband, the wife had to leave her matrimonial home and started residing with the parents. The stand of the husband was that the wife had left the matrimonial home on her own choice and therefore, she is not entitled to maintenance. The learned Court below held that the wife had not proved her case and therefore rejected the claim of the wife, but, awarded Rs.500/- each to the minor children.
3. I have gone through the entire file of the case. Before the Court below, the wife examined herself and her cousin (son of maternal uncle). Both these witnesses stated that the husband and his family members used to treat the wife with cruelty. They used to beat her and due this reason, she had to leave her matrimonial house. It was also alleged that on one occasion F.I.R. was lodged in this regard. The Learned Court below has rejected the claim of the wife mainly on the ground that the wife had not produced any records to show that the F.I.R. was lodged. It may be true that the wife before the Court below has not produced such material, but the fact remains that wife had made a statement on oath that she had left her matrimonial house along with

two minor children because of the cruelty meted out to her.

4. The Learned Court below held that the wife belongs to a well-off family and does not want to live with poor husband and therefore left the matrimonial house. I do not understand how the Court below came to this conclusion. The husband did not enter into the witness-box and he examined no witness. From the statement of the wife, there is nothing on record to show that she belongs to a very well-off family. In fact, the statement of the wife shows that she had only passed Class-VIII. If she belonged to a well-off family, she would not have left her education at Class-VIII itself. We must remember that in Indian society any married women especially with two minor children will normally not leave her matrimonial home without any rhyme and reason. The husband did not enter into the witness-box to state what was the reason for her wife to leave the matrimonial home. Therefore, the Court below should have drawn adverse inference against the husband. Instead of doing that the Court below has started picking holes in the evidence of the wife. Therefore, I am clearly of the view that the Court below gravely erred in rejecting the claim of the wife.
5. This brings me to the question as to what is the income of the husband. According to the wife, he is a vegetable vendor in Durg. Durg is a big city and as of date i.e. in the year 2016 even a vegetable vendor would be earning not less than Rs.200 to 300/- per day and therefore, the income would be Rs.9000/- per month. Keeping in view the fact that the husband is living along with his mother and sister and wife has to spend for herself with two minor children, I deem it appropriate to award a sum of Rs.1000/- per month for the wife and

Rs.1,000/- per month each for the two minor children i.e. a total sum of Rs. 3000/- per month. However keeping in view the status of the husband who is vegetable vendor, it may not be possible for him to pay the arrears. Therefore, I further direct that the amount of maintenance shall be payable only from 1.12.2016.

6. The Learned counsel for the Petitioner-wife is directed to supply copy of the pass-book of the individual bank account of the wife to the learned counsel for the Respondent so that the husband, if he so desires, can directly pay the amount into her bank account. The wife shall ensure that the maintenance granted for the two minor children is used only for that purpose.

7. The revision petition is disposed of in the aforesaid terms.

Sd/-

(Deepak Gupta)
CHIEF JUSTICE