

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 333 of 2016

1. Umashankar Bisai S/o Shivdas Bisai, aged about 49 years, R/o Bhejripadar Chowki, Bakawand, Tahsil Bakawand, Civil & Revenue District Bastar, Chhattisgarh.

---- Petitioner

Versus

1. Smt. Savita Bisai W/o Umashankar Bisai, aged about 40 years, R/o Village Udiapal Chowki, Bakawand, Tahsil Bakawand, Civil & Revenue District Bastar, Chhattisgarh.
2. Kumari Jogeshwari Bisai D/o Umashankar Bisai, aged about 16 years, Minor, through their natural guardian mother Smt. Savita Bisai, W/o Umashankar Bisai, aged about 40 years, R/o Village Udiapal Chowki, Bakawand, Tahsil Bakawand, Civil & Revenue District Bastar, Chhattisgarh.
3. Prakash Bisai S/o Umashankar Bisai, aged about 7 years, Minor, through their natural guardian mother Smt. Savita Bisai, W/o Umashankar Bisai, aged about 40 years, R/o Village Udiapal Chowki, Bakawand, Tahsil Bakawand, Civil & Revenue District Bastar, Chhattisgarh.

---- Respondents

For Petitioner – Shri Kunal Das, Advocate.

For Respondents– None, not noticed.

Hon'ble Shri Justice Chandra Bhushan Bajpai
Order on Board

16/03/2016

1. Heard the instant Cr.M.P. on admission.
2. Facts in brief required for disposal of the instant Cr.M.P. are that the petitioner and respondent No.1 are husband and wife. Respondents 2 and 3 are minor and born out of the wedlock between the petitioner and respondent No.1. Respondents 1 and 2 had filed an application for maintenance under Section 125 of the Code of Criminal Procedure, 1973 (in short 'the Code') before the C.J.M., Jagdalpur, C.G., the same was registered as Criminal M.J.C. No.116/2002. During hearing of the said Criminal M.J.C., both the parties had filed a compromise petition and prayed that the same may be allowed and order be passed accordingly. The Court below vide order 04-03-2003 held that as the compromise petition is filed voluntarily, the application for

maintenance is hereby dismissed, the applicants 1 and 2/respondents 1 and 2 will not file any application under Section 125 of the Code for the maintenance in future. The Court below also held that the other terms and conditions are against the law and the same were rejected.

3. Thereafter, all the present respondents had again filed an application under Section 125 of the Code for maintenance against the present petitioner, the same was registered as Criminal M.J.C. No.56/08. The respondents/applicants on 06-02-2009 prayed before the Judicial Magistrate First Class, Jagdalpur that they do not want to press the said Criminal M.J.C., hence, the Court below dismissed the said application for maintenance as not pressed.

4. Thereafter, the present respondents had filed again an application under Section 125 of the Code for maintenance before the Judge, Family Court Jagdalpur, C.G. against the present petitioner and the same is registered as Misc. Criminal Case No.45/2015. Against filing of the said miscellaneous criminal case for the maintenance the present petitioner/non-applicant filed the instant Cr.M.P. invoking the jurisdiction available under Section 482 of the Code to quash the proceeding regarding Misc. Criminal Case No.45/15 on the ground that the same is hit by law of estoppel, the parties entered into compromise, the respondent No.1 agreed that she will not file any maintenance application against the petitioner and as this is third round of litigation for the maintenance and as both the parties entered into the compromise, the instant Misc. Criminal Case No.45/15 may be quashed.

5. Heard learned counsel for the petitioner on admission.

6. Learned counsel for the petitioner submits that the third application for maintenance is barred by law of estoppel; both the parties agreed mutually and voluntarily to not to file any maintenance application against the present petitioner and now the respondents are again praying for maintenance. Once the parties entered into the compromise to not to sue for maintenance, the

respondents cannot file the present Misc. Criminal Case 45/15. Hence, the same may be quashed.

7. To appreciate the arguments advanced in this behalf, the instant Cr.M.P., impugned orders as mentioned above and the other documents are perused.

8. As per settled law, the respondents may file as many as application for maintenance as the earlier two maintenance applications were not decided on its merit. Any compromise for not suing the matter for maintenance is against the law and the same cannot be acted upon.

9. For relevance, sub-section 2 of Section 125 of the Code is required to be perused which reads as under :-

“125. Order for maintenance of wives, children and parents. –

(1) xxxxxx xxxxx xxxxx

(2) Any such allowance for the maintenance or interim maintenance and expenses of proceeding shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance or interim maintenance and expenses of proceeding, as the case may be.”

10. From perusal of the above provisions, it goes to show that whenever interim maintenance application is filed, the Court orders regarding maintenance from the date of order, or, if so ordered, the same shall be payable from the date of the application for maintenance. The third application for maintenance shows to be filed on 16-07-2015 as apparent from Annexure-P/6, though no any order sheet regarding presentation of the said application has been filed, but from perusal of Annexure-P/6, prima facie, it goes to show that the application has been filed by the respondents, which is registered as Misc. Criminal Case No.45/2015 on or after 16-07-2015. So far as provision of Section 125(2) of the Code is concerned, at the most, the Court may grant maintenance from the date of presentation of the application not before that as the above mentioned two criminal M.J.C. Nos. 116/02 and 56/08 are not disposed of on their merit. From perusal of the Annexure-P/6, it goes to show

that the element of the compromise have been mentioned in para 4 of the said application. The M.J.C. No.56/08 was also disposed of as the applicants/respondents had not pressed the said application, hence, the Court below vide order dated 06-02-2009 dismissed the application as the same was not pressed. The respondents /applicants are entitled for the maintenance, if any, from the date of presentation of the application as the earlier applications were not disposed of on their merit. Any terms and conditions in the compromise against the law cannot be maintainable. The law of estoppel with the facts of the present case is not attracted. If the applicants prove the ingredients of Section 125 of the Code as the respondents/applicants are unable to maintain themselves, the petitioner is having sufficient means, willfully neglecting or refused to maintain the applicants/respondents as required under Section 125(1) of the Code, the Court may grant maintenance only from the date of presentation of the application at the best.

11. On due consideration, as the law of estoppel, Section 11 of the Code of Civil Procedure and any other relevant provision is not attracted in the matter, in the considered view of this Court, the petitioner failed to demonstrate any reason for the prayer that the proceeding before the Court below be quashed. I do not see any illegality or impropriety for continuation of the said proceeding before the Court below. Consequently, the instant petition is dismissed as not maintainable in the motion stage itself.

12. The petition dismissed.

Sd/-

(Chandra Bhushan Bajpai)
JUDGE