

**NAFR**

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**CRR No. 32 of 2016**

1. Javed Khan S/o Abdul Rashid Khan Aged About 27 Years R/o Pathanpara, Behind Jama Maszid, Ward No. 34, Distt. Rajnandgaon Chhattisgarh.

**---- Applicant**

**Versus**

1. Smt. Rubina Khan W/o Shri Javad Khan Aged About 25 Years At Present R/o Near Kabristhan, Post Saddu Mova, Distt. Raipur Chhattisgarh.

**---- Respondent**

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For Applicant : Shri Parag Kotecha, Advocate

Respondent not noticed.

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**Hon'ble Shri Justice Chandra Bhushan Bajpai**

**Order On Board**

**18/02/2016**

1. Heard on admission.
2. Facts in brief for adjudication of the instant Cr. Revision are that the applicant/plaintiff filed C.S.No.11A/2014 against the respondent/defendant to declare the marriage solemnized between the parties as void wherein the defendant/respondent had filed an application for maintenance and cost of the suit. After hearing both the parties, the Court below held that the said application is not indicative of the facts regarding source of income, job of the applicant, therefore the application for maintenance is not maintainable. Thereafter, the Judge, Family Court, Rajnandgaon (CG) partly allowed the application vide order dated 20.4.2015 for Rs.2,500/- as one time expenses for the suit and also allowed Rs.200/- for per hearing date expenses, in which, the respondent appears along with the assistant. The defendant had filed M.J.C.No.91/2015 before the First Additional Principal Judge, Family

Court, Raipur (CG) for grant of maintenance. After hearing both the parties, vide order dated 17.12.2015, the First Additional Principal Judge, Family Court dismissed the preliminary objection as baseless and held that there is no bar for the order of maintenance in two of the aforesaid proceedings. Against the said order, the applicant had filed the instant Cr. Revision for setting aside the order dated 17.12.2015. He submits that the order is illegal and contrary to the facts and against the well settled law, therefore, res judicata operates in the matter. The parties belongs to Muslim caste and they are not having other opportunity of maintenance for the provisions of Section 125 Cr.P.C. Hence, the order passed by the Court below dated 17.12.2015 be dismissed.

3. Heard learned counsel for the applicant supported all the grounds taken in the instant Cr. Revision and would submit that under application of principles of res judicata and the applicability of maintenance, the order passed by the Court below dated 17.12.2015 may be dismissed. On behalf of the applicant reliance has been placed on 2013 Cri.L.J. 3082 (Rafique Mohammed Vs. Anisa & Ors.), in which, the puisne Judge of Rajasthan High Court held that in a case where the Special Judge had granted maintenance for the period of Iddat period/ concealment of the said facts by wife regarding earlier application. The Court held that in a settled position of law that once an order has been procured by fraud, the order becomes legally unsustainable.

4. In order to appreciate the entire facts, arguments and pleadings of the instant Cr. Revision, the application filed on behalf of the applicant, impugned orders dated 17.12.2015 and 20.4.2014 are perused.

5. The case law cited on behalf of the applicant is of no help for the applicant as vide order dated 17.12.2015 no order for maintenance has

been passed. Simply the preliminary objection filed on behalf of the present applicant was dismissed and it is held that in two different proceedings, order of maintenance shall not be a legal bar.

6. So far as the present facts are concerned, order dated 20.4.2015 was passed bi-party and at the time of the order, respondent failed to demonstrate the job of the petitioner, source of income, hence, the Court below had not rejected the prayer of maintenance on its merits. Simply it was rejected as not proved. As a settled law doctrine of res judicata for the prayer of maintenance is not a bar. Petitions may be filed again and again on different and changed circumstances. Whatever, the Court below held, there is no legal bar for grant of maintenance in two proceedings aforementioned. I do not see any reason to deviate from the said proposition of law.

7. I do not find any reason for interference. Consequently, the instant Cr. Revision filed is dismissed as not maintainable at the motion stage itself.

Sd/

(Chandra Bhushan Bajpai)

Judge