

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Criminal Revision No. 940 of 2015**

1. Smt. Subhashini W/o Ashok Pradhan, aged about 30 years, R/o Village - Saldih, Police Station - Saraipali, at present R/o Village - Amlipadar, Chowki - Balauda, Police Station - Saraipali, District Mahasamund, Chhattisgarh
2. Ku. Babita D/o Ashok Pradhan, aged about 4 years Minor, through legal guardian mother Smt. Subhashini Pradhan, R/o Village - Saldih, Police Station - Saraipali, at present R/o Village - Amlipadar, Chowki - Balauda, Police Station - Saraipali, District Mahasamund, Chhattisgarh

---- Applicants**Versus**

Ashok Pradhan S/o Gethal Pradhan, aged about 32 years, Caste - Kolta, R/o Village - Saldih, Chowki - Balauda, Police Station - Saraipali, District – Mahasamund, Chhattisgarh

---- Respondent

For Applicants	: Shri L. C. Das, Advocate
For Respondent	: Shri S. S. Rajput, Advocate

Criminal Revision No. 1009 of 2015

Ashok Pradhan S/o Gethal Pradhan, aged about 32 years, Caste - Kolta, R/o Village - Saldih, Chowki - Balauda, Police Station - Saraipali, District – Mahasamund, Chhattisgarh

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1. Smt. Subhashini W/o Ashok Pradhan, aged about 30 years, R/o Village - Saldih, Police Station - Saraipali, at present R/o Village - Amlipadar, Chowki - Balauda, Police Station - Saraipali, District Mahasamund, Chhattisgarh
2. Ku. Babita D/o Ashok Pradhan, aged about 4 years, through mother Smt. Subhashini Pradhan, R/o Village - Saldih, Police Station - Saraipali, at present R/o Village - Amlipadar, Chowki - Balauda, Police Station - Saraipali, District Mahasamund, Chhattisgarh

---- Respondents

For Applicant	: Shri S. S. Rajput, Advocate
For Respondents	: Shri L. C. Das, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****21/06/2016**

By way of the present Revision, the applicants in both the revisions have challenged the order dated 06.10.2015 passed by the Family Court, Mahasamund in Misc. Criminal Case No. F-51 of 2015. By the said impugned order, the Court below has partly allowed the application under Section 125 CrPC preferred by the applicants in Cr. Revision No. 940/15 to the extent of firstly rejecting the claim of maintenance to Smt. Subhashini and allowing the claim of maintenance to Ku. Babita, the daughter born to applicant no.1 and the respondent.

2. For convenience, the applicant no.1 Smt. Subhashini in CRR No. 940/15 who is respondent no.1 in CRR No. 1009/15 is referred as 'the wife'. Similarly, applicant no.2 Ku. Babita is referred as 'the daughter'. The respondent Ashok Pradhan in CRR No.940/15 who is the applicant in CRR No.1009/15 is referred as 'the husband'.

3. So far as Criminal Revision No. 940/15 is concerned, Shri Das appearing for the applicants submits that the rejection of the claim application of the wife by the Court below is bad in law. He submits that the Court below has not considered the evidence which has been led by the wife in its correct perspective. He referred to the evidence of the wife wherein she has made certain allegations against the husband of having subjected her to cruelty, ill-treatment and torture. He further submits that the wife was subjected to ill treatment on account of the fact that she had conceived on three occasions and on all the occasions, she gave birth to a girl child who could not survive for long. This caused annoyance to the family of in-laws and they started ill treatment to

the wife calling her all sort of names and compelled her and created a situation forcing her to leave the matrimonial home and take shelter at her parental home. This aspect has not been properly appreciated by the Court below and therefore, counsel for the applicants prayed for quashing of the impugned order and also prayed for a direction to the husband to pay maintenance to the wife.

4. Shri S. S. Rajput appearing for the respondent/husband submits that all the contentions put forth by the counsel for applicant no.1/wife are not proper and correct . In fact, it is a case where the wife had left the company of the husband and also her matrimonial home without any justifiable explanation or reason. He submits that the wife has made a bald allegation in respect of the character of the husband. In addition, the entire allegation made by the wife stands disproved only on the ground that the husband meanwhile initiated proceedings against the wife under Section 9 of the Hindu Marriage Act claiming for restitution of conjugal rights and he has been successful in the said proceeding by getting a decree in his favour, yet the wife has not shown any positive response and was not willing to stay at her matrimonial home with her husband. He further referred to the evidence of Mahesh Bhoi DW-2 and Gopal Pradhan DW-3 who in their statement before the Court below have categorically mentioned that efforts were made at the level of village elders on more than a couple of occasions and it was the wife who had taken an adamant stand of not going with the husband. According to the counsel for the respondent, these were

the factors weighed in the mind of the Court below while rejecting the claim of the wife for maintenance.

5. So far as the Criminal Revision No. 1009 of 2015 is concerned, it has been preferred by the husband to the extent of challenging the maintenance amount awarded by the Court below to the respondent no.2, the daughter born to them. Shri Rajput submits that the maintenance amount awarded to the daughter firstly is not proper for the reason that there is no reason why the wife and child should not come and stay with the husband at his house. He submits that the husband is ever willing to accept the wife and the child and to live together as a family but there is a total non-cooperation by the wife and child. Secondly, the maintenance amount of Rs.3,000/- per month is also on the higher side taking into consideration the financial status of the husband.

6. Having considered the contentions put forth by the counsel appearing on either side and on perusal of the record what is clearly reflected is that the wife has not been able to establish by leading cogent evidence in respect of any of the allegations that she had made which compelled her to leave her matrimonial home. On the contrary, the evidence put forth by the husband clearly shows that efforts were made by him at the level of village elders on more than a couple of occasions so as to ensure that the husband and the wife stay together with their child at the husband's house but the wife had taken an adamant stand of not willing to go and stay with her husband. Further, the husband has not led any evidence by which it could be said that he is not in a position of

making the payment of Rs.3,000/- per month as maintenance which comes to only around Rs.100/- per day to his daughter.

7. It is also trite at this juncture to refer to the decision of the Hon'ble Supreme Court in the case of Deb Narayan Halder Vs. Smt. Anushree Halder reported in AIR 2003 SC 3174 wherein the Supreme Court has categorically held that where there is no justification for the wife not to live at her matrimonial home with her husband and there being no evidence to show any ill-treatment and cruelty met upon the wife, the Magistrate is justified in refusing grant of maintenance.

8. Considering the total facts and circumstances of the case and also taking note of the judgment of the Supreme Court referred in the preceding paragraph, this Court is of the opinion that the Court below has not committed any error of law or on facts in reaching to the conclusion that the wife is not entitled for maintenance and at the same time, allowing the claim application in favour of the child and awarding her an amount of Rs.3,000/- per month as maintenance. Further, the amount awarded by the Court below to the daughter, in the opinion this Court, is neither exorbitant nor on the higher side calling for any interference with the same.

9. Consequently, the two Criminal Revisions being devoid of merit deserve to be and are accordingly dismissed.

**Sd/-
(P. Sam Koshy)
JUDGE**