

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 462 of 2016**

1. Laxmin Bai W/o Radhe Shyam D/o Sahni Ram Patel, aged about 32 years
2. Jay Prakash S/o Radhe Shyam, aged about 2 ½ years, Caste Patel, minor through his natural mother namely Laxmin Bai W/o Radhe Shyam D/o Sahni Ram Patel, aged about 32 years i.e. applicant no.1.
Both are R/o village Nandeli, Tehsil and Police Station Sakti, Civil and Revenue District Janjgir-Champa (CG)

---- Applicants**Versus**

Radhe Shyam Patel S/o Musur, aged about 40 years, Caste Patel, R/o Nawapara Kala, Tehsil and Police Station Sakti, Civil and Revenue District Janjgir- Champa (CG)

---- Respondent

For Applicants : Shri Govind Dewangan, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****13/06/2016**

Challenge in the present Revision is the order dated 09.02.2016 passed in M.C.C. No. 26 of 2015 by the Family Court, Sakti, District Janjgir-Champa

2. The facts in nutshell are that applicant no.1 is the wife of the respondent and applicant no.2 is their son. The applicants filed an application under Section 125 of CrPC seeking for maintenance from the respondent. According to applicant no.1, the respondent subjected her to cruelty and also ill treatment which led her to leave the matrimonial home and stay separately and that she found it difficult to sustain herself therefore, she initiated proceeding under section 125 CrPC against the respondent.

3. The Court below after considering the evidence brought on record reached to the conclusion that there was no sufficient ground for applicant no.1 for leaving her matrimonial house and stay separately. There had been efforts made by the respondent to bring applicant no.1 for staying together which was refused by applicant no.1. Considering these facts the Court below vide impugned order dated 09.02.2016 rejected the claim for maintenance by applicant no.1. However, the Court below directed the respondent to pay Rs.1,000/- per month as maintenance to applicant no.2.

4. Counsel for the applicants submits that he has challenged the impugned order on two grounds: firstly the rejection of the claim for maintenance by applicant no.1 is bad in law and secondly the amount of maintenance awarded to applicant no.2 is also on the lower side.

5. Counsel for the applicants further submits that the dispute took place between applicant no.1 and respondent on account of the cruelty being met upon applicant no.1 for abortion by the respondent. He submits that even otherwise there is allegation against the respondent that in between he has also kept another lady as his wife under the customary practice (Chudi Pratha) prevalent in the area and that also is a ground for applicant no.1 not to stay with the respondent. Thus, the order under challenge needs to be interfered on these two grounds.

6. A perusal of the evidence which has come on record clearly reflects that the respondent even after the birth of applicant no.2 had gone to bring applicant no.1 along with the child to stay together but the applicant no.1 refused to come with the respondent as is established from the cross-examination of applicant no.1 and also from the evidence of her father.

7. So far as the maintenance amount of Rs.1,000/- awarded to the applicant no.2 is concerned, the evidence which has come on record and which has not been disputed by the parties before the Court below establishes the fact that the respondent is working as a labour and therefore his monthly income has been assessed at Rs.3,000/-. Therefore, from Rs.3,000/-, the maintenance amount of Rs.1,000/- awarded to the applicant no.2 cannot be said to be on the lower side calling for enhancement.

8. Thus, in the opinion of this Court, the Court below has not committed any error of law in reaching to the conclusion while refusing maintenance to applicant no.1 and awarding Rs.1,000/- per month as maintenance to applicant no.2.

9. In view of the aforesaid reasons, the present Criminal Revision being devoid of merit deserves to be and is accordingly dismissed.

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