

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 463 of 2016**

1. Kalpana Sen W/o Laxminarayan Sen Aged About 28 Years R/o Near Primary School, Bhatapara, Utai, Tahsil & District Durg, Chhattisgarh.
2. Khilesh Sen S/o Laxminarayan Sen Aged About 3 Years & Half Year,
3. Ku. Divyanshi Sen D/o Laxminarayan Sen Aged About 9 Months,

Applicant Nos. 2 & 3 are Minor Through Legal Guardian Mother Kalpana Sen (Applicant No. 1). All are R/o Near Primary School, Bhatapara, Utai, Tahsil & District Durg, Chhattisgarh.

---- Applicants**Versus**

- Laxminarayan Sen S/o Gayaram Sen Aged About 38 Years R/o Village Khuteri, Tahsil Rajim, District Gariyaband, Chhattisgarh.

---- Respondent

For Applicants : Shri NS Dhurandhar, Advocate.

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

1. Challenge in this revision is to the order dated 27.04.2016 passed by the Illrd Additional Principal Judge, Family Court, Durg, in Misc. Criminal Case No.348 of 2014. Vide the said order, the court below has rejected the claim application of the applicant No.1 for grant of maintenance, whereas, the applicants No.2&3 have been awarded maintenance of Rs.2000/- each payable by the non-applicant/Respondent.
2. Learned counsel appearing for the applicants assailing the impugned order submits that the said order is bad in law to the extent that firstly; the court

below has not properly appreciated the fact that the applicant had been compelled to leave the matrimonial home that there has been serious allegations of cruelty and ill treatment met upon her by the non-applicant and his family members. Secondly; the order is bad to the extent of payment of Rs.2000/- each to the applicants No.2&3 as the said amount awarded is on the lower side and deserves to be enhanced, and thirdly; the impugned order has been assailed on the ground that in the operative part of the order it has been held that the applicant No.3, who is a daughter borne from the applicant No.1 and non-applicant, the maintenance has been awarded till her attaining the age of majority, whereas, as per the judicial pronouncements, the maintenance to a daughter has to be paid till she remains unmarried and dependent on the non-applicant. It is lastly submits that the proceedings under Section 125 Cr.P.C. being a benevolent legislation, the court below ought to have taken a more pragmatic approach and the applicant No.1 should also have been granted maintenance.

3. Having considered the submission put-forth by the counsel for the applicants and on perusal of record more particularly the impugned order, what is reflected is that the non-applicant had pursued the matter for brining the applicant No.1 and her children to stay together and the said efforts were made at the society level wherein on the ground of ill health, the applicant No.1 firstly did not attend the meeting and had sent a written reply. In the said reply also she did not allege any cruelty or ill-treatment subjected to her at her matrimonial home, but she had alleged that she is undergoing a training of N.M.A., therefore unable to go and stay with the non-applicant. Similarly, there is finding of fact that there was no allegation at any point of time by the applicant No.1 so far as ill-treatment and cruelty subjected by the non-applicant upon the applicant on the ground of insufficient dowry or any

assault made by the non-applicant.

4. So far as the maintenance awarded to the applicants No.2&3 is concerned, if we peruse the records, the admitted fact is that non-applicant is working as Shiksha Karmi Grade-II with the State Government and drawing approximately monthly salary of Rs.15 to 17 thousands, and therefore, after statutory deductions the net salary would be less. A sum of Rs.2000/- each has been awarded to the applicants No.2&3, which in the opinion of this court cannot be said to be on the lower side taking into consideration the net salary received by the non-applicant.
5. So far as the maintenance amount payable to the applicant No.3 till her attaining the age of majority is concerned, the record shows that as on date the applicant No.3 is only nine months old and there is long way to go for attaining firstly marriageable age and secondly getting married. Even otherwise, this court is of the opinion that so far as the daughter is concerned, the maintenance payable to a daughter would be till she is unmarried and dependent upon the father, and therefore, to that extent the prayer of the applicants are allowed and the order impugned needs to be and is accordingly modified.
6. So far as last submission of the counsel for the applicant that provisions of Section 125 Cr.P.C. has a benevolent legislation, and therefore, the court below ought to have taken more pragmatic approach and the applicant No.1 would also ought to have been granted maintenance by the court below is concerned, this court is of the opinion that specific reason has been assigned by the court below for not granting her maintenance and at the same time granting maintenance to the children who are dependent upon the non-applicant i.e. the non-applicant tried to bring the applicant No.1 to stay with

her. Further, there has been written reply by the applicant No.1 taking a stand that since she is undergoing N.M.A. training therefore, she is not in a capacity to stay with non-applicant. These two facts by itself give sufficient indication that it was the applicant No.1 who appears to be not interested to stay with the non-applicant.

7. In view of foregoing reasons, this court is of the opinion that the impugned order does not warrant any interference except to the extent that applicant No.3 would be entitled for maintenance till her marriage or till she is dependent upon the non-applicant.
8. With the aforesaid modification in the order impugned, the revision is allowed in part.

Sd/-
(P. Sam Koshy)
JUDGE