

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 1061 of 2015**

1. Smt. Nisha Yadav W/o Mukesh Yadav Aged About 24 Years R/o Kashi Nagar, Near Gouri Shankar Mandir Korba, Tah. Korba and Rev. and Civil Distt. Korba Chhattisgarh.
2. Minor Ku. Ruchika Yadav Aged About 3 Years Legal Representative Mother Smt. Nisha Yadav, R/o Kashi Nagar, Near Gouri Shankar Mandir Korba, Tah. Korba And Rev. And Civil Distt. Korba Chhattisgarh.

---- Applicants**Versus**

Mukesh Yadav S/o Shri Ram Kumar Yadav Aged About 30 Years R/o Village Bhadasar, Tah., Rev. And Civil District Janjgir Champa Chhattisgarh.

---- Respondent

For the Applicants	:	Shri S.V. Purohit, Advocate.
For the Respondent	:	Smt. Indira Tripathi, Advocate.

Hon'ble Shri Justice Chandra Bhushan Bajpai
Judgment On Board

05/02/2016

1. With the consent of both the parties the matter is heard finally.
2. Facts in brief for appreciation of the instant criminal revision are that the Applicants have filed Case No. 84 of 2015 (Smt. Nisha Yadav and one another vs. Mukesh Yadav) before the Family Court, Korba, Chhattisgarh, under Section 125 of the Code of Criminal Procedure, 1973 (for short 'the Code'). In the said case, the Applicants have also filed an application for interim maintenance, which was disposed of by the Court below vide order dated 15.10.2015 holding that as the Non-applicant in his reply submitted that he is paying Rs.3,000/- per month to the Applicants as per order passed in a case of domestic violence and there was no denial of the said fact, Applicant No.1 is not entitled for maintenance amount in the case pending

for maintenance. The Court below further held that since Applicant No.2 is a minor daughter, the Court below awarded interim maintenance of Rs.1,000/- per month and also allowed Rs.500/- (Rupees five hundred only) towards cost of the suit.

3. Against the said order, the Applicants filed the instant criminal revision praying that an interim maintenance of Rs.3,000/- per month may be allowed for Applicant No.1.

4. The petition was orally opposed on behalf of the Non-applicant.

5. Heard counsel for the parties and perused the records.

6. Learned counsel for the Applicants relying on the grounds taken in the instant criminal revision, submitted that the law has been legislated to stop mental and physical cruelty against the women. The prayer in the said case is only for interim maintenance. After final disposal of the case, the same will be merged with the final order. As per the Hindu law, the husband is duty-bound to maintain his wife and children. As the husband is ill-treating the Applicants, misbehaving, threatening and deliberately not maintaining, an amount of Rs.3,000/- per month may be granted to Applicant No.1 as an interim maintenance. Learned counsel further submits that Applicant No.1 has not received any amount as ordered earlier in the other case and as such, the instant petition may be admitted for hearing, after due hearing order passed by the Court below may be set aside and interim maintenance of Rs.3,000/- per month may also be granted to Applicant No.1.

7. Per contra, Learned counsel for the Non-applicant has opposed the petition and the arguments advanced in this behalf and submitted that as per provisions of Section 125 sub-section (4) of the Code if wife is not living with her husband without any sufficient cause or if they are living separately by

mutual consent, she is not entitled for the maintenance. Applicant No.1 has filed 7 cases against the Non-applicant. He was serving as a home-guard. After the complaints made by the Applicants, he was expelled from the job of home-guard. Applicant No.1 had also filed a divorce petition and thereby she is also prosecuting the present Non-applicant in each and every case. It is prayed that the Applicant is not entitled for interim maintenance and the petition may be dismissed at the motion stage itself.

8. In reply to the submissions advanced on behalf of the Non-applicant. Learned Counsel for Applicant No.1 submits that the Non-applicant expelled her at 12:00 night and no documents relating to the aforesaid seven cases have been filed in the matter. Hence, argument advanced on behalf of the Non-applicant is of no force.

9. For consideration of the matter, this Court has to examine whether any illegality and impropriety has been committed by the Court below and if so whether any interference is required in the matter.

10. From perusal of the impugned order dated 15.10.2015, it reveals that the fact that the Non-applicant is paying Rs.3,000/- per month as maintenance in a case of domestic violence as mentioned in the reply filed on behalf of the Non-applicant remains un-rebutted. Hence, the Court below has held that Applicant No.1 is not entitled for maintenance from the Non-applicant. Certified Copy of order sheet dated 2.12.2015 in Case No. 84 of 2015 is perused, which is an interim application under Order VII Rule 11 read with Section 151 of the Code of Civil Procedure, 1908 (for short 'the Code') and in the said order this fact also finds place that in a case pending before Chief Judicial, Magistrate, Korba, Chhattisgarh under the Protection of Women from Domestic Violence Act, 2005 (for short 'Act of

2005') filed as a complaint, the Court below under the provisions of Section 23 sub-section (2) of the Act of 2005 has granted Rs.3,000/- per month as an interim maintenance on 15.9.2011 till the final disposal of the case.

11. The document filed on behalf of the Applicant it is mentioned that Applicant No.1 was getting Rs.3,000/- per month as an interim maintenance and the said case is pending before the Chief Judicial Magistrate, Korba, Chhattisgarh under the provisions of Act of 2005 under Section 23 of sub-section (2) of the Act of 2005. This was the reason for rejection of the prayer for interim maintenance in the matter pending before the Judge, Family Court, Korba, Chhattisgarh in a proceeding under Section 125 of the Code.

12. On due consideration of the entire matter, since an interim maintenance of Rs,3000/- is already granted to Applicant No.1 and if for the sake of argument the same is not being given to Applicant No.1, she has an opportunity to execute the same order in the proper forum and can receive the amount, I do not see any illegality and impropriety committed by the Court below in rejecting the more interim maintenance amount in Case No. 84 of 2015.

13. Consequently, the petition filed on behalf of the Applicants is not maintainable and it is dismissed at the motion stage itself.

14. No order as to costs.

Sd/-

Chandra Bhushan Bajpai
Judge