

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 906 of 2016**

- Smt. Rekha Namdeo @ Nanu W/o - Sharda Prasad Namdeo Aged About 35 Years R/o - Near Sao Dharamshala Juna Bilaspur, Police Station - City Kotwali, Tahsil, Civil & Revenue District Bilaspur Chhattisgarh

---- Applicant**Versus**

- Sharda Prasad Namdev @ Babloo S/o Late Kanti Lal Namdev Aged About 36 Years Caste - Chhipia, R/o - Q. No. L. I. G.- 204, Near Ghanta Ghar, Maharana Pratap Nagar Korba, Police Station - Kosabadi, Tahsil, Civil & Revenue District - Korba Chhattisgarh

--- Non-applicant

For Applicant

Shri Ratnesh Kumar Agrawal, Advocate

SB: Hon'ble Shri Justice P.Sam Koshy**Order On Board****23/09/2016**

1. The challenge in the present revision is to the order dated 24.08.2016 passed by the Family Judge Bilaspur in MJC No. 223/2016.
2. The fact of the Petition in nutshell is that there was an order for grant of maintenance of Rs. 5000/- per month in favour of the Applicant against the Non-applicant and that the present MJC No. 223/2016 was filed for the execution of the non payment of the maintenance amount by the Non-applicant in as much as from June 2015 to March 2016 i.e. 10 months for a total amount of Rs. 50,000/-.

3. However, the Court below vide the impugned order has partly allowed the same to the extent that the present Applicant shall be entitled for maintenance of Rs. 5000/- per month for the period from June, 2015 to July, 2015. Thereafter, she would not be entitled for maintenance on account of the fact that on 22.8.2015 the Applicant and Non-applicant had entered into a mutual agreement on the basis of which they have obtained decree of divorce and wherein the Applicant had agreed for acceptance of lump sum amount of Rs. 2,00,000/- towards the permanent maintenance to the Applicant. The Court below accepting the same has partly allowed the application on the ground since the Applicant has already received part payment from the said agreement she would not be entitled for any maintenance amount subsequent to the date of agreement and thus ordered accordingly.
4. Learned Counsel assailing the said order submits that the Court below has erred in as much as not appreciating the fact that the said agreement was not applicable for the purpose of the proceedings under Section 125 CrPC. Further it is also contended that the Applicant in any manner would be entitled for the maintenance till 11.04.2016 i.e. date on which decree of divorce was obtained. Thus the Court below has erred in not granting maintenance amount till date of decree of divorce.
5. Learned Counsel for the Applicant relied upon the decision of this

Court passed in case of **Smt. Vinita Devangan v. Rakesh Kumar Devangan**¹. In addition also he relied upon the judgment of the Allahabad High Court passed in case of **Mahesh Chandra Dwivedi v. State of U.P. & Anr.**² and the Judgement of Punjab-Haryana High Court passed in case of **Sushil Kumar v. Neelam**³.

6. Having considered the submission put forth by the Counsel for the Applicant and on perusal of record what clearly reflects is that the Court below has taken note of fact that initially there was an order of maintenance in favour of the Applicant granting Rs. 5000/- per month as maintenance to be paid by the Non-applicant. Subsequently, divorce proceeding was initiated by the Non-applicant. The said divorce proceeding have been decided by way of a mutual consent where the parties in dispute have entered into a mutual agreement and the conditions to the agreement were acceptable to both the parties. On the basis of which on 11.04.2016 decree of divorce was passed. In the said agreement entered into between the parties, it was specifically envisaged that the Applicant shall be receiving a lumpsum amount of Rs. 2,00,000/- towards permanent maintenance and that she would not be entitled to claim any further maintenance amount in addition to the Rs. 2,00,000/-.

7. On the basis of the said agreement acceptable to the parties Rs. 1,00,000/- was paid to the Applicant on the date of execution of

1 2009 (4) C.G.L.J. 409

2 2009 CRI. L.J. 139

3 2004 CRI. L.J. 3690

the agreement itself i.e. 22.08.2015 and the remaining Rs. 1,00,000/- was paid to the Applicant on the date of passing of decree of divorce i.e. 11.04.2016. Meanwhile, the Applicant is said to have initiated the present MJC for execution of earlier order for maintenance passed in favour of the Applicant alleging default on part of the Non-applicant in not paying maintenance amount from June, 2015 till the decree of divorce was passed by the Court below. The Court below has passed the impugned order on basis of the fact that since there was an agreement between the parties and Applicant was granted Rs. 2,00,000/- towards permanent maintenance, therefore she would be entitled for maintenance amount till the date of agreement only and accordingly ordered for grant of maintenance to the Applicant for the month of June, 2015 and July, 2015.

8. In the opinion of this Court the Court below has not committed any infirmity or illegality in reaching to the said conclusion for the reason that the said conclusion has been arrived at based upon the agreement that has been entered into between the parties and which has also been acted upon, by the Non-applicant in accordance with the terms of the agreement.
9. So far as the judgments cited by the Counsel for the Applicant. All the three judgments are distinguishable in the facts itself as none of the three orders cited relates to the case where there were agreement between the parties for payment of lumpsum amount of

compensation of maintenance which is the bone of the contention of the present case. Thus, all these three judgments are distinguishable on facts.

10. Thus, in the opinion of this Court there is no strong ground made out interfering with the order passed by the Court below.

11. Accordingly, the present Revision Petition being devoid of merits stands dismissed.

Sd/-

(P. Sam Koshy)
JUDGE