

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Misc. Petition No. 20 of 2016**

Mukesh Yadav S/o Shri Ramkumar Yadav Aged About 30 Years R/o Village Bhadesh Tahsil - Janjgir, Distt. Janjgir-Champa Chhattisgarh. Present Address - Bamhnidih, Tahsil - Champa, Civil And Rev. Distt. Janjgir Champa Chhattisgarh.

---- Petitioner**Versus**

Smt. Nishad Yadav W/o Mukesh Yadav Aged About 26 Years R/o Kashinagar, Beside Rathore Kirana Store, Sarkhowala, Near Gourishankar Temple, Sarkhowala, Korba, Tahsil & Distt. Korba Chhattisgarh.

---- Respondent

Smt. Indira Tripathi, Advocate for the Petitioner.
Shri SV Purohit, Advocate for the Respondent.

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order On Board****31.3.2016**

1. Heard on I.A. No.1 of 2016, an application for taking additional document on record. On due consideration, the same is allowed and the document annexed alongwith said interim application is taken on record, if otherwise admissible in evidence.
2. As per order dated 5.2.2016, the Petitioner has filed certified copy of the order dated 30.3.2015. Learned counsel for the Respondent submits that a copy of the said certified copy is not provided to him.

3. On due consideration and after perusal of the copy of the order-sheet dated 30.3.2015 and the certified copy of the same filed alongwith a covering memo, it goes to show that the first one is not properly readable and the certified copy is better readable.

4. During the course of hearing, Learned Counsel for the Petitioner was directed to supply a copy of the certified copy of order dated 30.3.2015 to Learned Counsel for the Respondent and the same has been supplied to Learned Counsel for the Respondent during hearing.

5. Learned counsel for the Respondent submits that I.A. No.2 of 2016 is pending and the same may be heard and disposed of.

6. By filing I.A. No.2 of 2016, it is prayed on behalf of the Respondent that as the Second Additional Sessions Judge, Korba, Chhattisgarh has passed order dated 27.11.2015 in Criminal Appeal No.58 of 2015 and against the said order there is a provision available for preferring a criminal revision, but the Petitioner has filed the instant Cr.M.P. which is against the legal provisions, therefore, the instant Cr.M.P. deserves to be rejected.

7. The facts necessary for proper adjudication of the instant Cr.M.P are that before the concerned Judicial Magistrate First Class, Miscellaneous Criminal Case No.28 of 2015 is pending filed by the present Respondent under various provisions of Protection of Women from Domestic Violence Act, 2005 (for short 'the Act of 2005'). On 15.9.2011, the learned trial Court ordered that interim maintenance and cost of treatment be given to the

Respondent @ Rs.3000/- per month till final disposal of the said matter.

8. Against the said order, the Petitioner had preferred Criminal Revision No.01 of 2012 before the Sessions Judge Korba, Chhattisgarh. The learned Sessions Judge vide order dated 26.2.2012 affirmed the order passed by the trial Court and dismissed the said revision. Thereafter, the present Petitioner had filed an application to reduce the interim maintenance-cum-medical treatment awarded earlier. The trial Court, after hearing the parties, vide order dated 30.3.2015 rejected the application filed on behalf of the present Petitioner to reduce the interim maintenance amount granted vide order dated 15.9.2011. Against the said order, the present Petitioner filed Criminal Revision No.58 of 2015 before the Second Additional Sessions Judge, Korba (CG). The said revisional court vide order dated 27.11.2015 affirmed the order passed by the trial Court dated 30.3.2015 and dismissed the said criminal revision (in the impugned order the matter is referred as Criminal Revision No.58 of 2015 and on the other side in whole of the order on many occasions parties are referred as Appellant and Respondent and at paragraph 13 of the order it is mentioned that appeal filed by the Appellant is dismissed.)

9. Against the said order, the Petitioner has filed the instant Cr.M.P. invoking the provisions of Section 482 of the Code of Criminal Procedure, 1973 (for short 'the Code'). It is also for the

further relevance that the then Sessions Judge Korba, Chhattisgarh had also registered and decided the case preferred against the order dated 15.9.2011 passed by the trial Court as a revision bearing Criminal Revision No.01 of 2012.

10. On perusal of the Act of 2005 it goes to show that as per Section 29 of the Act there is a provision for appeal. Section 29 of the Act 2005 reads as under:

“29. Appeal.- There shall lie an appeal to the Court of Session within thirty days from the date on which the order made by the Magistrate is served on the aggrieved person or the respondent, as the case may be, whichever is later.”

11. Besides this provision, there is no any further provision in the said Act for preferring a revision before any other forum against the order passed by the Magistrate. Hence, undisputedly, against any order of the Magistrate the provision made in law is for an appeal only. The above solitary provision goes to show that the then Sessions Judge Korba, Chhattisgarh while hearing the matter against order passed by the Magistrate dated 15.9.2011 committed grave mistake of procedural law by registering the same under the head of criminal revision and also under the provisions of Section 399 of the Code. Section 399 of the Code is for the relevance is as under:

“399. Sessions Judge's powers of revision.-

(1) In the case of any proceeding the record of which has been called for by himself, the

Sessions Judge may exercise all or any of the powers which may be exercised by the High Court under sub-section (1) of section 401.

(2) Where any proceeding by way of revision is commenced before a Sessions Judge under sub-section (1), the provisions of sub-sections (2), (3), (4) and (5) of section 401 shall, so far as may be, apply to such proceeding and referenced in the said sub-sections to the High Court shall be construed as references to the Sessions Judge.

(3) Where any application for revision is made by or on behalf of any person before the Sessions Judge, the decision of the Sessions Judge thereon in relation to such person shall be final and no further proceeding by way of revision at the instance of such person shall be entertained by the High Court or any other Court.”

12. As a settled law, if any special enactment is in force, then provision of such enactment has to be complied with. Legislature has already provided the provision of an appeal under Section 29 of the Act of 2005. The appreciation of the then Sessions Judge, Korba for registering the application under the head of criminal revision and to pass the order under the procedural laws under Section 399 of the Code is patently illegal. He ought to have registered the matter as an appeal under the provisions of Section 29 of the Act of 2005. This Court has not appreciated on the factual aspects, but as per the observation of this Court, the then

Sessions Judge, Korba has committed patent illegality by registering the said application as a criminal revision.

13. Also the Second Additional Session Judge, Korba, who registered the matter as a criminal revision and besides this, he referred the matter subsequently as an appeal goes to show that either he is ignorant for not quoting the correct nomenclature of the matter or he was not sure about which category of nomenclature would be applicable for registering the case, that is why, at many places, he referred the parties as Appellant and Respondent and the case as an appeal. Initially in the cause-title of his order, the Second Additional Sessions Judge mentioned the case as a criminal revision, but at the right top corner of all pages of the order he mentioned the case as a criminal appeal and also in the conclusion of the order he referred the case as an appeal. The said illegality cannot be allowed to continue. In the considered view of this Court, the matter ought to have been registered purely under the head of criminal appeal under the provisions of Section 29 of the Act of 2005. Through for the moment, this court hesitate to appreciate the other factual aspects and also order dated 27.11.2015.

14. The Registrar General is directed to send a copy of this order to both the Judicial Officers i.e. the then Sessions Judge, Korba and Second Additional Sessions Judge, Korba, who passed the respective orders dated 26.5.2012 and 27.11.2015 with a direction not to commit this procedural mistake again. The

Registrar General shall, after obtaining appropriate administrative permission, again issue circular to all the Judicial Officers working in the State of Chhattisgarh to mention the correct nomenclature of the cases in their orders and not to commit such mistake in future.

15. Now, I consider the interim application IA No.02 of 2016. From perusal of the provision of Section 397 read with Section 401 of the Code it appears that there is no any provision in the Act of 2005 besides the provision of an appeal under Section 29 of the Act 2005. Hence, if there is no specific forum mentioned against the order passed in the appeal as a settled law, normal procedural law will be applicable and as such, in the considered view of this Court, against the order dated 27.11.2015 passed by the Second Additional Session Judge, Korba, Chhattisgarh, the only forum available to the Petitioner is to file a criminal revision under Section 397 read with Section 401 of the Code. As the specific provision of revision is applicable, the inherent jurisdiction of this Court is not attracted. Accordingly, in the considered view of this Court, the matter is to be heard as a criminal revision only and not as a Cr.M.P.

16. In view of above, as the instant Cr.M.P. is not maintainable, also as prayed the same is disposed of as withdrawn without any appreciation on its merits with liberty to file a revision.

17. The petition is disposed of as withdrawn reserving the aforesaid liberty.

18. Registrar (Judicial) is directed to send a copy of this order to the concerned the then Second Additional Sessions Judge, Korba, Chhattisgarh for information with a direction not to commit the procedural mistakes again in future.

Sd/-
(Chandra Bhushan Bajpai)
JUDGE

Nimmi