

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 1006 of 2015**

Shambhu Nath Chakravarti S/o Virendra Chakravarti Aged About 48 Years Aged About 40 (Presently 48) Years, Occupation - Service, Clerk (Daily Wage Employee), Irrigation Department, Ambikapur, R/o Village : Fundur - Dihari, Banaras Road, Ambikapur, Police Station & Tahsil - Ambikapur, Civil & Revenue District - Surguja Chhattisgarh.

---- Petitioner**Versus**

1. Smt. Nitika Chakravarti W/o Shambhu Chakravarti (Wrongly Mentioned As Husband) Aged About 34 Years
2. Abhijit Chakravarti Aged About 12 Years (Minor) (Presently Aged About 21 Years), Through Natural Guardian - Mother Smt. Nitika Chakravarti, Wife of Shri Shambhu Chakravarti,

Both R/o Near Power House, North Jhagarakhand Colliery, P.S. Jhagarakhand, Tahsil - Manendragarh, Civil & Revenue Distt. Korea Chhattisgarh.

---- Respondents

For petitioner	Shri A.N. Bhakta, Advocate.
For Respondents	Shri Parag Kotecha, Advocate.

Hon'ble Shri Justice P. Sam Koshy**CAV JUDGMENT****Reserved on 05.12.2016****Delivered on 07/12/2016**

1. The present revision petition has been preferred against the judgment dated 15.10.2015 passed by the Family Court, Manendragarh, in Misc. Criminal Case No.264/2007. Vide the said impugned order, the Family Court in a proceeding under Section 125 CrPC while allowing the same has ordered for payment of Rs.2000/- each to the respondents No.1&2 i.e. wife and son of the petitioner.

2. Learned counsel appearing for the petitioner challenges the said order on the ground that the application on which the impugned order has been passed was a second application under Section 125 CrPC and the same was not maintainable and the impugned order is therefore per se illegal and not sustainable. According to him, it is a case where the respondent had already preferred an application in the past for grant of maintenance invoking the same provisions that of Section 125 CrPC and which stood adjudicated upon on its merits vide order dated 17.11.2000 in Misc. Criminal Case No.71 of 2000. Even before the 125 CrPC application was decided on 17.11.2000, the petitioner had moved an application under Section 9 of the Hindu Marriage Act for restitution of conjugal rights and it also stood allowed in favour of the petitioner vide order dated 29.02.2000 and in spite of there being a specific judgment in favour of the petitioner, the respondent-wife did not think it proper for compliance of the directions of staying together with the petitioner.
3. It was also contended by the petitioner that down the line the petitioner had also moved an application for divorce on the ground of desertion and cruelty on the part of the respondent No.1. The court below has granted decree of divorce in favour of the petitioner-Husband vide order dated 15.07.2009. All these circumstances go against the respondent No.1 and there was no reason whatsoever for the family court to entertain the fresh application under Section 125 CrPC moved by the respondent No.1.
4. Taking the court through the order dated 17.11.2000 passed in Misc.

Criminal Case No.71 of 2000 which was the initial proceeding under Section 125 CrPC, it is submitted that the order is explicit of it being decided on merits and was not rejected on technical grounds. Once the matter has been fully thrashed out and decided on its merits, subsequent application under Section 125 CrPC could not have been made by the respondent particularly when the court at the first instance itself has held that she has not been able to establish her claim for maintenance by leading cogent evidence.

5. It was also submitted that it is a case where the family court has in fact sat over the findings of the JMFC who had decided the application under Section 125 CrPC 16 years ago i.e. on 17.11.2000 in Misc. Criminal Case No.71 of 2000. Referring to paragraphs 17 and 18 of the impugned order of the family court Manendragarh in Misc. Criminal Case No.264 of 2007, counsel for the petitioner submits that it is a case where the family court has sat over the earlier judgment dated 17.11.2000 of JMFC as if it was sitting over it as an appellate court whereas, the fact remains that both the courts had conferred with the same powers under the same provisions of law. Therefore, the family court could not have refused to accept the reasons assigned in the said order nor could the family court Manendragarh have gone into the veracity of the order dated 17.11.2000 at this juncture unless it was subjected to appeal by the wife. Thus, prayed for quashment of impugned order.
6. Another aspect which was submitted by the petitioner was the fact that all the orders which stand in favour of the petitioner husband i.e. the

first order dated 17.11.2000 decided by the JMFC, Manendragarh in Misc. Criminal Case No.71 of 2000 and also the order under Section 9 of the Hindu Marriage Act dated 29.02.2000 and also the judgment and decree of divorce dated 15.07.2009 have not been questioned by the respondent No.1-wife. As long as the same are not challenged and set aside, there was on occasion for the respondent to claim maintenance again by filing fresh application under Section 125 CrPC. Thus, prayed for allowing the revision and for quashing the impugned order dated 15.10.2015.

7. Counsel for the petitioner relied upon the decision of Supreme Court in case of Deb Narayan Halder Vs. Anushree Halder (Smt.), reported in 2003(11) SCC 303.
8. Per contra, learned counsel appearing for the respondents submits that there is no bar under the Act that the second application under Section 125 CrPC was not maintainable. According to him, it can be a case where at the first instance the application got rejected because the respondent No.1 had sufficient means to sustain at that relevant point of time, however, now that she does not have sufficient means to maintain herself, she would be entitled to revive her application under Section 125 CrPC for the second time and under such circumstances the same would not be hit by the principle of res-judicata.
9. It was also submitted that it is a case where the subsequent application was preferred as she was not having sufficient source of income and that in between the status has also changed and the petitioner has

obtained a decree of divorce against her which all the more leaves her in a severe situation of financial crunch which forced her to file repeat application under Section 125 CrPC. He submits that there are judgments of this High Court as well as the other High Courts that once even if the application under Section 125 CrPC has been dismissed on merits, the subsequent application for grant of maintenance can still be filed.

10. According to respondents, the finding of the JMFC, Manendragarh was not proper, legal and justified at the first instance while passing the judgment on first application on 17.11.2000 as has been discussed and held by the Family Court, Manendragarh, in impugned order dated 15.10.2015. The family court has re-appreciated the case on its merits and found that the reasons assigned by the JMFC rejecting the claim application to be improper, it has therefore, taken a different view and have allowed the application under Section 125 CrPC by ordering the present petitioner-husband to pay an amount of Rs.2000/- each to the wife as well as son. Thus, prayed for rejection of the revision petition.

11. In support of his contentions, counsel for the respondents relied upon the decision of MP High Court in case of Kamlesh Kumar Patel Vs. Smt. Madhulata, reported in ILR 2014 (MP) 1445 and judgment of this High Court in case of Santoshi Jaiswal & Another Vs. Rakesh Jaiswal, reported in 2014 (4) CGLJ 640.

12. Having considered the rival contentions put forth on either side and on perusal of records certain undisputed facts in the instant case is that,

on an earlier occasion 125 proceedings were initiated by the respondent No.1 which was registered as Misc. Criminal Case No.71 of 2000. The said case got dismissed on merits on 17.11.2000 after considering all the contentions and evidence which were led by the respondent No.1-wife. Another undisputed fact is the order passed under Section 9 of the Hindu Marriage Act wherein in a proceeding for restitution of conjugal rights, the court had passed judgment/order in favour of the petitioner-Husband on 29.02.2000 and lastly there is also an order of decree of divorce passed against the respondent No.1 wife on 15.07.2009. These three orders were passed in favour of the petitioner-Husband. From the record, it does not reflect that these three orders have been subjected to appeal before any appellate forum and as such now by efflux of time these orders have also attained finality.

13. Once when the initial application under Section 125 CrPC has been threshed out by the court having jurisdiction and have held that respondent-wife does not have strong and sufficient reasons to leave the matrimonial home and the court has rejected the application under Section 125 CrPC, the same could not have been reconsidered, re-appreciated or tested before a forum having the same jurisdiction under the same provisions of law i.e. 125 CrPC. The findings of the family court, Manendragarh, in paragraphs 17 & 18 appreciating the veracity of the order dated 17.11.2000 and re-appreciating the evidence which have come on record, in the opinion of this court was beyond its powers, competence and jurisdiction. This opinion of this court is on the ground that the family court, Manendragarh has also exercised the

same powers conferred upon it under Section 125 CrPC and the judgment dated 17.11.2000 of JMFC was also an order passed in an application under Section 125 CrPC exercising the same powers. Thus, the family court again exercising the same powers (which could have been exercised only by an appellate court) has reconsidered the matter and has passed the impugned order by taking a different view to the JMFC, Manendragarh.

14. Thus, in the opinion of this court, the impugned order of family court dated 15.10.2015 was bad in law, uncalled for and the same deserves to be set aside.
15. So far as two judgments cited and relied upon by the counsel for the respondents is concerned, both the judgments have been passed under different contextual background. In case of Santosh Jaiswal (Supra), initially application under Section 125 CrPC was allowed, but was annulled in a proceeding under Section 127 CrPC. Such is not the facts of present case. Therefore, the same is distinguishable. Likewise, in case of Kamlesh Kumar Patel (Supra), subsequent application under Section 125 CrPC was made maintainable in the light of the changed circumstances that had developed between the Husband and Wife, inasmuch as, it was not in dispute that in the earlier occasion of litigation under Section 125 CrPC, at the relevant stage, there was a compromise entered into between the parties. Though, at the first instance application under Section 125 CrPC was rejected, the MP High Court taking into consideration the changed circumstances of the alleged compromise, had entertained and allowed the second

application which again is under different factual context. Therefore, this judgment is also distinguishable to the facts of the case on hand.

16. However, at this juncture, what cannot be lost sight of is the fact that the order of maintenance to the son would have been only till the age of his attaining majority. In the instant case, according to the petitioner as well as respondent No.1, the respondent No.2 have attained the age of majority and as such the order of granting maintenance to him stands ceased by efflux of time and there is no hesitation in reaching to the conclusion that the impugned order so far as grant of maintenance to the respondent No.2 is concerned, the same does not deserve to be interfered with and the same is affirmed to that extent. However, taking into consideration the factual matrix of the case as has been narrated in the preceding paragraphs, this court has no hesitation in reaching to the conclusion that the findings of the Family Court, Manendragarh dated 15.10.2015 granting maintenance of Rs. 2000/- per month to the respondent No.1-wife is bad in law and is not sustainable. The same deserves to be and is hereby set aside/quashed.

17. However, in case if any amount of maintenance has already been made by the petitioner to the respondent No.1-wife in between, the same shall not be recoverable under any circumstances.

18. With the aforesaid modification, the revision petition is partly allowed.

Sd/-
(P. Sam Koshy)
JUDGE