

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRIMINAL REVISION NO. 735 OF 2016

- Santosh Kumar Agrawal (Kasturiya), aged about 32 years, S/o Omprakash Kasturiya, R/o Sakti, P.S. - Sakti, District Janjgir-Champa (C.G.)

... Applicant

Versus

1. Smt. Sarita Goyal (Agrawal), aged about 30 years, W/o Shri Santosh Kumar Agrawal (Kasturiya), D/o Laxmi Narayan, R/o Bankimongra, Tahsil- Katghora, District- Korba (C.G.)
2. Ku. Sannu @ Saniya, aged about 2 years, D/o Shri Santosh Agrawal minor through natural guardian mother Sarita Goyal Agrawal, W/o Shri Santosh Kumar Agrawal (Kasturiya), D/o Laxmi Narayan, R/o Bankimongra, Tahsil- Katghora, District- Korba (C.G.)

... Non-applicants

For Applicant	:	Mr. P.R. Patankar, Advocate.
For Non-applicants	:	Mr. S.R.J. Jaiswal, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

20/10/2016

1. The present revision under Section 19(4) of the Family Courts Act has been preferred by the Applicant assailing the order dated 8.7.2016 passed by the Family Court, Camp Court Katghora, District Korba in M.J.C. No. 68 of 2013. By way of the impugned order dated 8.7.2016, the Family Court in a proceeding under Section 125 of CrPC has allowed the monthly maintenance to the tune of Rs.1500/- to Non-applicant No.1 and Rs.500/- to Non-applicant No.2, including the cost of litigation to the tune of Rs.500/-.
2. Learned Counsel for the Appellant submits that the impugned order and the proceeding under Section 125 of CrPC is per se illegal on account of the fact that the Judicial Magistrate First Class, Katghora vide its order dated 21.7.2014 had already ordered for payment of Rs.3000/- as maintenance to the present Non-applicants under the provisions of

the Protection of Women from the Domestic Violence Act. Similarly, the present Non-applicants were also getting Rs.1000/- as maintenance in a proceeding under Section 24 of the Hindu Marriage Act. Thus, in all, the present Non-applicants are already getting an amount of Rs.4000/- per month for their sustenance. Therefore the order under Section 125 of CrPC was not proper, legal and justified and the impugned order of granting maintenance is bad in law. In support of his contentions, Counsel for the Applicant has relied upon the two decisions of the Delhi High Court rendered in the cases of **Rachna Kathuria Vs. Ramesh Kathuria** [reported in 2010 (96) AIC 772 (Del., H.C.)], decided on 30th August, 2010, and **Renu Mittal Vs. Anil Mittal & Others**, passed on 27th September, 2010 in Crl. R.P. No. 633 of 2010 and Crl. M.A. No. 15451 of 2010. In the said judgments, it has been enunciated by the High Court that once when there is already a proceeding and an order grant of maintenance has been provided to the wife from a competent Court of law the subsequent application for grant of maintenance under a different statute and provision of law would not be permissible. Thus, prayed for the setting aside of the impugned order.

3. Learned Counsel for the Non-applicants however opposing the revision submits that it is the case where the Non-applicants are getting maintenance under the entirely different case and also under the entirely different provisions of law and that the impugned order in the present case has been passed under the entirely different provisions of law. That the applications for grant of maintenance under different provisions of law can be invoked by the wife as there is no such bar under any of the statutes from filing different applications under the different statutes.

4. At this juncture, it would be relevant to take note of the fact that in the instant case while the application under Section 125 of CrPC was being considered, the Non-applicant/wife had also claimed for an interim maintenance and the Family Court vide its order dated 13.10.2014 had rejected the said application for grant of interim maintenance on the ground that since the Non-applicants are already deriving maintenance amount of Rs.4000/- under the provisions of the Protection of Women from the Domestic Violence Act as also in a proceeding under Section 24 of the Hindu Marriage Act, they are not entitled for any interim maintenance. Surprisingly, the Family Court while deciding the proceeding under Section 125 of CrPC and passing the impugned order has not made any discussion in respect of the amount of Rs.4000/- that the Non-applicants are getting from the Applicant-husband and neither is there any reference on the aspect of the amount of Rs.4000/- which the Non-applicants are getting regularly.

5. Thus, in the given facts and circumstances of the case and also considering the evidence which has come on record in respect of the amount of Rs.4000/- which the Non-applicants are already getting from the present Applicant, this Court is of the opinion that the Court below has not properly appreciated the entire facts of the case while allowing the application under Section 125 of CrPC in favour of the Non-applicants. The Court below ought to have particularly taken note of the fact that the interim application of the Non-applicants was rejected on the ground of Rs.4000/- being paid to them by the present Applicant. In the said factual background it was incumbent upon the Court below to have considered this aspect and should have also gone into the source of income of the Applicant-husband to determine whether the Non-applicant/wife was entitled for more compensation than she was already

getting under the Domestic Violence Act as well as under the provisions of the Hindu Marriage Act. In the absence of any such finding or any such discussion in the impugned order, the same is not sustainable and deserves to be and is accordingly set aside.

6. The revision is allowed. No order as to costs.

/sharad/

Sd/-
(P. Sam Koshy)
Judge