

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Cr.M.P. No. 1370 of 2016**

Dhaneshwari Bai, w/o Purushottam Nishad, aged about 30 years, R/o Rambagh, Dhamtari, District Dhamtari, Chhattisgarh.

---- Petitioner**Versus**

Purushottam Nishad S/o Budhu Ram Nishad, aged about 35 years, resident of village Mandraud, police station and Tehsil Kurud, district Dhamtari, Chhattisgarh.

---- Respondent

For the Petitioner	:	Shri Adil Minhaj, Advocate.
For the Respondent	:	Shri R.S. Patel, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**Order on Board****23.01.2017**

1. Heard petition under Section 482 of the Code of Criminal Procedure, 1973 (for short 'the Cr.P.C.') challenging the legality of the order dated 7.11.2016 passed in M.J.C. No. 155 of 2015 by the Learned Principle Judge, Family Court, Dhamtari.

2. Learned counsel for the petitioner submits that the petitioner filed an application under Section 125(3) of the Cr.P.C. for recovery of the maintenance amount as ordered in a separate proceeding by the same court. During the pendency of this application for recovery of the arrears of maintenance amount, one application under Section 127 of the Cr.P.C. was filed by the respondent which was registered as M.J.C. No. 164 of 2016. Thereafter, the respondent filed an application for stay of the recovery proceedings in M.J.C. No. 155 of 2015. The application was decided by the Family Court, Dhamtari on 7.11.2016 by which an order was passed that till

the disposal of M.J.C. No.155 of 2015, proceedings for recovery under Section 125(3) of the Cr.P.C. against the respondent shall remain stayed. He further submits that the court below was not empowered under any law to pass such an order and the order of maintenance against the respondent is still subsisting. It is only after the outcome of the proceedings under Section 127 of the Cr.P.C. that the order may be altered, modified or cancelled.

3. Learned counsel for the respondent has opposed the arguments submitted on behalf of the petitioner and the grounds raised in this petition. He further submits that the court below has passed a valid order which cannot be interfered with.

4. The Family Court is governed by the Family Courts Act, 1984. Section 7(2) and Section 10(2) of the Family Courts Act read as under:

'Section 7(2) of the Family Courts Act empowers a Family Court shall also have and exercise the jurisdiction exercisable by a Magistrate of the First Class under Chapter IX of the Cr.P.C. 1973 (2 of 1974).

Section 10 of the Family Courts Act defines the procedure in which sub-section (2) is specifically referred that subject to the other provisions of this Act and the rules, the provisions of the Cr.P.C. or the rules made thereunder, shall apply to the proceedings under Chapter IX of the Cr.P.C. before a Family Court.'

This provision specifically defines the jurisdiction and the procedure to be adopted by a Family Court while exercising the jurisdiction of a Judicial Magistrate, First Class under Chapter IX of the Cr.P.C.

5. The impugned order has been passed invoking powers under Section 151 of the Cr.P.C. Section 151 of the Cr.P.C. provides for arrest to prevent the commission of cognizable offences. This provision does not empowers the Family Court to stay the proceedings under Section 125(3) of the Cr.P.C. There is no need to go into the details of the merits of this order.

6. Considering the limits and powers of the Family Court as laid down under Section 10(2) of the Family Courts Act and that a Family Court is not vested with any inherent powers, which are provided under Section 482 of the Cr.P.C to the High Courts. For these reasons the order passed by the trial court staying the proceedings of the recovery against the respondent is not legal and is liable to be set aside. Hence, this petition is allowed and the impugned order passed by the trial court is set aside.

7. The parties are directed to appear before the Family Court, Dhamtari on **6th February, 2017** for further proceedings in M.J.C. No. 155 of 2015.

Sd/-

(Rajendra Chandra Singh Samant)
Judge