

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP (227) No.732 of 2016**

1. Smt. Archana Nath, W/o. Shailendra Nath, Aged about 38 years,

2. Aryan Nath, S/o. Shailendra Nath, Aged about 11 years

Both Resident of C/o. Umashankar Rai Bhatnagar, Sheetla Mahamaya Mandir Road, Nav Durga Chowk, Mohalla-Aminpara, Purani Basti, Raipur, P.S.-Purani Basti, Tehsil & District Raipur (CG)

---- **Petitioners**

Versus

Shailendra Nath S/o. Late Swaminath, Aged about 43 years, R/o. Quarter No.30/e (Old No.8/e), Avenue-"A", Sector-7, Bhilai-490001, P.S.-Sector-6, Bhilai Nagar, Bhilai, Tehsil & District Durg (CG) Office: Shailendra Nath S/o. Late Swaminath, (Personal No.-942280, Token No.-30085), C/o. Managing Director, Bhilai Steel Plant, Water Management Department, Water Repairing Shop, "Ispat Bhawan", Bhilai-490001, District-Durg (CG)

---- **Respondent**

For Petitioners	:	Mr.Pawan Kesharwani, Advocate
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Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board**

16/02/2017

- Petitioner No.1-Smt. Archana Nath is wife of respondent-Shailendra Nath. She filed MJC No.197/10 for grant of maintenance to her and her son Aryan. That application was considered by learned Principle Judge, Family Court, Durg on 27.8.2011, it was partly rejected refusing maintenance to petitioner No.1. Order of the Principle Judge, Family Court was subjected to Criminal Revision before this Court in Criminal Revision No.561 of 2011 and

this Court by order dated 10.7.2013 dismissed the revision upholding the order of the Principle Judge, Family Court, Durg. Against which, SLP (Crl.) No.8864/2013 was filed before the Supreme Court and the Supreme Court by order dated 12.9.2014 dismissed the SLP.

2. Now the petitioners have filed MJC No.128/2015 i.e. an application under Section 125 of the CrPC on the ground that the judgment and decree of the Family Court granting divorce to the respondent dated 27.8.2011 has been set aside by this Court in F.A.(M) No.112/2011 on 10.3.2014. The Second Additional Principal Judge, Family Court, Durg by order dated 7.11.2015 rejected the same on the ground that order refusing maintenance to petitioner No.1-Smt. Archana Nath has been affirmed by this Court in Criminal Revision No.561/2011 and SLP has not been entertained against the order of this Court. Against which, this writ petition under Article 227 of the Constitution of India has been filed.
3. Mr.Pawan Kesharwani, learned counsel appearing for the petitioners, would vehemently submit that since order rejecting the application for maintenance was based on finding of the Family Court granting divorce to the respondent and that order has been set aside by this Court in First Appeal, petitioner No.1 is entitled to file fresh application for re-opening of the earlier proceeding for

maintenance and learned Second Additional Principal Judge, Family Court, Durg is unjustified in rejecting the petitioner's application under Section 125 of the CrPC.

4. It is not in dispute that the petitioners application for maintenance was heard and decided on merits by the Principle Judge, Family Court, Durg, against which, criminal revision was preferred and order of the Family Court has been maintained by this Court and SLP filed at the instance of the petitioners has not been entertained by the Supreme Court, thereby the order passed under Section 125 of the CrPC in the petitioners application has become final. The petitioners cannot be permitted to re-open the proceeding of maintenance on the ground of principle of finality of the order and as such, entertaining such application would be against the public policy. Learned Family Court is absolutely justified in rejecting the application.
5. Accordingly, the writ petition deserves to be and is hereby dismissed. No order as to cost(s).

Sd/-
(Sanjay K.Agrawal)
Judge

B/-