

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 278 of 2017**

- Ajay Sharma S/o Chandrashekhar Sharma Aged About 39 Years
R/o L I G- 59, Sharda Bihar Colony , Near Railway Crossing, Balco
Road, Korba, District- Korba, Chhattisgarh.

---- Petitioner**Versus**

1. Anju Sharma W/o Ajay Sharma Aged About 33 Years
2. Minor Sanhavi Sharma D/o Ajay Sharma, Aged About 2 Years 8
Months, Represented Through Legal Guardian Mother Anju
Sharma,

Both are R/o Subhash Ward, Bhatapara, Tahsil & District -
Balodabazar- Bhatapara, Chhattisgarh.

---- Respondent

For Petitioner

Mr. Vikram Dixit, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board****2/3/2017**

1. Heard.
2. The petitioner would assail the order of interim maintenance of
Rs.1500/- per month allowed in favour of respondent No.1 and
Rs.1000/- per month in favour of respondent No.2.
3. It is argued that when the trial Magistrate has rejected the
application for grant of interim maintenance, the revisional

Court should not have entertained the revision, because, the order passed by the trial Magistrate is interlocutory in nature. It is also argued that the applicant is not mentally fit and he is under regular medical treatment, therefore, he is not in a position to pay the amount.

4. Issue concerning maintainability of the revision application has been dealt with by the Sessions Court to hold on the strength of the judgments passed in the matters of **Sunil Kumar Sabarwal Vs. Mrs. Neelam Sabarwal and others, 1191 Cri.L.J. 2056, Aakansha Shrivastava Vs. Virendra Shrivastava, 2010 (3) MPLJ 151 and Aarti Gupta Vs. State of Madhya Pradesh, 2007 (1) MPHT 412**, that the order refusing or allowing interim maintenance is not to be treated as interlocutory order.
5. In the considered opinion of this Court also, the order allowing or refusing interim maintenance decides valuable rights of the parties, therefore, it is not interim in nature and the learned trial Judge has not committed any error of law in entertaining the revision application.
6. The petitioner has not submitted any proof of the fact that he is mentally unfit. Although in para 17 of the impugned order, it is mentioned that the petitioner has submitted certificate issued by the Psychiatrist Mr. Satish Shrivastava certifying that the petitioner is a patient of Schizophrenia. However, a Schizophrenic is not to be considered as mentally unfit for all times to come so as to be incapable of earning any income.

7. Even otherwise, the impugned order has allowed interim maintenance and the main application under Section 125 Cr.P.C. is still pending consideration on merits. The petitioner would get the opportunity to lead evidence and proof his case before the trial Magistrate.
8. The issue being of only interim maintenance, there is no such illegality, which can be termed as abuse of process of Court or that if the order is allowed to sustain, it shall occasion failure of justice.
9. For the foregoing, no case for entertaining this petition is made out. It is accordingly dismissed.

Sd/-

Judge

(Prashant Kumar Mishra)

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