

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 261 of 2017**

1. Ratna Jani W/o Kaushik Jani, aged about 30 years, R/o Village Kotagaon, Police Station Mahamaya, Balod, District Balod, Chhattisgarh.
2. Harsh (Minor) S/o Kaushik Jani, aged about 7 years, through the guardian Ratna Jani (Mother), R/o Village Kotagaon, Police Station Mahamaya, Balod, District Balod, Chhattisgarh

---- Applicants**Versus**

Kaushik Jani S/o Kushik Bhai Yogendra Jani, aged about 35 years, R/o Village Post Veraval, Near Somanth Mandir, District Junagarh, Gujrat.

---- Respondent

For Applicants	:	Shri Vikash Dubey, Advocate
For Non-applicant	:	Shri B. P. Singh, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****08/03/2017**

Challenge in the present writ petition is the order dated 09.12.2016 passed by the 1st Additional Principal Judge/ Family Court, Balod (CG) in Miscellaneous Criminal Case No. 61/2013. Vide the impugned order the Court below in a proceeding under Section 125 of CrPC has refused to grant maintenance to applicant no.1 and allowed the application for grant of maintenance to applicant no.2 by ordering for payment of Rs.2,000/- per month as maintenance.

2. Assailing the impugned order counsel for the applicants contended that the finding of the Court below in rejecting the claim of applicant no.1 is not proper, legal and justified and the amount of Rs.2,000/- awarded to applicant no.2 is also on the lower side and therefore, on this count also the impugned order needs interference.

3. So far as the first contention is concerned, counsel for the applicants submitted that the applicant-wife had specifically pleaded before the Court below in her claim application under Section 125 of CrPC in respect of the cruelty which she had received at the hands of non-applicant. She had narrated the reasons and justifications for leaving matrimonial home and staying at her parental home. All these facts have not been considered in proper perspective by the Court below. It was contended by the counsel for the applicants that the evidence of cruelty and the other contentions of the applicant-wife have not been rebutted in the cross-examination, therefore the same has to be expected to have been established. Hence, the rejection of the claim of the applicant-wife is bad in law.

4. So far as the quantum of maintenance awarded to applicant no.2 is concerned, counsel for the applicants submitted that Rs.2,000/- is too meager an amount for sustenance of a child looking to the present day cost of living. According to him, the non-applicant is a driver by profession and he has much more paying capacity, therefore the amount of maintenance awarded to the applicant no.2 should be enhanced suitably.

5. In addition, it was also contended by the counsel for the applicants that the Court below has allowed the maintenance to applicant no.2 from the date of passing of the order whereas it ought to have been from the date of application under Section 125 CrPC. He relied upon the decision of the Supreme Court in (2015) 6 SCC 353 (Bhuvan Mohan Singh v. Meena and Others) for making the award operative from the date of application.

6. Having considered the contentions put forth by the counsel for the applicants and on perusal of the record what is relevant at this juncture to consider is the evidence of applicant no.1 herself. Applicant no.1 in her

cross-examination has accepted that the cruelty both physically and mentally that the non-applicant used to make upon the applicant-wife was not reported anywhere nor any complaint in this regard had been made. She has further accepted that in spite of the allegation of assault and ill treatment at the hands of the non-applicant, no such complaint has been lodged before any police station or Collector. In her cross-examination, the applicant-wife has admitted the fact that even while she was pregnant, the allegation of her being ill treated has not been reported anywhere. Further, in paragraph-9 she has in very categorical term stated that the non-applicant in between had come from Gujarat to take her but it was she who had refused to go along with him. The applicant-wife has again accepted that it was her own decision not to go along with the non-applicant. From the evidence it also appears that the non-applicant was having a cordial relation with the applicant-wife and he was keen to keep her as the applicant-wife herself has admitted in her Court statement that the non-applicant used to frequently visit her parental house. Thus, the contention of the applicant-wife for leaving the matrimonial home on account of ill treatment and compulsive circumstances stands falsified.

7. So far as the quantum of award is concerned, this Court cannot brush aside the fact that the applicant-wife herself has not been able to establish the source of income as also the status of the non-applicant on the basis of which the maintenance could be ascertained. On the contrary, the non-applicant husband has stated that he is working as a driver and is getting Rs.5,000/- per month of which Rs.2,000/- has been awarded as maintenance to applicant no.2. Under such circumstance, it cannot be said that the amount of Rs.2,000/- awarded by the Court below is on the lower side or too meager when compared to the source of income of the non-applicant.

8. So far as the last contention of the applicants that the award should be effective from the date of application is concerned, Section 125 (2) CrPC specifically holds that under normal circumstance, it would be effective from the date of order and in case of justified reasons, the Court below can order for grant of maintenance from the date of application. So far as the judgment in the case of Bhuwan Mohan (supra) which has been referred by the counsel for the applicants is concerned, there also it has been held by the Hon'ble Supreme Court that under normal circumstances, the order of maintenance would be prospective. In case of justified reasons given by the Court below, there is a discretion left upon the Court below for making an order from the date of application. In the said judgment the Court had taken almost 9 years for deciding the claim application and it was under the said circumstance, the order was passed which is not the facts in the present case. Therefore, the said judgment is distinguishable on its facts itself.

9. Thus, the present criminal revision being devoid of merit deserves to be and is accordingly dismissed.

Sd/-
(P. Sam Koshy)
JUDGE