

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No.433 of 2015**

1. Satish Rai S/o Late Ramesh Chandra Rai Aged About 40 Years
2. Manish Rai S/o Late Ramesh Chandra Rai Aged About 42 Years
3. Smt. Asha Rai W/o Manish Rai Aged About 36 Years
4. Smt. Shvikumari Rai W/o Wd/o Late Ramesh Chandra Rai Aged About 64 Years

All R/o Indraprastha Colony, Police Station Sarkanda, District Bilaspur Chhattisgarh Civil & Revenue District Bilaspur Chhattisgarh.

---- **Petitioners**

Versus

Smt. Aarti Rai W/o Satish Rai Aged About 32 Years R/o Indraprastha Colony, Police Station Sarkanda, District Bilaspur Chhattisgarh.

---- **Respondent**

For Applicants	:	Shri Vivek Shrivastava, Advocate.
For Respondent	:	Shri Anil Tawadkar, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order On Board

09/02/2017

1. The present revision has been preferred assailing the order dated 29.04.2016 passed by the 3rd Additional Sessions Judge, Bilaspur, in Criminal Appeal No.6/2015. Vide the said order, the court below has modified the order of Judicial Magistrate First Class, Bilaspur, dated 09.09.2014 passed in Criminal Case No.49/2013 and have ordered for payment of maintenance of Rs. 5000/- to the respondent, in addition to the amount of Rs.5000/- which she was already getting as maintenance under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (for short, the Act, 2005).
2. Learned counsel appearing for the applicants submits that since the applicants are already paying regularly an amount of Rs.5000/- per

month as maintenance to the respondent for two children born from the wedlock of applicant No.1 and respondent vide the order of the Lok Adalat dated 20.01.2013, subsequent application under Section 12 of the Act, 2005 would not be maintainable. He further submits that the respondent is not entitled to claim maintenance under the different provisions of law. The respondent could only have availed the remedy of claiming maintenance either under Section 125 CrPC or under the Act, 2005. Thus, prayed for quashment of order dated 29.04.2016 passed by the 3rd Additional Sessions Judge, Bilaspur. He relied upon the decision of this Court in case of Santosh Kumar Agrawal (Kasturiya) Vs. Smt. Sarita Goyal (Agrawal) & Others, Criminal Revision No.735 of 2016, decided on 20.10.2016. He also relied upon the decision of Delhi High Court in case of Renu Mittal Vs. Anil Mittal & Ors., CRL.R.P. No. 633 of 2010, decided on 27.09.2010.

3. Counsel for the respondent, however, submits that it is a case where two forums have been provided under the different statutes and that there is no prohibition under the two laws for claiming maintenance under each of the Act. According to respondent, the case under the Act, 2005 is separately conducted before a different forum and the considerations on the said complaint are entirely different, whereas, application Section 125 CrPC is filed before a different forum under a different provisions of law and where the consideration is entirely different as compared to the Act, 2005. Therefore, the two orders would be sustainable in the eyes of law and as such order impugned does not warrant any interference.

4. This court in case of Santosh Kumar Agrawal (Supra), relying upon the decision of Delhi High Court in case of Renu Mittal (Supra) as also another decision in case of Rachna Kathuria Vs. Ramesh Kathuria, reported in 2010(96)AIC 772 (Del. H.C.) had taken a view that the claimants would be entitled for seeking maintenance only under one of the forum available to them from among different statutes enacted by the Government. It was decided by this court that the claimants would have liberty of seeking maintenance under either of the provisions of the Act, 2005 or under Section 125 CrPC.
5. Merely because two separate enactments have been made and that there is provision for grant of maintenance by itself would not create a right in favour of the claimants for claiming separate maintenance under the separate provisions of law. If the said analogy is brought into the force and if there are more than one enactments enacted by the Government under which maintenance can be claimed, then it would reach to a stage where the person against whom the claim is being made, would have to pay maintenance under different acts and that could go much beyond the total income of the person against whom claim has been made.
6. True it is there is no embargo or bar claiming maintenance under both the provisions i.e. under the Act, 2005 and under Section 125 CrPC, but so far as claim for maintenance is concerned, the same would be entitled only under either of the provision. It can be either under the Act, 2005 or under the provision of Section 125 CrPC. Just because grant of maintenance is permissible in 125 proceeding as well as under the Act,

2005, by itself would not entitle the respondents to claim for maintenance under both the forums. Even if, the two forums have passed the order of maintenance, the subsequent order of maintenance passed would only be subject to adjustment of the maintenance which has been ordered by the court in a previous proceeding, which in the instant case is under Section 125 CrPC. Therefore, this court is of the opinion that the order granting maintenance by the court below i.e. 3rd Additional Sessions Judge, Bilaspur, vide its order dated 29.04.2015 in Criminal Appeal No.6/2015 was not proper, legal and justified.

7. Another aspect which cannot be brushed aside for setting aside the order dated 29.04.2015 is the fact that the respondent-wife in the instant case is also a State Government employee. She is working as Shiksha Karmi and she has her own source of income for providing maintenance to both the children in addition to what has already been ordered against the applicant No.1-Husband by the Lok Adalat.
8. Accordingly, the revision is partly allowed. The order dated 29.04.2015 passed by the 3rd Additional Sessions Judge, Bilaspur is set aside upholding the order dated 19.09.2014 passed by the JMFC, Bilaspur in Criminal Case No.49/2013.

SD/-
(P.Sam Koshy)
Judge