

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No.630 of 2016**

Amit Sahu S/o Chhedilal Sahu Aged About 30 Years By Caste - Teli,
R/o Sanjay Nagar, Tushar Road, Behind Chir Bangla Jaijaipur, P.S. &
Tahsil - Jaijaipur, P.S. & Tahsil - Jaijaipur, Civil & Revenue Civil &
Revenue Distt. Janjgir - Champa Chhattisgarh

---- Petitioner**Versus**

1. Smt. Chhaya Sahu W/o Amit Sahu Aged About 25 Years D/o Atmaram Sahu, R/o Qtr. No. S F 553 C.S.E.B. Colony, Korba, Tahsil - Korba, Distt. Korba Chhattisgarh
2. Disha Sahu D/o Amit Sahu Aged About 2 Years 6 Month Minor Girl Through Natural Guardian Mother Namely Smt. Chhaya Sahu, W/o Amit Sahu, By Caste - Teli, R/o Qtr. No. S.F. 553, Cseb Colony, Korba, Tahsil - Korba, Distt. Korba Chhattisgarh.

---- Respondents

For Applicant	:	Smt. Indira Tripathi, Advocate.
For Respondents	:	Shri Ashutosh Shukla, Advocate.

Hon'ble Shri Justice P. Sam Koshy**Order On Board****07/02/2017**

1. For the reasons assigned in the application and finding them to be satisfactory, IA No.1 for condonation of delay is allowed and delay of 523 days in filing the present revision is condoned. With the consent of the parties, the matter is taken up for hearing finally.
2. Learned counsel appearing for the applicant submits that the sole ground of challenge to the order dated 20.10.2014 passed by the Family Court, Korba, in MJC Case No.06/2014 is the fact that non applicants in the instant case have also initiated a proceeding under the provisions of Protection of Women from Domestic Violence Act, 2005 (for short, the Act, 2005). The said complaint is registered as Case

No.15/2014 before the Chief Judicial Magistrate, Korba. In the said case, an amount of Rs.3000/- was ordered to be paid as interim maintenance to the respondents.

3. Counsel for the applicant submits that since the applicant is already paying regularly an amount of Rs.3000/- per month as interim maintenance to the respondents under the Act, 2005, subsequent application under Section 125 CrPC was not maintainable. She further submits that the respondents are not entitled to claim maintenance under the different provisions of law. The maintenance amount can be granted only under one of the statutes from among different provisions of law which are available. The respondents 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 20.10.2014 passed in 125 proceeding.
4. Counsel for the respondents, 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 either under each of the Act. According to respondents, 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 the different Act and where the consideration is an 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.

5. Having heard the rival contentions put forth on either side and on perusal of records, what clearly reflects is that, the respondents herein had moved an application under the Act, 2005 before the Chief Judicial Magistrate, Korba, where the case has been registered as Case No.15/2014. In the said case, the respondents had moved an application for grant of maintenance and also for grant of interim maintenance. The said application was allowed by the court below on 07.07.2014 and have ordered for payment of Rs.3000/- to the respondents as interim maintenance. Once when there is already an order of interim maintenance in favour of the respondents, there was no occasion for the respondents to file another application simultaneously before the Family Court at Korba under 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. Maintenance could be claimed only under one of the provisions of the law and which the respondents could have chosen.
6. The interim maintenance as well as final amount is always awarded taking into consideration the paying capacity of the applicant. In case if such application is entertained under different forum and each time if the paying capacity is considered and separate order of maintenance is passed, in all likelihood the total amount of maintenance which could be ordered in favour of the claimants would go much beyond the total income of the applicant. Thus, the said claim of maintenance under the different forum would be detrimental to the interest against whom the

claim is made.

7. In the said factual matrix of the case, this court is of the opinion that application under Section 125 CrPC and order being passed in the said application was not proper, legal and justified. At the same time, one should not forget the fact that the order under the Act, 2005 is only an interim order which has been passed. Final adjudication is yet to be done. The matter is fixed for the evidence before the court below. The possibility of rejection of said complainant case before the court below also cannot be ruled out. In the event of rejection of that complaint case under the Act, 2005, the applicant would not be entitled for the interim maintenance or the grant of maintenance under the Act, 2005. Under the said circumstances, it should not create a situation where the order for grant of maintenance to the respondents shall stand extinguished under both the proceeding i.e. under Section 125 CrPC as well as under the Act, 2005.
8. Therefore, taking into consideration the aforesaid possibility, this court is of the opinion that ends of justice would meet if the order dated 20.10.2014 is modified to the extent that the maintenance amount awarded under Section 125 CrPC vide the said impugned order would be subject to adjustment to the amount which the applicant is paying as interim maintenance under the Act, 2005. It is ordered accordingly.
9. It is made clear that in the event if the complaint filed under the Act, 2005 finally gets rejected against the respondents, the impugned order dated 20.10.2014 would automatically become enforceable and revived. Under the said circumstances, the respondents shall be

entitled for the maintenance as decided by the impugned order dated 20.10.2014.

10. With the aforesaid modification in the order dated 20.10.2014 passed in MJC Case No.06/2014, the present criminal revision stands partly allowed and disposed off.

Sd/-
(P.Sam Koshy)
Judge

inder