

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL REVISION NO. 1023 OF 2016

1. Smt. Ambika Mandavi, W/o Govind Mandavi, aged about 35 years.
 2. Ku. Chandrika Thakur, D/o Govind Mandavi, aged about 16 years.
 3. Dev Mandavi, S/o Govind Mandavi, aged about 11 years.
- No. 2 and 3 are minor through natural guardian mother Smt. Ambika Mandavi (Applicant No.1). All R/o Rajiv Nagar (Ramnagar), P.S. Supela, Bhilai, Tahsil and District Durg (C.G.)

... Applicants

Versus

Govind Mandavi, S/o Late Sukdev Mandavi, aged about 40 years, R/o Village Sirsida, Shitala Para, Post Charama, Tahsil and Police Station Charama, District Kanker (C.G.)

... Non-applicant

For Applicants	:	Mr. C.B. Kesharwani, Advocate.
For Non-applicant	:	Mr. Siddharth Bajpayi, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

23/02/2017

1. The present Criminal Revision under Section 19(4) of the Family Courts Act, 1984, has been filed by the Applicants assailing the order dated 24.9.2016 passed by the Principal Judge, Family Court, Durg, in Criminal M.J.C. No. 562 of 2016.
2. Vide the impugned order dated 24.9.2016, the Court below in a proceeding under Section 125 of CrPC has partly allowed the application, inasmuch as the claim of Applicant No.1 has been rejected and the claim of Applicants No. 2 and 3 has been allowed to the extent of payment of Rs.1500/- each to them as maintenance every month to be paid by the present Non-applicant.
3. According to the Counsel for the Applicants, there is no strong reason made out by the Court below in refusing grant of maintenance to Applicant No.1. According to him, the Applicant No.1 being the wife of the present Non-applicant she is supposed to be maintained by him and she is entitled for getting maintenance with which she can sustain herself. He further submits

that one of the grounds for refusal of maintenance to Applicant No.1 is that the nature of work done by the Applicant No.1 is similar in nature to that of the Non-applicant. They both are working as manual labourer. According to him, this ground of the Court below is not sustainable.

4. Another ground which the Counsel for the Applicants has taken is the fact that it is a case where the Court below has decided the matter *ex parte* against the Non-applicant. The evidence of Non-applicant is not on record and there is no rebuttal to the evidence produced by Applicant No.1. In the absence of either of the two, the contention of Applicant No.1 had to be presumed to be correct and established and her claim could not have been rejected by the Court below.

5. At this juncture, Counsel for the Non-applicant opposing the criminal revision submits that it is a case where the contentions of Applicant No.1 have been duly considered by the Court below and the impugned order has been passed and the same does not suffer from any illegality and, therefore, it does not warrant any interference. According to the Counsel for the Non-applicant, the fact is that the Non-applicant is a disabled person and that he is not able to earn much, he shall not be able to provide sufficient sustenance to his wife. It has been further contended that the agriculture land which is being claimed by Applicant No.1 to be of the Non-applicant being 2-3 acres of land, the said property in fact lie in the name of Applicant No.1 herself and therefore the said contention cannot be accepted. He thus prayed for the rejection of the criminal revision.

6. Undisputedly, before the Court below the Non-applicant was proceeded *ex parte*. The Non-applicant evidence is not on record. Contention of the Applicant No.1 has not been rebutted in any manner. In the given facts, due weightage has to be given to the averments made by the Applicant No.1. The documents and the averments which the Non-applicant wants this Court to

take into consideration for refusing grant of maintenance to Applicant No.1 cannot be accepted, for the reason that these documents ought to have been brought by way of proper evidence before the Court below. The Non-applicant does not appear to have taken any steps for getting the *ex parte* order set aside by moving appropriate application under Section 126(2) of CrPC.

7. Further, the ground on which the claim of Applicant No.1 has been rejected on comparing the status of the wife to that of the status of the husband as the same, as both of them were working as labour, cannot be accepted for the reason that it is a settled rule wherein the responsibility has been casted upon the husband to take care of his wife and children. It cannot be accepted that only because the Non-applicant had got some disability he would not have the responsibility for maintaining his wife and children. Every efforts ought to have been made by the Non-applicant for providing sufficient and decent sustenance of Applicant No.1 and Applicants No. 2 and 3.

8. In the given facts and circumstances of the case, the non-granting of maintenance to Applicant No.1 by the Court below was not proper, legal and justified. Therefore, the impugned order is set aside/quashed to that extent and it is held that the Applicant No.1 is also entitled for maintenance.

9. Taking into consideration the overall facts and circumstances of the case and also taking into consideration the admission on the part of the parties to the dispute in respect of nature of work which has been performed by the Non-applicant, this Court is of the opinion that ends of justice would meet if the Applicant No.1 is also ordered to be entitled for maintenance of Rs.1500/- per month as has been awarded to Applicants No. 2 and 3 by the Court below and it is ordered accordingly.

10. With the aforesaid modification of the impugned order, the present Criminal Revision stands allowed.

Sd/-

(P. Sam Koshy)
Judge