

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Cr.M.P.No. 514 of 2018**

Akhilesh Kumar Jagatramka, S/o. Ganesh Jagatramka, Aged About 48 Years, Occupation-Business, R/o. Shyam Talkies Road, Nai Sarak, Raigarh, Tehsil & District Raigarh (CG)

----Petitioner**Versus**

1. Ganesh Kumar Jagatramka, Aged About 75 Years, S/o. Late Banwarilal Jagatramka, Occupation-Nothing, R/o. Shyam Talkies Road, Tehsil and District Raigarh (CG)
2. Smt.Pratibha Devi Jagatramka, Aged About 68 Years, Occupation-House Wife, R/o. Shyam Talkies Road, Tehsil and District Raigarh (CG)

---- Respondents

 For Petitioner : Mr.Kishore Bhaduri, Advocate
 For Respondents : Mr.Vineet Kumar Pandey, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****15/05/2018**

1. This is an avoidable and unfortunate litigation between father & mother and their son. Challenge in this petition is order of interim maintenance granted by the Family Court, Raigarh dated 22.2.2018 (Annexure P/1) granting an amount of ₹ 40,000/- per month (₹ 10000/- per month to respondent No.1 and ₹ 30,000/- per month to respondent No.2) from the date of order.
2. A well known proverb is required to be noticed herein:-

“Maatru Devo Bhava” (revere your mother as God) and “Pitro Devo Bhava (revere your father as God).

The above-stated words of prudence direct us to treat our parents as God. Modernization, technological advancement and social liability have changed our life-style and values. We have completely forgotten the duties of a son towards aged parents. We have also abandoned our ancient traditions when parents were most revered and respected.

3. A test of Manu cited in the Mitakshara and the Parasaramadhaviya says:-

“It is declared by Manu that the aged mother and father, the chaste wife and an infant child must be maintained even by doing a hundred misdeeds.”

(See Manu's Hindu Law 16th edition Para 722)

4. The petitioner herein is a son, failed to perform his parental duties towards his parents by maintaining them, forced them to institute proceedings for maintenance under Section 125 CrPC, in which they also claimed interim maintenance which was replied by the petitioner. Learned Family Court pending adjudication of maintenance proceedings, directed the petitioner herein to pay a sum of ₹ 40,000/- per month as an interim maintenance without going into the merits of the matter, which has been seriously disputed by the petitioner stating that the claim

of the respondents/parents is an act of playing fraud upon the Court, as the respondents are not dependent upon the petitioner and they are self-sufficient wealthy business persons having properties Raigarh at prime locations valuing in excess of crores of rupees and interim maintenance has been granted without appreciating the reply of the petitioner and documents appended thereto, which deserves to be set aside.

5. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the records with utmost circumspection.
6. The provision contained in Section 125 CrPC is a piece of social legislation and provides for summary and speedy relief by way of maintenance to a person who is unable to maintain. The object of this provision being to prevent vagrancy and destitution, it has to be found out as to what is required by wife/parents to maintain a standard of living which is neither luxurious nor penurious, but is modestly consistent with status of the family. The needs and requirement of wife/child/parents for moderate living, the earning of the husband, son or his capacity to earn and his commitments are relevant factors.
7. By the Code of Criminal Procedure (Amendment) Act, 2011, sub-section (1) and (2) came to be amended with effect from 24.9.2001 by which ceiling which was fixed under the

original enactment of 1973 of ₹ 500/- has been removed and now it is open to a Court under the amended law to fix such amount as it “thinks fit”.

8. Section 125 CrPC as originally enacted did not expressly empower the Magistrate to make such order and direct payment of interim maintenance, but by the Amendment Act 2011, power and jurisdiction to grant interim maintenance has been conferred to Magistrate.
9. The Supreme Court in the matter of **Savitri w/o Govind Singh Rawat v. Govind Singh Rawat**¹ held that magistrate has implied power on being prima facie satisfied to pass interim order directing the person from whom the maintenance is claimed to pay a reasonable sum by way of interim maintenance to the applicant pending final disposal of the application on the basis of affidavit filed by the applicant stating the grounds in support of the claim for interim maintenance.
10. The Supreme Court in the matter of **Sunita Kachwaha and others v. Anil Kachwaha**² held that person claiming maintenance must positively aver and prove his/her inability to maintain. It was observed as under:-

“7. Inability to maintain herself is the precondition for grant of maintenance to the wife. The wife must positively aver and prove

¹ (1985) 4 SCC 337

² (2014) 16 SCC 715

that she is unable to maintain herself, in addition to the fact that her husband has sufficient means to maintain her and that he has neglected to maintain her. In her evidence, the appellant wife has stated that only due to help of her retired parents and brothers, she is able to maintain herself and her daughters. Where the wife states that she has great hardships in maintaining herself and the daughters, while her husband's economic condition is quite good, the wife would be entitled to maintenance."

Their Lordships further in **Sunita Kachwaha** (supra) held that merely because wife is earning something, would not be a ground to reject her claim for maintenance.

11. The proceedings under Section 125 CrPC, it must be remembered, are of a summary nature and are intended to enable destitute wives and children, the latter whether they are legitimate or illegitimate, to get maintenance in speedy manner (See **Smt.Dukhtar Jahan v. Mohammed Farooq**³).

12. Recently, the Supreme Court in the matter of **Bhuwan Mohan Singh v. Meena and others**⁴ deprecating the delay in concluding the maintenance proceeding observed as under:-

"13. The purpose of highlighting this aspect is that in the case at hand the proceeding before the Family Court was conducted without being alive to the objects and reasons of the Act and the spirit of the provisions under Section 125 of the Code. It is unfortunate that the case continued for nine years before the Family Court. It has come to the notice of the Court

³ (1987) 1 SCC 624

⁴ (2015) 6 SCC 353

that on certain occasions the Family Courts have been granting adjournments in a routine manner as a consequence of which both the parties suffer or, on certain occasions, the wife becomes the worst victim. When such a situation occurs, the purpose of the law gets totally atrophied. The Family Judge is expected to be sensitive to the issues, for he is dealing with extremely delicate and sensitive issues pertaining to the marriage and issues ancillary thereto. When we say this, we do not mean that the Family Courts should show undue haste or impatience, but there is a distinction between impatience and to be wisely anxious and conscious about dealing with a situation. A Family Court Judge should remember that the procrastination is the greatest assassin of the lis before it. It not only gives rise to more family problems but also gradually builds unthinkable and Everestine bitterness. It leads to the cold refrigeration of the hidden feelings, if still left. The delineation of the lis by the Family Judge must reveal the awareness and balance. Dilatory tactics by any of the parties has to be sternly dealt with, for the Family Court Judge has to be alive to the fact that the lis before him pertains to emotional fragmentation and delay can feed it to grow. We hope and trust that the Family Court Judges shall remain alert to this and decide the matters as expeditiously as possible keeping in view the objects and reasons of the Act and the scheme of various provisions pertaining to grant of maintenance, divorce, custody of child, property disputes, etc.”

13. Reverting to the facts of the case, it appears that learned Family Court granted the application for interim maintenance only on the basis of averments made in the said application and reply of that application filed by the petitioner herein as no affidavits were filed by the respondents in support of the application for interim maintenance. Likewise, no affidavit was filed by the

petitioner to oppose the application for interim maintenance. It ought to have been decided on the basis of affidavit on the question of interim maintenance filed by the parties, which is in teeth of judgment of the Supreme Court in the matter of **Savitri** (supra), as such, order of interim maintenance has been passed on the basis of no material.

14. As a fallout and consequence of the above-stated discussion, order granting interim maintenance is set aside. The matter is remitted to the Family Court, Raigarh with following directions:-

(i) That the parties will appear before the Family Court, Raigarh on 23.5.2018 and they will file their affidavit in support of application for interim maintenance/reply to application within 7 days from the date of their appearance (23.5.2018).

(iii) Thereafter, the Family Court, Raigarh will consider and decide the application for interim maintenance afresh within further 7 days thereafter by a reasoned and speaking order after hearing the parties on or before 11.6.2018.

(iv) Final maintenance proceedings will be decided expeditiously as held by Hon'ble Supreme Court in the matter of **Bhuvan Mohan Singh** (supra).

15. The petition is allowed to the extent outlined herein-
above. No cost(s).

Sd/-

(Sanjay K.Agrawal)
Judge

B/-

HIGH COURT OF CHHATTISGARH AT BILASPUR**Cr.M.P.No.514 of 2018****Petitioner**

Akhilesh Kumar Jagatramka

Versus**Respondents**

Ganesh Kumar Jagatramka

(English)

Application for interim maintenance has to be decided on the basis of affidavit.

(हिन्दी)

अन्तरिम भरणपोषण हेतु आवेदन शपथपत्र के आधार पर निर्णित किया जाना है।