

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No.469 of 2018

Kashiram Sahu, S/o Late Ramkumar Sahu, aged about 69 years, occupation Retired Government Servant, Address Beside Karmel School, Namnakala, Ring Road, Ambikapur, District Surguja, Chhattisgarh

---- Applicant

versus

1. Smt. Neera Gupta, W/o Shri Sanjay Sahu, aged about 34 years, Housewife and Private Teacher,
2. Ku. Shreya Sahu, D/o Shri Sanjay Sahu, aged about 11 years, Occupation Student,
3. Anirudh, S/o Shri Sanjay Sahu, aged about 07 years, Occupation Student,

Respondents No.2 and 3 are minor represented through their natural guardian mother Respondent No.1 Smt. Neera Gupta, All are R/o Main Road, Bus Stand, Batauli, Police Station and Tahsil Batauli, District Surguja, Chhattisgarh

4. Sanjay Sahu, S/o Shri Kashiram Sahu, aged about 41 years, R/o Pani Tanki, Namnakala, Ambikapur, Tahsil Ambikapur, District Surguja, Chhattisgarh
5. State of Chhattisgarh through District Magistrate, Ambikapur, District Surguja, Chhattisgarh

--- Respondents

For Applicant	:	Shri Sachin Singh Rajput, Advocate
For Respondents No.1 to 3	:	Ms. Priyanka Mehta, Advocate
For Respondent No.4	:	Shri Shashank Upadhyay, Advocate
For Respondent No.5/State	:	Shri U.K.S. Chandel, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

Order on Board

26.9.2018

1. With the consent of Learned Counsel appearing for the parties, the matter is heard finally.
2. Vide order dated 25.5.2016 passed in M.Cr.C. No.128 of 2016, the Chief Judicial Magistrate, Ambikapur has ordered for payment of total Rs.3,000/- per month as interim maintenance to Respondents

No.1, 2 and 3 by the present Applicant and Respondent No.4 jointly, which has also been affirmed by the Appellate Court, i.e., 1st Additional Sessions Judge, Ambikapur vide impugned order dated 22.3.2018 passed in Criminal Appeal No.31 of 2017.

3. It is not in dispute that Respondent No.1 is legally wedded wife of Respondent No.4. Respondents No.2 and 3 are their children and the present Applicant is father-in-law of Respondent No.1.
4. Respondent No.1/wife filed a complaint before the Trial Court under Sections 12, 19 and 20 of the Protection of Women from Domestic Violence Act, 2005 (henceforth 'the Act of 2005'), wherein it is alleged that after the marriage, she was subjected to cruelty by the husband/Respondent No.4, he has left his job and has indulged in drinking liquor, he has committed atrocities on her, he is also not maintaining his children and whenever she went to the house of her parents, the present Applicant/father-in-law brought her back by giving her assurance of giving her and her children maintenance, but neither the Applicant/father-in-law nor Respondent No.4/husband is giving maintenance to her and her children. Vide order dated 25.5.2016, the Trial Court/Chief Judicial Magistrate granted interim maintenance in favour of Respondents No.1 to 3, but he held the husband and father-in-law jointly liable for making payment of the interim maintenance. An appeal, being Criminal Appeal No.31 of 2017 was preferred by the Applicant/father-in-law on the ground that he, being a retired person and pensioner, is not able to maintain Respondents No.1 to 3 and he being father-in-law also, is not responsible for the same. Vide the impugned order dated 22.3.2018, the Additional Sessions

Judge has rejected the appeal on the ground that if the husband is a member of the Hindu Undivided Family (HUF) and is financially contributing in the joint family, the father-in-law of Respondent No.1, being a member of the joint family, can also be held liable to pay the maintenance. Hence, the instant revision has been preferred by the father-in-law.

5. I have heard Learned Counsel appearing for the parties and perused the record with due care.
6. Admittedly, the Applicant is an old person aged about 69 years. He is a retired person and getting only pension for his livelihood. From the record, it is also clear that the husband/Respondent No.4 has himself in his pleading stated that he is working as an Electrician with one private contractor. He has also pleaded that he is maintaining his wife and children. He has stated that he had got his children admitted in the best school of the city. He himself had been incurring the expenses of fees of his children and their other expenses. Thus, *prima facie*, it is clear that he has sufficient means to maintain his wife and children. Whether he is a member of joint Hindu family or not and whether he is financially contributing in the family or not is a matter of evidence. Therefore, when the Appellate Court itself has come to a conclusion that the husband is financially contributing to the joint family or not is a matter of evidence, holding the father-in-law jointly responsible for making payment of interim maintenance is not proper. Apart from this, while granting interim maintenance, the Trial Court/Chief Judicial Magistrate has also not mentioned any reason why he held the father-in-law jointly liable to make payment of interim

maintenance.

7. Thus, from the above discussion, I find that holding the father-in-law jointly liable for payment of the interim maintenance is not proper. Thus, the impugned order dated 25.5.2016 passed by the Chief Judicial Magistrate is modified to the extent that only the husband/Respondent No.4 shall pay the interim maintenance granted by the Chief Judicial Magistrate in favour of Respondents No.1 to 3.
8. Consequently, the revision is allowed to the extent indicated above.
9. Record of the Court below be sent back along with a copy of this order forthwith for information and necessary compliance.

Sd/-

(Arvind Singh Chandel)
JUDGE