

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No.425 of 2016

Mohd. Amin, S/o Late Yasim, aged about 55 years, Occupation Sr. Overman, SECL, Charcha, R/o Village Charcha, P.O. Line, Qtr. No.144, Police Station Charcha, Tahsil Baikunthpur, District Koriya, Chhattisgarh

---- Applicant

versus

1. Rasida Bano, W/o Mohd. Amin, aged about 48 years, Caste Momin (Musalman),
2. Aaftab Aalam, S/o Mohd. Amin, aged about 28 years, Caste Momin (Musalman) (Blind by birth), through natural guardian Respondent No.1 Rasida Bano,

Both are R/o Village Umjhar, Post Nagar, Police Station Charcha, Tahsil Baikunthpur, District Koriya, Chhattisgarh

--- Respondents

and

Criminal Revision No.914 of 2016

1. Rasida Bano, W/o Shri Mohd. Amin, age around 48 years,
2. Aaftab Aalam, S/o Shri Mohd. Amin, age around 20 years,

Both R/o Village Umjhar, P.S. Charcha, Baikunthpur, District Koriya, Chhattisgarh

---- Applicants

versus

Mohd. Amin, aged about 55 years, S/o Late Shri Yasim, R/o Village Charcha, P.O. Line, Qtr. No.144, P.S. Charcha, Baikunthpur, District Koriya, Chhattisgarh

--- Respondent

For Mohd. Amin : Shri Ashok Kumar Shukla, Advocate
For Rasida Bano and Aaftab Aalam : Shri Pragalbha Sharma, Advocate

Hon'ble Shri Justice Arvind Singh Chandel

Order on Board

13.9.2018

1. Since both the revisions arise out of a common order, they are disposed of together by this common order.

2. Both the revisions arise out of the order dated 26.4.2016 passed by the Family Court, Baikunthpur, District Koriya in M.Cr.C. No.130 of 2013, whereby the Family Court has rejected the application of Rasida Bano (Applicant No.1 of Criminal Revision No.914 of 2016 and Respondent No.1 of Criminal Revision No.425 of 2016) on the ground that she is capable to maintain her and has granted monthly maintenance of Rs.4,000/- in favour of Aaftab Aalam (Applicant No.2 of Criminal Revision No.914 of 2016 and Respondent No.2 of Criminal Revision No.425 of 2016).
3. Admittedly, Rasida Bano is wife of Mohd. Amin and Aaftab Aalam is major son of Mohd Amin and Rasida Bano. Aaftab Aalam is blind by birth and is residing with his mother Rasida Bano. Rasida Bano and Aaftab Aalam jointly filed an application under Section 125 of the Cr.P.C. for grant of maintenance against Mohd. Amin. After taking evidence of both the parties, the Family Court, vide the impugned order dated 26.4.2016, has rejected the application of Rasida Bano on the ground that she is capable to maintain her and has granted monthly maintenance of Rs.4,000/- in favour of Aaftab Aalam.
4. Criminal Revision No.914 of 2016 has been preferred by Rasida Bano and Aaftab Aalam on the ground that in spite of the fact that Rasida Bano is unable to maintain her, she has been denied monthly maintenance and the order of rejection has been passed without proper appreciation of evidence available on record. The grant of maintenance in favour of Aaftab Aalam, looking to the financial status of his father Mohd. Amin, is on lower side.
5. Criminal Revision No.425 of 2016 has been moved by Mohd. Amin

on the ground that Aaftab Aalam is his major son. Though he is blind by birth, his statement was not recorded before the Family Court. In these circumstances, without proving the fact that Aaftab Aalam, by reason of any physical or mental abnormality or injury, is unable to maintain him, the Family Court has wrongly granted him the maintenance.

6. I have heard Learned Counsel appearing for the parties and perused the record with due care.
7. With regard to Rasida Bano, from perusal of the record, it reveals that on 21.4.2014, an application under Order 26 Rule 9 of the Code of Civil Procedure was filed by Mohd. Amin. The Application was allowed by the Family Court and vide order dated 22.9.2014, an Advocate, namely, Shri Vasudeo Mohanti was appointed as the Commissioner for an inquiry and submission of a report regarding financial status etc. of Rasida Bano. Report was submitted by the Commissioner on 20.10.2014. Thereafter, statements of both the parties were recorded by the Family Court and after recording of the evidence, vide the impugned order dated 26.4.2016, the Family Court has rejected the application of Rasida Bano on the ground that she has sufficient means to maintain her. The said report submitted by the Commissioner is the basis of the observation made by the Family Court, but the said Commissioner has not been examined during trial before the Family Court. When the report of the Commissioner was made basis for denial of monthly maintenance to Rasida Bano, statement of the Commissioner ought to have been recorded by the Family Court and an opportunity of his cross-examination ought to have been afforded

to the parties.

8. With regard to Aaftab Aalam, from perusal of the record, it is clear that in spite of the fact that he is a major son aged about 28 years and is blind by birth, his statement has not been recorded by the Family Court and thus, the provision of Section 125(1)(c) of the Cr.P.C. has not been complied with. Any legitimate or illegitimate child (not being a married daughter), who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, can only be entitled to get maintenance. In the instant case, Aaftab Aalam has been stated to be blind by birth, but whether he, due to his blindness, is physically or mentally able or unable to maintain him, his statement in this regard is essential. Learned Counsel appearing for both the parties agreed to this.
9. Therefore, the matter is remanded to the Family Court with directions to examine the above-named Commissioner, afford an opportunity to both the parties to cross-examine the Commissioner, record statement of Aaftab Aalam and thereafter the matter be decided by the Family Court in accordance with law. Both the revisions are disposed of in the aforesaid terms.
10. 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