

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 994 of 2016**

Smt. Kiran Sharma, W/o Shri Arvind Sharma, aged about 46 years, R/o C/o M.S. Dange, Azad Chowk, Mandipara, Raipur, Civil & Revenue District- Raipur (C.G.).

---- Applicant**Versus**

Dr. Arvind Sharma S/o Shri D.R. Sharma, aged about 52 years, Occupation- Service, Presently working at Government Homeopathy Dispensary, Dallirajhara, District- Balod R/o Bhawani Nagar, Ward No. 38, Rajnandgaon(C.G.).

---- Respondent

For Applicant	:	Mr. Malay Shrivastava, Advocate
For Respondent	:	Mr. R.N. Jha, Advocate

Hon'ble Shri Justice Arvind Singh Chandel**Order on Board****29/10/2018**

1. This revision has been preferred against the order dated 24/08/2016 passed by the Second Additional Principal Judge, Family Court, Raipur in Criminal Case No. 44/2011, whereby the learned Family Court has rejected the application under Section 125 (3) of the Cr.P.C filed by the applicant.
2. An application under Section 125 of the Cr.P.C was filed by the applicant before the Family Court in the year 2008. On 28/04/2008, an application for interim maintenance was allowed and the learned Family Court had granted interim maintenance of Rs. 3000/- monthly in favour of the applicant, herein and Rs. 2500/- and Rs. 2500/- in

favour of son and daughter of the applicant. Being aggrieved by the said order, the respondent herein preferred a revision before the this Court and vide order dated 13/12/2010, the revision was partly allowed. As the non-applicant was not regularly paying the allowance, an application under Section 125 (3) of the Cr.P.C was filed by the applicant for claiming balance amount of maintenance from the respondent. During the pendency of the said application, an application under Order 11 Rule 12 of the CPC was filed by the respondent. The applicant filed her reply. Vide impugned order dated 24/06/2016, the learned Family Court while deciding the application under Order 11 Rule 12 of the CPC also decided the application submitted under Section 125 (3) Cr.P.C finally and rejected the same. Thus, this revision has been filed.

3. Counsel for the applicant submits that on 24/08/2016, the matter was fixed for orders on the application filed under Order 11 Rule 12 of the CPC, but the learned Family Court surprisingly decided the application filed under Section 125 (3) of the Cr.P.C. He further submits that the Family Court has not given any opportunity of hearing to the applicant and without giving hearing opportunity, dismissed the application filed under Section 125 (3) of the Cr.P.C., therefore, the Family Court has violated the law of natural justice. The order is illegal, arbitrary and contrary to the law.
4. Learned Counsel appearing on behalf of the respondent supported the impugned order.
5. I have heard learned counsel for the parties and perused the record

available.

6. From the record, it is clear that on 08/04/2016 an application under Order 11 Rule 12 CPC was filed by the respondent. Reply was filed on 29/04/2016. Arguments were heard on 11/08/2016 and the matter was fixed for orders on the said application on 24/08/2016. But, inspite of deciding the said application, the Family Court rejected the application filed under Section 125 (3) of the Cr.P.C. From the order itself, it is clear that the application under Order 11 Rule 12 CPC is still not decided by the Family Court before rejecting the application filed under Section 125 (3) of the Cr.P.C. Moreover, the Family Court has not given any opportunity of hearing to the applicant. The Family Court has violated the law of natural justice, thus, the impugned order is not sustainable in the eye of law.
7. Consequently, the revision is allowed. The order dated 24/08/2016 passed by the Family Court is set-aside.
8. The matter is remanded back to the Family Court to firstly decide the application preferred under Order 11 Rule 12 CPC, and after providing the opportunity of hearing to both the parties decide the application filed under Section 125 (3) of the Cr.P.C. Both the parties are directed to remain present before the Family Court on 3rd of December, 2018.
9. Record of the Trial Court be sent back along with the copy of this order for necessary compliance.

Sd/-
(Arvind Singh Chandel)
Judge