

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 243 of 2019**

- Chandra Prakash Yadav S/o Shri Pardeshi Ram Yadav, Aged About 45 Years R/o Village Gabaud Post Office Gabaud ,police Station And Tahsil Palari District Balodabazar Bhatapara Chhattisgarh.

---- Applicant**Versus**

- Smt. Geeta Yadav W/o Chandraprakash Yadav, Aged About 40 Years R/o Bhatapara, near Gayatri Mandir,Tatibandh Tahsil And District Raipur, Chhattisgarh.
- Minor Deepak S/o Chandraprakash Yadav, Aged About 13 Years Through Legal Guardian Mother Smt. Geeta Bai Yadav R/o Bhatapara Near Gayatri Mandir,Tatibandh Raipur Police Station Amanaka Tahsil And District Raipur, Chhattisgarh.

---- Respondents

For Applicant	: Shri Sharad Mishra, Advocate
For Respondents	: Shri C.P.Lahrey, Advocate

Hon'ble Smt. Justice Rajani Dubey**Order On Board****17/07/2019**

Present revision arises out of the impugned order dated 10.12.18 passed by the learned Additional Principal Judge, Family Court Raipur in Case No. 783/17 whereby the learned Family Court has awarded Rs. 2000/- & Rs. 1,000/- per month as maintenance amount in favour of the non-applicants.

2. Brief facts of the case are that on an application filed by the non-applicants under Section 125 Cr.P.C., after recording the evidence of the parties, the Court below has directed the applicant to pay

Rs. 2,000/- & 1000/- to both the non-applicants as the non-applicant No.1 is a legally wedded wife of the applicant and out of their wedlock, non-applicant No.2 was born.

3. Counsel for the applicant submits that the order dated 10.12.18 is bad in the eye of law and is perverse, arbitrary and erroneous, therefore liable to be set aside. In his reply, applicant has stated that the non-applicant/wife does not want to live with him and left her matrimonial house of her own. He has stated that she did not turn up despite several efforts made by the applicant as she has developed illicit relationship with another person and the non-applicant No.2 is not born out of their wedlock. He submits that the non/applicant No1 is living in adultery and therefore she is not entitled for getting any maintenance from the applicant. Learned Family Court has failed to appreciate that while leaving her matrimonial house, the respondent has left her daughter with the applicant. Learned Family Court has also failed to appreciate that the applicant is doing labour work and he hardly maintains himself so the order of the family court is liable to be set aside.

4. Denying the contention of the applicant, it has been put forth by the counsel for the non-applicants that the allegations as levelled against her are totally false. There is absolutely no evidence on record to show that the applicant/wife is living in adultery. and the allegation pertaining to the character of the non-applicant No.1 appears to have been made by the applicant/husband just to deprive her of claiming any maintenance from him.

5. I have heard counsel for the parties and perused the record.

6. For deciding the application of interim maintenance the court has to look into the claim to satisfy himself that there is a prima facie case for making such an order. Applicant in his reply admitted his marriage with the non-applicant No.1 but has stated that the non-applicant No.1 left his house in the year 1993 and that the non-applicant No.2 is now aged about 13 years so, she is not his daughter. Despite this pleading, learned family court awarded maintenance in her favour which is not permissible under the law. Applicant has to prove his case by submitting oral and documentary evidence. Prima facie only the non-applicant No.1 is entitled for the interim maintenance therefore, the order dated 10.12.18 is liable to be set aside.

7. In the case in hand, there is absolutely no evidence on record to show that the non-applicant No.1/wife is living in adultery. Merely on the basis of some stray instances and the unreliable statement of the applicant, it cannot be said that the non-applicant No.1 was living in adultery. It was the duty of the applicant to prove the fact of adultery of the non-applicant No.1 by leading cogent, legal admissible evidence and the evidence is not so reliable on which basis it can be safely held that the non-applicant No.1 was living in adultery. This Court is of the considered opinion that the findings as recorded by both the Courts below are based on very weak evidence and therefore the same cannot be accepted by this Court. Moreover, the evidence available on record shows that the non-applicant No.1 was subjected to cruelty and for this reason she had chosen to live separately. It has further come in the reply of the applicant that a committee meeting was also convened in the village in which she has admitted that she is living with another person and is not willing to live with the present applicant. Applicant

has also stated that the non-applicant No.2 was born out of the relation with whom she is living and therefore he is not liable to pay maintenance in his favour.

7. Thus, after going through the order of both the Courts below, I find no illegality in the order impugned so far as it relates to non-applicant No.1. As far as non-applicant No.2 is concerned, it has come in the records produced by the applicant that the non-applicant No.2 was born after their separation and therefore, the Family Court has committed error by awarding maintenance in favour of non-applicant No.2.

8. In view of above, I am of the opinion that the non-applicant No.1 is very much entitled for receiving maintenance from the applicant. However, the interim maintenance granted to the non-applicant No.2 is set aside.

9. Accordingly, the revision is partly allowed.

Sd/-

(Rajani Dubey)
Judge