

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 262 of 2018**

- Mahesh Kumar S/o Vyasnarayan Dehre Aged About 4 Years Minor Represented Through Mother Neeta W/o Vyasnarayan Dehre, R/o Village Sukhatal, Police Station Dadhi, Tahsil And District Bemetara Chhattisgarh

---- Applicant**Versus**

- Vyasnarayan Dehre S/o Bhawani Dehre Aged About 24 Years Occupation Cultivator, R/o Village Sukhatal, Police Station Dadhi, Tahsil And District Bemetara Chhattisgarh

---- Respondent

For Applicant	: Ms. Meenu Banerjee, Advocate
For Respondent	: Shri Sudhir Kumar Verma, Advocate

Hon'ble Smt. Justice Rajani Dubey**Order On Board****02.8.2019**

1. This revision is directed against the order dated 12.12.2017, passed by the Judge, Family Court, Bemetara, District Bemetara (CG) in MJC Cr.Case No. 07/2012, whereby, the Judge Family Court has dismissed the application of the applicant filed under Section 125 Cr.P.C. for grant of maintenance.
2. Facts of the case are that the applicant, who is minor, aged about 4 years, filed an application under Section 125 Cr.P.C. for grant of maintenance through his mother Neeta on the ground that the respondent on account of pretext of marriage committed rape on her six months prior to 2.4.2007 due to which, she became pregnant and gave birth to the applicant. A Panchayat meeting was

convened in this regard and it was told in the Panchayat that the respondent should marry to the mother of the applicant, but the respondent did not bother it. Thereafter, mother of the applicant- Neeta lodged a report in the Police Station, Dadhi on 2.4.2007 under Section 376 of the IPC against the respondent. Mother of the applicant is a poor lady and she is a labourer, therefore, she is not able to maintain herself and the applicant. The respondent who is father of the applicant is having property and 3.450 hectares of agricultural land bearing Khasra No.13 at village Sukhatal, therefore, the applicant claimed maintenance of Rs.3000/- per month from the respondent/father.

3. Denying the allegations, the respondent pleaded that a false report has been lodged against him. Mother of the applicant is a corrupt lady and she is having relations with some other persons. He also denied that a Panchayat Meeting was convened in this regard. He pleaded that he has no relation with the mother of the applicant and for proving paternity, D.N.A. test may be conducted; the applicant is not his son, therefore, he is not entitled for any maintenance from him.
4. The Family Court after hearing learned counsel for the parties, vide impugned order dated 12.12.2017 rejected the application filed on behalf of applicant. Hence, this revision.
5. Learned counsel for the applicant submits that the Family Court has committed grave error of law in not appreciating the evidence adduced on behalf of the applicant and reached to a wrong

conclusion. He submits that the conclusive proof of standard is mandated by Section 112 of the Evidence Act. He further submits that if it is not possible for the court to reach to the truth without conducting D.N.A. test, then it would be necessary to determine the issue between the parties so that the future of the child can be protected and prayer of the child can also be allowed according to Section 112 of the Evidence Act. He submits that paternity of the child is to be established by science and not by legal presumption, therefore, the impugned order may be set aside and the applicant be granted maintenance.

6. On the other hand, learned counsel for the respondent supported the impugned order and submits that the order passed by the trial court is just and proper and requires no interference by this Court.
7. I have heard learned counsel for the parties and perused the impugned order.
8. This revision has been filed against the order of rejection of maintenance to the applicant, who is a minor child of the respondent. The Family Court in para 16 of the order appreciated the oral and documentary evidence and came to the conclusion that rape was committed on 2.4.2007 and the applicant was born on 3.10.2007, which is not possible. According to the Family Court, if rape was committed on 2.4.2007, the child would have been born in the month of December, 2007 and not on 3.10.2007. A copy of the charge sheet Ex. P1 has been filed before the Family Court and it is clear from the FIR that a report under Section 376 IPC was

lodged by the mother of the applicant against the respondent, on which, he was arrested and it is proved that the date of incident is prior six months of the date of lodging of the report i.e. 2.4.2007 and the applicant is son of the respondent. The Family Court has wrongly taking into consideration the date of FIR as the date of incident, arrived at a conclusion that the applicant may not be born on 3.10.2007 and thus, the applicant is not son of the respondent. Therefore, this finding is wrong and erroneous and it is liable to be set aside. In all documents, name of the respondent has been mentioned as father of the applicant. The respondent has also admitted in his cross examination that he is facing trial under Section 376 IPC and Neeta is mother of the applicant and in birth certificate his name has been written as father of the applicant. He also admitted that he has not filed any application to delete his name, written in place of father of the applicant. Therefore, it is proved from the oral and documentary evidence that the respondent is father of the applicant.

9. Section 125 Cr.P.C. clearly recognizes that maintenance can be granted to legitimate and illegitimate child who is incapable of maintaining himself and the respondent being father of the applicant is duty bound to maintain his minor son. So far as quantum of maintenance is concerned, the Family Court finds that the respondent has agricultural land in his father's name, having one Tractor and he is working as Mason (*Rajmistri*) and earning Rs.400/- per day, therefore, Rs.3000/- per month would be just and

proper to grant maintenance to the applicant(son) from the respondent(father). Accordingly, the revision is allowed and it is ordered that the respondent shall pay to the applicant Rs.3000/- per month as maintenance from the date of 12.12.2017.

10. The revision stands disposed of.

Sd/

(Rajani Dubey)

JUDGE