

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 149 of 2014**

1. Smt. Shobhanti W/o Shri Prem Kerketta, aged about 26 years Caste Uraon, Occupation Housewife, R/o Village Kuberpur, Police Station Darima, Civil and Revenue District- Surguja (C.G.).
2. Sonu S/o Prem Kerketta, aged about 6 years, minor through legal guardian mother Smt. Shobhanti W/o Shri Prem Kerketta, R/o Village Kuberpur, Police Station Darima, Civil and Revenue District Surguja (C.G.).

----Applicants**Versus**

Prem Kerketta S/o Chhote Ram, aged about 30 years, Caste- Uraon, Occupation- Vehicle Driver and Agriculturist, R/o village Kuberpur, Police Station- Darima, Civil and Revenue District Surguja (C.G.)

---- Respondent

For Applicant	:	Mr. D.N. Prajapati, Advocate
For Respondent	:	None

Hon'ble Shri Justice Arvind Singh Chandel**Order on Board****30/04/2019**

1. This revision has been filed against order dated 23/01/2014 passed in Miscellaneous Criminal Case No. 69/2013 by the Family Court, Ambikapur whereby the Family Court has rejected the application for grant of maintenance in respect of Applicant No. 1 i.e. wife and only granted maintenance of Rs. 800/- in favour of Applicant No. 2.
2. Facts of the case are that an application under Section 125 of the Cr.P.C was filed by the Applicants before the Family Court. It was pleaded by them that the marriage between Applicant No. 1 and the Respondent was solemnized 8 years ago and out of their wedlock, Applicant No. 2 got birth.

After 5 years of marriage, the Respondent performed second marriage and started to live with her second wife at village- Namna. Since then, the Respondent started harassing Applicant No. 1. He also beaten her in intoxicated condition and expelled her from his house. It was further pleaded by them that they are unable to maintain themselves, whereas the Respondent is having 5 acres of agricultural land and he earns Rs. 2 lakh per annum. He also drives a vehicle and from that work he earns Rs. 7000/- per month. Despite the service of notice, neither the Respondent appeared before the Family Court nor he filed any reply, therefore, the Family Court proceeded ex-parte.

3. After recording the evidence and hearing the submission of learned counsel for the Applicant, the Family Court has partly allowed the application and granted monthly maintenance of Rs. 800/- in favour of Applicant No. 2 and claim of Applicant No. 1 has been rejected only on the ground that she is working as labour, therefore, she is able to maintain herself.
4. Today also no one appears on behalf of the Respondent.
5. I have heard counsel for the Applicant and perused the record.
6. Applicant No. 1 herself examined as Applicant Witness No. 1 and one witness namely Ramchandra as Applicant Witness No. 2 before the Family Court. In her court statement, Applicant No. 1 has categorically stated that she is doing nothing. Her above statement has been unrebutted. In these condition, the learned Family Court ought to have reached to the conclusion that she is not able to do nothing. Though Applicant Witness

No. 2 Ramchandra stated in his statement that Applicant No. 1 is working as labour occasionally in rainy season, only this ground to reach to the conclusion that Applicant No. 1 is working and is capable to maintain herself by the Family Court, is not acceptable in the eye of law and the same is not in accordance with the evidence available on record. For the shake of argument, if it is admitted that Applicant No. 1 works as labour occasionally yet there is no evidence available on record which shows that she is having regular source of income. Therefore, the finding of the Family Court that Applicant No. 1 is working as labour and is capable to maintain herself is not in accordance with law and in my considered opinion she is also entitled to get maintenance from the Respondent/Husband.

7. From the evidence adduced by Applicant No. 1 before the Family Court, the Respondent owned some agricultural land and he also drives a vehicle and getting some income from that work.
8. Considering the above aspect of the matter, it is ordered that the Respondent shall now pay Rs. 1500/- as monthly maintenance to Applicant No. 1 from today. The order of Family Court in respect of Applicant No. 2 shall remain affirmed.
9. Consequently, the revision is partly allowed to the extent indicated above.

Sd/-
(Arvind Singh Chandel)
Judge