

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 643 of 2018**

- Mo. Asad Khan, aged about 28 years, S/o Mr. Sheikh Hussain, resident of ahead of Noorani Chowk, in front of Gulshan Apartment, Rajatalab, Raipur (C.G.)

----Petitioner**Versus**

1. Smt. Tasmeen Khan, aged about 22 years, W/o Mr. Asad Khan
2. Elina @ Iram Firdaus, aged about 6 years, D/o Mr. Mo. Asad Khan, minor through her mother Smt. Tasmeen Khan

Both 1 and 2 are resident of Near Chandani Chowk, Nehru Nagar, Raipur (C.G.)

---- Respondents

For Petitioner	:	Shri Raza Ali, Advocate.
For Respondents	:	Shri Navin Shukla, Advocate.

Hon'ble Smt. Justice Rajani Dubey**Order On Board****25/07/2019**

01. Challenge in the present revision filed under Section 19 (4) of the Family Courts Act read with Section 397/401 of the code of Criminal Procedure is to the order dated 22.05.2018 passed by the First Additional Principal Judge, Family Court, Raipur, in M.J.C. No.644/2014 granting Rs.15,000/- to respondent No.1-wife and Rs.10,000/- to respondent No.2-daughter, totaling Rs.25,000/- per month as maintenance.

02. It is admitted facts before the trial Court that the

marriage of applicant was solemnized with respondent No.1 on 12.01.2007 and out of wedlock the couple is having a female child Ku. Elina @ Iram Firdaus (R-2) aged 6 years.

03. The respondent No.-1 wife herein filed an application under Section 125 of Code of Criminal Procedure before the learned trial Court on the ground that the applicant-husband started harassing her for bringing less dowry and tortured her mentally and physically. It has been further alleged that on 22.07.2009, her mother-in-law committed maar-peat with her and, on very date, a report was lodged in the Mahila Thana, based on which, offence under Section 498-A IPC was registered and Criminal case No.498/10 in this connection is pending before the Court of Magistrate. It has also been alleged that she had filed a Case No.30/10 of Section 125 of Cr.P.C, wherein an order dated 18.08.2011 was passed by Smt. Minakshi Gondale, Judge., granting maintenance of Rs.1,000/- to respondent No.1 wife and Rs.500/- to respondent No.2 daughter. During pendency of Criminal Case No.496/2010, they arrived at in compromise on the assurance of the petitioner-husband that he would keep them with him and withdrew her application filed under Section 125 Cr.P.C. and order dated 25.08.2014 was passed, but the petitioner husband did not keep them with him. Further allegation is that the petitioner husband earns Rs.40,000/- from light decoration shop and Rs.30,000/- from taxi, therefore, maintenance of Rs.35,000/- may be granted to her. The Family Court has

ordered to give Rs. 25,000/- (15,000/- to respondent No.1 wife and Rs.10,000/- to respondent No.2 daughter). Hence, this revision petition.

04. The petitioner husband herein, in his reply, denied all the allegations of respondents stating that he never tortured his wife. In fact, it is the respondent No.1 wife who used to ill treat his mother and father and created pressure over the petitioner to reside separately from his parents, for which the respondent No.1 quarreled with the parents of the petitioner. He is not earning Rs.80,000/- per month. He is a small fish vendor from which he earns Rs.9,000/- per month, whereas the respondent No.1 wife is well educated, she is working as Teacher in the Rizing School and earns Rs.20,000/- per month.

05. Learned counsel for the petitioner submits that the order of learned trial Court granting maintenance to respondents is perverse and not sustainable in law. The main objection of learned counsel for the petitioner is that once the application of respondents filed under Section 125 Cr.P.C. was allowed by the trial Court on 18.08.2011 on merit then other application under the same provision is not maintainable. Reliance is placed on the decision of Rajasthan High Court in the matter of **Rafique Mohammed V. Anisa & Ors** reported in **2013 Cri LJ 3082.**

06. Learned counsel for respondents submits that respondents did not conceal any fact before the trial Court and in their application they made aware about the previous

cases and the learned trial Court decided this issue in para 13 of the impugned order.

07. Heard the learned counsel for the parties and perused the record of M.J.C. No.644/14 and M.J.C. No.30/10.

08. In M.J.C. No.30/10, the learned trial Court, after hearing both the parties, passed an order on 18.08.2011 allowing the application of applicant wife and directed the non-applicant husband to pay Rs.1,000/- to applicant No.1 wife and Rs.500/- to applicant No.2 daughter. It is surprising to note here that there is no such order on record which show that the order dated 18.08.2011 has been set aside or partly allowed. This fact was brought to the notice of learned trial judge, but the learned trial judge completely ignored this aspect of the matter. The Family Court granted maintenance by order dated 18.01.2011. This order of maintenance has not been shown by either side that it has been set aside by the higher court or it has been annulled in proceeding under Section 127 Cr.P.C. by the Family Court. Thus, the order (18.01.2011) granting maintenance has attained finality. The trial Court has not given any finding on this issue.

09. Hence, for the reasons stated herein above, this Court quashes and set aside the impugned order dated 22.05.2018. The case is remanded back to the trial Court with direction to afford opportunity to both the parties and then to decide afresh the case in accordance with law. However, the amount, if any, paid by the petitioner husband to respondents, shall be

adjusted as per the final order to be passed by the trial Court.

The respondent (wife), if so desires, may file an application for interim maintenance before the trial Court.

10. Both the parties to remain present before the trial Court on 26.08.2019.

Sd/-

(Rajani Dubey)
JUDGE

Vijay