

**NAFR**

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**CR.R. No. 73 of 2019**

Smt. Renuka Surana, W/o. Late Shri Shubhash Chandra Surana, Aged About 65 Years, R/o. C-02, Shailendra Nagar, City Kotwali, Thana Raipur Chhattisgarh.

**---- Petitioner**

**Versus**

Anand Surana, S/o. Late Shri Shubash Chandra Surana, Aged About 41 Years, R/o. C-02, Shailendra Nagar, City Kotwali, Thana Raipur Chhattisgarh.

**-----Respondent**

**AND**

**CR.R. No. 845 of 2018**

Anand Surana, S/o. Late Shri Shubhas Chandra Surana, Aged About 41 Years, R/o. C-02, Shailendra Nagar, Thana City Kotwali, Raipur Chhattisgarh.

**---- Petitioner**

**Versus**

Smt. Renuka Surana, W/o. Late Shri Shubhas Chandra Surana, Aged About 65 Years, R/o. C-02, Shailendra Nagar, Thana - City Kotwali, Raipur Chhattisgarh.

**-----Respondent**

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| For Petitioner (in Cr.R. No.73/19)  | : Mr. K. Rohan, Advocate      |
| For Petitioner (in Cr.R. No.845/18) | : Mr. Ashish Surana, Advocate |
| For Respondent (in Cr.R. No.73/19)  | : Mr. Ashish Surana, Advocate |
| For Respondent(in Cr.R. No.845/18)  | : Mr. K. Rohan, Advocate      |

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**Hon'ble Shri Justice Rajendra Chandra Singh Samant**

**Order On Board**

**18/11/2019**

1. Both the revision petitions are heard and decided together by this common order as they are arising out of the same order passed by the First Additional Principal Judge, Family Court, Raipur (C.G.)

2. Both these petitions have been brought being aggrieved by the order dated 11.07.2018, passed by the First Additional Principal Judge, Family Court, Raipur, District – Raipur in M.J.C. No.623 of 2017.
3. The grievance of the applicant (in Cr.R. No.73 of 2019) is with regard to the quantum of the maintenance and also that the order of the payment of maintenance is from the date of order. The grievance of the applicant (in Cr.R. No.845 of 2018) is this that the applicant does not have earning capacity, which has not been taken into consideration by the learned Family Court.
4. Counsel appearing for the applicant (in Cr.R. No.73 of 2019) submits that the applicant is mother of the respondent. The learned Family Court has held that the applicant is unable to maintain herself and also the respondent has sufficient means for paying maintenance. However, the order has been passed for making payment of half the amount, which was prayed for i.e. Rs.15,000/- and that too from the date of passing of the order. The applicant had prayed for monthly maintenance of Rs.30,000/-, which is her requirement because of the medical expenditure she has to bear in routine. Therefore, it is prayed that the maintenance amount be enhanced and order be made for payment from the date of filing of the application.
5. Counsel for the respondents as well as applicant (in Cr.R. No.845 of 2018) submits that the respondent/applicant does not deny his liability towards his mother the applicant (in Cr.R. No. 73 of 2019) but brother of the respondent is also equally liable to maintain his mother, therefore, whole liability of maintenance can not be saddled upon the respondent. It is submitted that as claimed in the application, the respondent is in possession of Rs.99.00 lakhs and gold 1 Kg. is not

true statement because this property is under seizure by the authorities which has not been released in favour of the applicant, regarding which a writ petition No.25855 (2) of 2016, Renuka Surana Vs. Union of India is pending before the Calcutta High Court in which the release of the cash and gold is prayed for.

6. It is also submitted that the applicant resides in the same house, in which the respondent and his family are residing and all the daily needs and necessity are taken care of by the family of the respondent. It was denied by the respondent that he is engaged in the business of broking of gold and silver and earning lakhs of rupees per month. Respondent is not engaged in any kind of business and he is unable to pay any amount to the applicant. Copy of the income tax returns have been filed along with the petition, which may be perused to appreciate that the respondent is unable to make payment of maintenance as ordered. Therefore, it is prayed that the order impugned be set-aside and the learned Family Court be directed to reconsider the status of the respondent and pass order accordingly.
7. I have heard the learned counsel for the parties and perused the documents present on record.
8. The issue raised in Cr.R. 73 of 2019 and Cr.R. No.845 of 2018 are jointly considered.
9. The first point for consideration is the earning capacity of the respondent/applicant (in Cr.R. No.845 of 2018).
10. Renuka Surana (A.W.-1) submits that her son, the respondent is engaged in business of wholesale broking of gold and silver and from which he has income of lakhs of rupees per month. In cross-

examination, she has admitted that she has one another son by name Suyash Surana, who lives in Ujjain, where she keeps visiting. No question was put to her in cross-examination to rebut the statement that the respondent is engaged in business of wholesale broking of gold and silver from which he has earning lakhs of rupees per month.

11. Respondent Anand Surana (N.A.W-1) has stated in his examination-in-chief that the business of his firm styled as Suvijita Dimond is closed since last two years because cash of Rs.99.00 lakhs is under seizure and because of shortage of funds, he is unable to continue with his business. Therefore, he is in acute economic crises and unable to make the payment of maintenance, however, he is taking care of food, medicine and other requirements of the applicant, therefore, there is no requirement of any payment of maintenance to the applicant. In cross-examination, he has denied the suggestion regarding monetary requirements of the applicant.
12. The procedure followed under Section 125 of Cr.P.C. is summary procedure in which the enquiry regarding the claims and defence are made only for a limited purpose. On perusing the statement in evidence of both the sides, it is found that the respondent is not paying any maintenance and is also denying to pay any maintenance to the applicant. Although no evidence has been brought by the applicant side regarding broker business of the respondent and respondent has given evidence in denial, but this fact is noticed from the statement of the respondent himself that he is maintaining his mother by providing food and other necessities, which shows that he is in possession of some income, which he has not disclosed to the Court. The reference to the income tax returns before this Court can not be taken into

consideration because these documents are not part of the record of the Courts below, therefore, after over all consideration I am of this view that the respondent has capacity to make payment and looking to his status, he is capable to make payment of amount as ordered by the learned Family Court.

13. Considering the prayer made by the applicant (in Cr.R. No.73 of 2019) I am of this opinion that there is no requirement to order for enhancement because half of the requirements of the applicant are taken care by the respondent, however, order can be passed for grant of maintenance from the date of filing. With respect to the prayer made (in Cr.R. 845 of 2018) I am of this opinion that this prayer is not fit to be allowed.
14. Therefore, on the basis of the discussions made herein above and the conclusions drawn, the Cr. R. No.73 of 2019 is partly allowed. The order of the learned Family Court is modified to this extent that the monthly maintenance shall be payable to the applicant (in Cr.R. No.73 of 2019) from the date of her filing application. The Cr.R. No.845 of 2018 is accordingly dismissed.

**Sd/-**  
**(Rajendra Chandra Singh Samant)**  
Judge