

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 846 of 2018**

1. Brijesh Kumar Pandey, S/o Ram Uday Pandey, Aged About 39 Years, R/o Lig-176, Amdi Nagar, Hudco, P.S. Bhilai Nagar, Tahsil and District- Durg Chhattisgarh.
2. Smt. Chanda Pandey, W/o Brijesh Kumar Pandey, Aged About 34 Years, R/o Lig-176, Amdi Nagar, Hudco, P.S. Bhilai Nagar, Tahsil and District- Durg Chhattisgarh.

---- Applicants**Versus**

- Kumari Riya Pandey, D/o Brijesh Pandey, Aged About 11 Years Through Suit Friend Smt. Sangeeta Pandey, W/o Kamlesh Pandey, Aged About 41 Years, R/o Lig-176, Amdi Nagar, Hudco, P.S. Bhilai Nagar, Tahsil and District- Durg Chhattisgarh.

---- Respondent

For Applicants	: Mr. Praveen Dhurandhar, Advocate
For Respondent/State	: Mr. Jitendra Gupta, Advocate

Hon'ble Smt. Justice Rajani Dubey**CAV Order****29.08.2019**

1. This revision has been filed by the applicants against order dated 24.05.2018 passed by Additional Principal Judge, Family Court, Durg (C.G.), in Miscellaneous Criminal Case No. 226/2015 whereby, the learned trial Court allowed the application filed by respondent under Section 125 of Cr.P.C. and granted Rs. 5,000/- per month as maintenance.
2. Brief facts of the case before the Family Court are that the respondent (adopted daughter) filed an application under Section 125 of Cr.P.C. before trial Court through her biological

mother on this ground that she was adopted by the applicants from their natural parents through adoption deed dated 30.07.2007 which was registered on 04.06.2009. It was stated that the applicants in violation of terms of the adoption deed, harassed the child hence the biological mother namely (Sangeeta) brought the child with her since 2014. The respondent is the school going girl aged about 11 years student of Class 8th studying in Private School at Bhilai having expenses of Rs. 70,000/-. The natural parents do not have any source of income and they are not in a position to maintain the respondent. The applicant No. 1 is the employee of Railway earning 70,000/- per month, so respondent demanded Rs. 6,000/- as a maintenance.

3. In their reply, the applicants denied all the allegations levelled against them and stated that applicant No. 1 is a railway employee but his earning is not as what, it has pleaded in the application. It was further stated that the natural mother of the child had three girl child and the applicants had no child, hence the natural father of the child requested them to maintain his youngest child Kumari Riya, hence the child was taken on adoption by the applicants. Subsequently the natural mother (Sangeeta) forcefully took the child with her and filed an application for maintenance. Applicants have the similar affection with the respondent and they want to keep her and they do not discriminate her so, application is liable to be dismissed.

4. The learned family Court, after appreciating oral and

documentary evidence of both the parties, vide order dated 24.05.2018, allowed the application of respondent and granted Rs. 5,000/- per month as maintenance. Hence, this revision.

5. Learned counsel for the applicants submits that impugned order passed by the family Court suffers from impropriety, perversity, incorrectness and therefore not sustainable in accordance with law. The application under Section 125 of Cr.P.C. preferred by the adopted child through suit friend natural mother was not maintainable as the adopted child do not come under preview of Section 125 of Cr.P.C. and the remedy available is to file an application for maintenance under Hindu Adoption and Maintenance Act. The application was not maintainable filed by the child to whom the applicants are natural guardian but illegally the application was preferred through suit friend natural mother, which is not maintainable. The family Court failed to appreciate that the applicants are the guardian of the child and are willing to keep the child with them but was forcefully taken by the natural mother Sangeeta Pandey. The Family Court also failed to appreciate that an application under Section 97 of Cr.P.C. was filed by the applicants to have the custody of child, who is in the illegally custody of natural mother, which was rejected vide order dated 12.08.2015. The application was not maintainable for the reason that the child and her natural mother (Sangeeta Pandey) and the applicants reside in the same house, which is maintained by the applicants. Before family Court the adoption deed was not exhibited by the respondent and the same has not

been proved. The maintenance is at higher side and the income pleaded by the applicant No. 1 incorrect and has not been proved. So, impugned order is liable to be set aside. Reliance placed on the matters of *Ma E Mya Vs. U Ko Ko Gyi reported in AIR 1937 Rangoon 370 & Nanu Nair Vs. Puthan Veettil Karthyayini Amma reported in AIR 1937 Madras 547.*

6. Learned counsel for the respondent supporting the impugned order submits that the trial Court was fully justified in passing the impugned order. Other reliance placed on the matter of *Indar Mal Vs. Babu Lal reported in AIR 1977 Rajasthan 160.*
7. Heard learned counsel for both the parties and perused the material available on record.
8. Before the family Court, the respondent examined her suit friend, her biological mother (Sangeeta Pandey) (Aw/1) and applicants examined themselves as (NAW/1 and NAW/2). The respondent also filed documents Ext. P/15 and Ext. D/1.
9. The learned family Court after appreciating oral and documentary evidence finds that applicants have sufficient means and granted Rs. 5,000/- per month as maintenance in favour of respondent and the respondent is an adopted daughter of the applicants and adoption deed is admitted by the respondent in their examination before family Court. The respondent being minor, holding a registered deed of adoption in her favour is entitled for maintenance from her adopted parents. In light of above, this Court does not find any irregularity or illegality in the finding so recorded by the Court below.

10. Accordingly, the revision has no merit and is hereby dismissed at motion stage.

**Sd/-
(Rajani Dubey)
Judge**

Ruchi