

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUROrder reserved on : 25/09/2019Order delivered on : 17/12/2019**CRR No. 906 of 2019**

- Ashfaaq Ahmed Khan, S/o Shri N.A. Khan, Aged About 40 Years, R/o Near Yes Bank, Link Road, Bilaspur, District Bilaspur (C.G.).

---- Applicant

Versus

- Smt. Shahin Nikhat, W/o Ashfaaq Ahmed Khan Aged About 30 Years At Present R/o Nurani Chowk, Rajatalab, Police Station Civil Line, Raipur, District Raipur (C.G.).

---- Respondent

For Applicant	: Mr. Raghvendra Pradhan, Advocate
For Respondent	: Mr. Pragalbha Sharma, Advocate

Hon'ble Smt. Justice Rajani Dubey**C.A.V. Order****17.12.2019**

1. This Revision has been filed by the applicant against order dated 22.05.2019 passed in MJC No.508/2018 by the learned First Additional Principal Judge, Family Court Raipur, whereby the learned Family Court has directed the applicant to pay Rs. 5,000/- per month to the respondent as interim maintenance.
2. Brief facts of the case are that the respondent (wife) filed an application under Section 125 of Cr.P.C. for grant of maintenance and along with this application she had also filed an application for grant of interim maintenance wherein she alleged that because of cruelty and ill treatment given by the applicant and his family members, she had to leave the house of the applicant and at

present she is residing in her parental house.

3. The applicant (husband) denied all the allegations in his reply and submitted that he is a handicapped person, he could barely see from his one eye and he has also many other health issues relating to handicap, and after the marriage, the respondent- wife herein did not take interest in the household works and she also did not help the applicant in day-to-day works as he is handicapped and within a short span of time, she left the house of the applicant on 10.02.2018 and never came back to his house. Respondent is living separately without any sufficient reason and she left the house of the applicant on her own will and he is hardly earning his livelihood from software development that too is not a regular income and because of this reason, respondent is not entitled for any maintenance.
4. The Family Court after hearing counsel for both the parties by impugned order dated 22.05.2019, allowed the application of the respondent for interim maintenance and awarded Rs. 5,000/- per month. Hence, the present revision.
5. Learned counsel for the applicant submitted that the impugned order is arbitrary and contrary to the facts and law. The Family Court ought to have considered the fact that the applicant is a handicapped person and also suffering from various health problems and he has not given any ill-treatment or committed any cruelty against the respondent. The applicant himself is a handicapped person and he is dependent for help on others to do his daily routine work and he is not in a position to do any ill-treatment or cruelty against the respondent. He does not earn

regular income, whereas the respondent herself is a well-educated lady who could earn properly, hence there is no need of passing of an order for maintenance against the applicant. Respondent lived with the applicant for a short span of time of 21-22 days in which any kind of cruelty or ill-treatment cannot be presumed to have happened with her. So, impugned order is liable to be set aside.

6. On the other hand, learned counsel for the respondent supported the impugned order and submitted that the impugned order is interlocutory order and this revision is not maintainable. Reliance has been placed on this Court's order in **FAM No. 95/2019 vide order dated 29.07.2019, Smt. Monica Sahu Vs. Puranlal Sarwa and vide order dated 02.09.2019 passed by High Court of Judicature at Patna in Criminal Miscellaneous No. 6740/2016 in Dr. Dilip Kumar @ Dr. Dilip Kumar Sharma @ Dilip Sharma Vs. State of Bihar and Others.**
7. Heard, learned counsel for both the parties and perused the material available on record.
8. Admittedly, the applicant (husband) cannot refuse to maintain to his wife on the ground that he has no sufficient means. As a matter of fact, the applicant is an able-bodied and can earn his livelihood, even if, he never has capacity to earn then also he is liable to maintain as per Section 125 of Cr.P.C. The presumption is that able-bodied healthy person has possessed of sufficient means and onus on him to prove that by his deficiency or his health condition he is not able to earn his livelihood. Learned counsel for applicant submitted that handicapped certificate is sufficient to show that he is 100% handicapped person.

9. For grant of interim maintenance Court has to see prima facie relations between the parties and earning capacity of the husband. In this case, the Family Court awarded interim maintenance of Rs. 5,000/- per month to the respondent (wife) on the basis of her affidavit.
10. The applicant has also filed affidavit in support of his reply of main petition. Where there is no proof of income of the applicant (husband) minimum daily wages are taken for calculating income for an able - body person but in the present case applicant is handicapped. Considering the health condition of the applicant and looking to the facts of the case and also in the light of liability of Rs. 5,000/- per month, it appears to be little bit excessive. Consequently, the petition is partly allowed and the interim maintenance awarded to the respondent for Rs. 5,000/- per month is reduced to Rs. 3,000/- per month.
11. The Family Court is directed to decide the matter as early as possible with the co-operation of the parties preferably within a period of six months from the date of receipt of this order.
12. It is made clear that this observation will not affect the merits of the case and if any delay occurs on behalf of the respondent, then the trial Court shall reconsider the application for interim maintenance. Revision is accordingly partly allowed with the aforesaid direction.

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