

HIGH COURT OF CHHATTISGARH, BILASPUR

Order Reserved on : 14.11.2019

Order Passed on : 04/12/2019

Cr.R. No. 941 of 2019

- Dilip Sharma S/o Ram Lochan Sharma Aged About 49 Years R/o Flat No. 101 Vaishanodevi Niwas Plot No. 385 And 386, Sarsole Sector, -6 Police Station Nerul West Navi Mumbai 400706 Present Address R/o Flat No. 202, Chaman Heights, Chadda Badi, Nehru Nagar, Bilaspur Police Station Civil Line, District Bilaspur Chhattisgarh

---- Petitioner

Versus

1. Swati Sharma D/o Shri Dilip Sharma Aged About 18 Years
2. Smt. Madhulika Sharma W/o Dilip Sharma Aged About 47 Years
3. Shashank Sharma S/o Dilip Sharma Aged About 13 Years Minor Through Natural Gaurdian Mother Madhulika Sharma.

(All are r/o H.No. HIG 1/128, Sector- 1, D.D.U. Nagar, Police Station D.D.U. Nagar, Raipur, Tahsil And District Raipur Chhattisgarh)

---- Respondents

For Petitioner	:	Mr. Ravindra Sharma, Advocate
For respondents	:	Mr. Pravesh Shrama, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

C A V Order

04/12/2019

1. This petition has been brought being aggrieved by the order dated 17.07.2019 passed by the learned Family Court Raipur in the execution proceeding.
2. On 17.07.2019, the applicant was absent. Thereafter, on request made by the respondent, the learned Court below has ordered for issuance of non-bailable warrant against the applicant.
3. It is submitted by the learned counsel for the applicant that the applicant had preferred an application for exempting him from appearance on that date, on the ground of his own physical ailment which has not been

considered at all and the impugned order has been passed. Copy of that application has been filed along with the petition.

4. Learned counsel for the respondent opposed the petition and submissions and submits that the applicant is deliberately avoiding the proceeding of execution against him and he is deliberately not complying with the order of the Court because of which the respondents were compelled to file the execution proceedings. Therefore, no error has been committed by the learned Family Court in issuance of non-bailable warrant against the applicant.
5. It is a case of payment of maintenance to the wife and further the date of 17.07.2019 was fixed for payment of arrears of maintenance.
6. Section 125 (3) of Cr.P.C. provides that the learned Court shall have the power to issue warrant for levying the amount and the manner provided to levy fine and also may sentence such persons for default in payment so made. Non-appearance of the applicant on the given date by itself cannot be considered that he has expressed his intention for not paying the remainder of arrears of maintenance. On the contrary, the applicant had filed an application regarding his inability to appear before the Court supported with a medical certificate. Therefore, the learned Execution Court should have given one more opportunity to applicant to appear and show his intention for making the payment according to the order against him. Therefore, for this reason, this petition is allowed and disposed off. The order dated 17.07.2019 is set aside and the applicant is granted opportunity to appear before the learned Family Court on 16th of December, 2019 to participate in the further proceeding.
7. Accordingly, the petition stands disposed off.