

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****CRR No. 1124 of 2018**

Order Reserved on : 20.08.2019

Order Delivered on : 19.11.2019

- Devsharan Sahu, aged about 42 years, Through : his father Shri Milau Das Sahu, aged about 70 years, S/o late Shri Jhumukh Das Sahu, R/o village - Tolagaon, Police Station - Khairagarh, Tahsil - Khairagarh, District Rajnandgaon (C.G.) (Petitioner Devsharan Sahu is suffering from Major Depressive Disorder and other psychological problem)

----Petitioner**Versus**

1. Smt. Asha Bai W/o Shri Devsharan Sahu, aged about 37 years.
2. Ku. Rinki Sahu, D/o Shri Devsharan Sahu, aged about 18 years.

Respondent No. 1 and 2 R/o Ward No.16, village - Dauchuora, Police Station - Khairagarh, Tahsil Khairagarh, District Rajnandgaon (C.G.)

3. Sachin Sahu, S/o Shri Devsharan Sahu, aged about 16 years, presently residing with his Grand Father at village Tolagaon, Police Station Khairagarh, Tahsil Khairagarh, District Rajnandgaon (C.G.)

---- Respondents

For Petitioner	:	Shri Shyam Sunder Lal Tekchandani, Advocate.
For Respondents	:	Shri Abhishek Sharma, Advocate.

Hon'ble Smt. Justice Rajani Dubey**Order On Board****19/11/2019**

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 19.06.2018

passed by the Judge, Family Court, Rajnandgaon, in M.J.C. No.62/2015 granting Rs.2,000/- to respondent No.1 and Rs.1,500/- to respondent No.2 totaling Rs.3,500/- per month as maintenance.

02. It is admitted facts before the trial Court that the marriage of applicant was solemnized with respondent No.1 in the year 1998 according to hindu customs and out of wedlock the couple is having a female child Ku. Rinki Sahu (R-2) aged 18 years and Sachin Sahu (R-3) aged 16 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 after the birth of children, the applicant (husband) started assaulting respondent No.1-wife and harassing her mentally and physically under the influence of liquor. It has been alleged that on 17.06.2014, the applicant assaulted and forcibly removed her from the house along with the children. It has been also alleged that she is not in a position to maintain herself and her children. The applicant is having 8 acres of agricultural land, his yearly income is Rs. 2 lac and he has also paddy rice cutting machine. Therefore, she may be given Rs.15,000/- per month for the maintenance.

04. In reply, the applicant denied all the allegations levelled against him and stated that respondent No.1 is living separately of her own. The applicant is suffering from major depressive disorder and other psychological problem and

taking treatment from the Psychiatrist. The applicant is facing these problems due to false complaint and false allegation by respondent No.1-Wife.

05. The learned trial Court, after hearing both the parties and appreciating oral and documentary evidence, allowed the application of respondent No.1-Wife and ordered to give Rs. 2,000/- to respondent No.1, Rs.1,500/- to respondent No.2 and rejected the application in respect of respondent No.3 Sachin Sahu on the ground that since he is residing with his father, no compensation can be granted in his favour. Hence, this revision petition filed by the applicant through his father.

06. Learned counsel for the applicant submits that the learned Family Court has not taken into consideration the medical prescriptions and medical record of the applicant, which has been produced by the father of the applicant through his counsel, which shows that the applicant is under psychiatrist treatment. He further submits that the Court below has recorded its finding in para 20 that the applicant is mentally disturbed and is under treatment of Psychiatrist and also filed document to this effect but the Court below has not extended the benefit only on the ground that those documents have not been duly certified. It has been also submitted that proceeding under Section 125 Cr.P.C. is criminal in nature and provision of Section 329 Cr.P.C. would apply in this case. In support of his argument, he placed reliance on the decision of this Court's order dated 22.02.2017

passed in CRR No. 89/2017 (**Tiruvardan Singh Vs. State of Chhattisgarh**), decision of Karnataka High Court in the matter of **Pujappa Vs. The State** (1991 CriLJ 1189) and decision of Gauhati High Court in the matter of **Nandeswar Das Vs. State of Assam** (2004 (CriLJ 4723).

07. On the other hand, learned counsel for respondents supported the impugned order passed by the learned Family Court and submitted that proceedings under Section 125 Cr.P.C. are civil in nature and applicant appeared before the Family Court and gave his statement as a normal person.

08. Heard the learned counsel for the parties and perused the material on record including the impugned order.

09. Before the trial Court, both the parties produced oral and documentary evidence. Applicant Devsharan Sahu was examined before the trial Court as non-applicant No.1. In his detailed cross-examination, he gave answer to the questions put to him very carefully. The learned trial Judge, in its para 20 of the judgment, recorded the finding that, though, the applicant is stated to have mentally disturbed but no incriminating evidence to this effect has been adduced by the applicant which could prove that he is suffering from any mental disease. That apart, it has also recorded the finding that all the questions have been thoughtfully answered by the applicant, on the basis of which no conclusion can be drawn regarding the applicant that he is psychopath.

10. The learned Family Court, after appreciating the oral and

documentary evidence, has rightly decided the application filed under Section 125 of Cr.P.C. in favour of respondent No.1, 2 and dismissed the application in respect of respondent No.3.

11. In view of the above, this Court is of the considered opinion that the order dated 19.06.2018 passed by the Court below being fully justified, do not call for any interference in revision petition.

12. Accordingly, this revision has no substance and it is hereby dismissed.

Sd/-

(Rajani Dubey)
JUDGE