

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 1142 of 2018**

1. Smt. Archana Tiwari W/o Sumendra Tiwari Aged About 38 Years Posted As Headmistress, Govt. Primary School, Gondwara, R/o J-195, Janta Colony, Tilak Nagar, Gudhiyari, District- Raipur, Chhattisgarh.
2. Ku. Nivedita D/o Sumendra Tiwari Aged About 16 Years Now Aged About 22 Years, R/o J-195, Janta Colony, Tilak Nagar, Gudhiyari, District- Raipur, Chhattisgarh.
3. Aryan S/o Sumendra Tiwari Aged About 13 Years Now Aged About 19 Years, R/o J-195, Janta Colony, Tilak Nagar, Gudhiyari, District- Raipur, Chhattisgarh.

---- Applicants**Versus**

- Sumendra Tiwari S/o Late Dr. C.N. Tiwari Aged About 41 Years Government Employee Posted As Assistant Grade-2, Office Of District Ayurved Officer, Durg. R/o Behind Bamleshwari Mandir, Danganiya, Raipur, Chhattisgarh.

---- Respondent

For Applicants	: Shri Suryakant Mishra, Advocate
For Respondent	: Shri Chitendra Singh, Advocate

Hon'ble Smt. Justice Rajani Dubey**Order On Board****26/08/2019**

Present revision has been filed by the applicant against the order dated 17.4.2018 passed by the Principal Judge, Family Court, Raipur in MJC No. 1255/2012 whereby the family court has partly allowed the application filed under Section 125 Cr.P.C. and granted maintenance of Rs. 10,000/- per month to applicant No.2 whereas rejected the application on behalf of applicant No.1 & 3.

2. Facts of the case in brief are that applicant No.1 and respondent are legally wedded husband and wife. Their marriage was performed on 30.06.94 at Raipur according to Hindu customs and out of their wedlock two children (applicants 2 & 3) were born. After their marriage, respondent used to quarrel with the applicant No.1 on several occasions and tortured her mentally and physically and since then (28.04.09), the applicant No.1 is residing separately from her husband. It is stated that the respondent is posted as Assistant Grade-II and is earning Rs. 30,000/- per month and despite this, he is not giving any amount towards maintenance to the applicants being wife and children therefore, the applicants filed application under Section 125 Cr.P.C. and demanded Rs. 25,000/- per month as maintenance.

3. In his reply, the respondent denied all the allegations as made against him and submitted that he never tortured his wife physically or mentally and she is living separately of her own. Applicant No. 2 and 3 are major and therefore they are not entitled for getting any maintenance.

4. After recording the evidence and hearing the submission of counsel for the parties, learned Family Court vide order dated 17.04.2018 has partly allowed the application on behalf of the applicant No.2 by granting maintenance of Rs. 10,000/- per month and dismissed the application filed by the applicants 1 & 3. Hence this revision.

5. Counsel for the applicant submits that the impugned order dated 17.4.2018 is bad in the eye of law, perverse and erroneous therefore the same is liable to be set aside. He submits that the

Family Court has failed to appreciate that applicant No.3 though has become major but he is a student and unable to earn for himself therefore he is entitled for maintenance from the respondent. Applicant No. 3 is required education fees, tuition fees, clothes, books and other articles for his studies and the respondent being father is liable to pay the amount for proper education of his son. The applicant No.1 is legally wedded wife and therefore she is also entitled to get maintenance from the non-applicant.

6. On the other hand, Counsel for the non-applicant supports the impugned order.

7. I have heard counsel for the parties and perused the record.

8. The Family Court finds that applicant No.1 is working as Principal in Government School and earning Rs. 35,000/- per month after deduction therefore, the learned family court has rightly rejected the application filed on behalf of the applicant No.1.

9. The Family Court has found that the date of birth of the applicant No.3 is 06.07.99 and now he has attained his majority and therefore is not entitled for getting any maintenance. Applicant has filed this petition on 13.01.2012 and on that date, applicant No.3 was minor and therefore till the date he attains majority, he has right to get maintenance therefore the trial court is not correct on this finding.

10. Thus, in view of the overall discussion, the matter is remanded back to the trial court with a direction that the trial court on the basis of oral and documentary evidence and after hearing both the parties, shall fix the amount of maintenance of applicant No.3 till the date of

his attaining majority which comes from 13.01.12, he is liable to get maintenance.

With the aforesaid observation, the case is sent back to the trial court for further proceedings.

Sd/-
(Rajani Dubey)
Judge