

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1797 of 2019**

- =====
1. Khushi Kumari aged about 14 years, female, Daughter of Sanjay Chaudhary, minor, under guardianship of their mother namely Anjali Devi, wife of Sanjay Chaudhary, residents of Tarapur, Police Station- Tarapur, District- Munger, At present residing at Mohalla- Pupri, Police Station- Pupri, District- Sitamarhi.
 2. Krish Kumar, aged about 12 years, male, Son of Sanjay Chaudhary, minor, under guardianship of their mother namely Anjali Devi, wife of Sanjay Chaudhary, residents of Tarapur, Police Station- Tarapur, District- Munger, At present residing at Mohalla- Pupri, Police Station- Pupri, District- Sitamarhi.

... .. Petitioners

Versus

Sanjay Chaudhary @ Sanjay Jaiswal Son of Mahendra Chaudhary @ Mahendra Jaiswal Resident of Ward No. 3, Tarapur Colony, Police Station- Tarapur, District- Munger.

... .. Respondent

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Appearance :

For the Petitioner/s : Mr. Uday Kumar, Advocate.

For the Respondent : Mr.

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date : 23-01-2020

The present application has been filed “*for setting aside the order dated 23.08.2019 passed by the learned Principal Judge, Family Court, Sitamarhi in Maintenance Case No. 14 of 2018/C.I.S. No. 14 of 2018 whereby and whereunder an application filed by petitioners for grant of maintenance under Section 125(1) Cr. P.C. has been rejected on the ground of res-judicata.*”

2. Learned counsel for the petitioners submits that the learned Court below has erred in rejecting the claim for maintenance under Section 125 Cr. P.C. on the ground of *res-*



judicata. It is submitted that the maintenance of Rs. 4,000/- per month earlier granted by order dated 22.09.2014 passed in Misc. Case No. 21 of 2003 was made for the purpose of maintenance of the minor- petitioners and their mother. On the other hand, the permanent alimony of Rs. 11,00,000/- as directed by this Court in Misc. Appeal No. 678 of 2014 in the appeal against the judgment and decree passed in the divorce case in Matrimonial Case No. 1030 of 2013/177 of 2012, was only in favour of the mother of the petitioners. As such, it is submitted that the petitioners are entitled for separate maintenance from their father, the respondent herein.

3. Having heard learned counsel for the petitioners and on consideration of the materials on record, this Court is not inclined to interfere in the matter. It is not in dispute that in Misc. case No. 21 of 2003, the maintenance amount of Rs. 4,000/- per month was directed to be paid in favour of the petitioners and their mother in terms of Section 125 Cr. P.C. On the other hand, paragraph-9 of the judgment dated 19.12.2016 passed by this Court in Misc. Appeal No. 678 of 2014 for payment of permanent alimony of Rs. 11,00,000/- to the mother of the petitioners specifically provided that such amount was inclusive of the arrears of maintenance and for adjusting any amount already paid. It is thus clear that the maintenance amount of Rs. 11,00,000/- payable to the mother of the petitioners was fixed, having regard that she had two minor children to take care of. It is for this reason that this Court



clarified that the amount would include the arrears of maintenance, with obvious reference to the maintenance of Rs. 4,000/- per month in Misc. Case No. 21 of 2003 allowed not only in favour of the mother of the petitioners but also in favour of the petitioners themselves. This Court is therefore of the view that the petitioners cannot over again be permitted to claim maintenance from their respondent-father.

4. The impugned order therefore suffers no illegality, infirmity or error of jurisdiction. The petition stands dismissed.

(Vikash Jain, J)

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AFR/NAFR	NAFR
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