

HIGH COURT OF CHHATTISGARH, BILASPUR

Cr.R. No.184 of 2019

1. Smt. Mithlesh Mishra W/o Shyamadhar Mishra Aged About 40 Years
R/o Satnami Para Sanjay Nagar, Raipur Tehsil And District Raipur
Chhattisgarh
2. Ku. Seeta Mishra D/o Shyamadhar Mishra Aged About 14 Years Minor
Through Natural Guardian Applicant No. 1 Smt. Mithlesh Mishra, R/o
Satnami Para Sanjay Nagar, Raipur Tehsil And District Raipur
Chhattisgarh

---- Petitioners

Versus

- Shyamadhar Mishra S/o Shri Ram Lal Mishra Aged About 50 Years R/o
Satnami Para Sanjay Nagar, Raipur Tehsil And District Raipur
Chhattisgarh

---- Respondent

For Petitioners : Ms. Priya Mishra, Advocate.

For Respondent : Mr. Arvind Shrivastava, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

04/02/2020

1. This petition has been brought challenging the legality, propriety and correctness of order dated 13.12.2018 passed by the learned Family Court, Raipur, in C.S. No.650/2016, dismissing the application filed by the petitioners under Section 125 of Cr.P.C.
2. Learned counsel for the petitioners submits that learned Family Court has passed an erroneous order dismissing the application of applicants on holding that the applicant No.1 had earlier filed application under Section 125 of Cr.P.C. in which she had entered into a compromise with

the respondent and then the case was disposed of on that basis, on 24.11.2015 according to agreed terms in the compromise, it was also held that the applicant No.1 had remarried, therefore, she was not found entitled for grant of maintenance and also in that compromise, the issue of maintenance of applicant No.2 was also dealt with by receiving a lump sum amount of Rs.50,000/-.

3. It is further submitted that the learned Family Court has not appreciated the application filed by the applicants in its true spirit. The applicants had pleaded in their application that the compromise deed that was filed in the earlier application of the applicants was fraudulently obtained from the applicant by the respondent. The evidence was produced on this point which has not been correctly appreciated, therefore, the impugned order is liable to be set aside.
4. Learned counsel for the respondent opposes the submissions and submits that no error has been committed by the learned Family Court in passing the impugned order. Further the applicants have never made any complaint that any agreement was executed on fraudulent basis, hence, there is no ground for interference in the impugned order.
5. It is undisputed that the applicants had earlier filed an application under Section 125 of Cr.P.C. which was registered as Case No.608/2013 and disposed off on the basis of compromise between the parties on 24.11.2015, according to which, the applicants had, on the basis of the terms in compromise, relinquished claim against the respondent.
6. If it is pleaded by the applicants that the order in earlier case was obtained from the Court on the basis of fraud played by the respondent side. In that case, the applicant should have better preferred a proceeding before the appropriate Court praying to set aside or nullify

the order dated 24.11.2015 passed in Case No.608/2013. The order on the basis of compromise being operative, the applicants are under a restraint to make the same prayer again. Therefore, the appropriate procedure to be adopted in this case, would have been to file a petition under Article 226/227 of Constitution of India for setting aside the order passed in compromise in Case No.608/2013, without proceeding in that direction, the application that has been filed by the applicants could not have been entertained, hence, I do not find any error in the rejection of the application, however, the learned Family Court has rejected the application on merits which was not a requirement in this case. Consequently, I am of this view that there is no need of any interference in the impugned order, therefore, it is dismissed. However, the applicant No.1 is at liberty to avail appropriate remedy which may be available to her in law.

7. Accordingly, the petition is disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge