

**NAFR**

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**CRR No. 228 of 2019**

1. Mohd. Hafeej S/o Rafiq, Aged About 50 Years, R/o Village Bazarpara, Patna, Dhobiapara, Police Station and Post Patna, District Korea Chhattisgarh, District : Koriya (Baikunthpur), Chhattisgarh

**---- Applicant**

**Versus**

1. Nafeesa W/o Mohd. Hafeej, Aged About 35 Years, R/o Village Sarnapara, Patna, Post Patna, Police Station Patna, Tahsil Baikuntpur, District Korea Chhattisgarh, District : Koriya (Baikunthpur), Chhattisgarh
2. Ku. Neha Khatun D/o Mohd. Hafeej, Aged About 16 Years, Minor Through Natural Guardian Mother R/o Village Sarnapara, Patna, Post Patna, Police Station Patna Tahsil Baikuntpur, District Korea Chhattisgarh, District : Koriya (Baikunthpur), Chhattisgarh
3. Sahiba D/o Mohd. Hafeej, Aged About 12 Years, Minor Through Natural Guardian Mother R/o Village Sarnapara, Patna, Post Patna, Police Station Patna Tahsil Baikuntpur, District Korea Chhattisgarh, District : Koriya (Baikunthpur), Chhattisgarh

**---- Respondents**

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For Applicant – Shri Anil Gulati, Advocate.

For Respondents – None.

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**Hon'ble Shri Justice Rajendra Chandra Singh Samant**

**Order on Board**

**04-02-2020**

1. This revision has been brought challenging the correctness, legality and propriety of the order dated 24-11-2018 passed in Misc. Criminal Case No.23/2018 by the Family Court Baikunthpur, District Korea, C.G. allowing the application filed by the respondent under Section 125 of the Cr.P.C. and granting maintenance to respondents 2 and 3 of Rs.1500/- each.

2. It is not denied by the applicant that respondent No.1 is his wife and respondents 2 and 3 are his children. The only ground on which the applicant wants to challenge the impugned order is this, that this applicant is totally incapable to earn living for the reason that he is incapacitated on account of paralytic attack from which he has not recovered so far. The applicant/respondent witnesses have very clearly admitted in their cross-examination regarding the incapacity of the applicant, even then the learned

Family Court without appreciating the same passed order for paying maintenance to the respondents. The intention of Section 125 of the Cr.P.C. is very clear that order for making payment of maintenance can be passed against only such person who is capable for paying the same. Therefore, the impugned order suffers from infirmity which is not maintainable.

3. There is no appearance on behalf of the respondents, although Vakalatnama has been filed by the counsel appointed by them.

4. Heard learned counsel for the parties and perused the documents.

5. Considered on the submission made by learned counsel for the applicant and perused the record of the proceeding before the Family Court. The respondent No.1 Nafisa (AW-1) has stated in examination-in-chief that the applicant is neglecting to maintain the respondents and recently he has sold some property of value Rs. 16,00,000/-, therefore, he is a man of means. In cross-examination she has admitted that the applicant is totally dependant on his children from other wife, his needs are also lookedafter by those children. She has also admitted that the applicant is paralytic and is unable to do any work. She was unable to produce any other documentary proof regarding the land sold.

6. Neha (AW-2) is daughter of this applicant and respondent No.1, she has similarly stated in her examination-in-chief. However, in cross-examination she has also admitted that this applicant is unable to earn living and is depended on others.

7. Mo. Imtiyaz (NAW-1) has stated that the applicant is physically incapacitated and is dependant on others and similar is the statement of Mo. Aslam (NAW-2) which has remained unrebuted.

8. On appreciating the evidence so presented by both the parties before the Court below it is found that there is no such evidence to show that the

applicant is able-bodied person and that he is a man of means. The statement of respondent No.1 that he has sold some property has also been not supported with any documentary proof. Therefore, there was nothing present in the evidence to hold that the applicant was man of sufficient means and neglecting the respondents in paying maintenance to them. In absence of such evidence, it was not proper for the learned Family Court to hold that the applicant can be burdened with payment of maintenance to the respondents. Therefore, on these observations, I am of this view that the impugned order is liable to be set aside. Consequently, the revision petition is allowed at motion stage and the impugned order is set aside.

9. The petition stands disposed off.

Sd/-  
**(Rajendra Chandra Singh Samant)**  
**Judge**