

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 372 of 2019

Ritesh Agrawal S/o Shri Natwar Agrawal Aged About 33 Years R/o Infront Of Durga Temple, Ward No. 5, Bawadwar, Police Station Baradwar, Tahsil Sakti, Civil And Revenue District Janjgir Champa Chhattisgarh.

---- Applicant

Versus

1. Smt. Payal Agrawal W/o Ritesh Agrawal Aged About 31 Years R/o Sunflower Tower, Mangla Chowk, Behind Krishna Public School, Police Station Civil Line Bilaspur, Tahsil, Civil And Revenue District Bilaspur Chhattisgarh.
2. Ku. Ananya Agrawal D/o Ritesh Agrawal Aged About 8 Years Through Natural Guardian Mother Smt. Payal Agrawal, W/o Ritesh Agrawal R/o Sunflower Tower, Mangla Chowk, Behind Krishna Public School, Police Station Civil Line Bilaspur, Tahsil, Civil And Revenue District Bilaspur Chhattisgarh.
3. Ku. Aahna Agrawal D/o Ritesh Agrawal Aged About 2 Years Through Natural Guardian Mother Smt. Payal Agrawal, W/o Ritesh Agrawal R/o Sunflower Tower, Mangla Chowk, Behind Krishna Public School, Police Station Civil Line Bilaspur, Tahsil, Civil And Revenue District Bilaspur Chhattisgarh.

---- Respondents

For Applicant	: Shri Ratnesh Kumar Agrawal, Advocate.
For Respondents	: Shri Sunil Kumar Soni and Shri Vijay Chhabra, Advocates.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

28-02-2020

Heard.

1. The impugned order has already been challenged before this Court in CRR No. 372 of 2019 decided on 17.7.2019 which was later on recalled by the order dated 14.2.2020 in Cr.M.P. No. 1935 of 2019.
2. This criminal revision is directed against the order dated 5.3.2019 passed by the Learned Additional Principal Judge, Family Court,

Bilaspur in M.J.C. No.230 of 2018 directing the applicant to pay monthly maintenance of Rs.35,000/- to the respondents.

3. It is submitted by counsel for the applicant that the learned Court below has not properly appreciated the documents regarding the income of the applicant. Income-tax return for the year 2015-2016 which has been taken into consideration was the income-tax return filed for the firm M/s. Ritesh Kumar Agrawal. Therefore, the total income mentioned is of Rs.19,48,633/- in that financial year has to be divided between the partners and the share of the applicant is nearly Rs.3,89,726/- only. Therefore, the interim maintenance order is in excess to the income of the applicant. It is also submitted that the income-tax return itself is not the conclusive proof as it is a settled principle. Therefore, the assessment made by learned Court below regarding the income of the applicant is totally erroneous and the applicant has no capacity to pay the maintenance. Hence, the order of interim maintenance is liable to be set aside.
4. Learned counsel for the respondents opposes the submissions made in this respect. It is submitted that the applicant has not come before this Court with clean hands. He has suppressed numerous other details regarding his income. According to which, apart from the aforesaid income of the applicant, the applicant files separate income-tax return in individual capacity which shows that his income is more than Rs.20,00,000/- per year. The documents are submitted showing the income in individual capacity and also the property purchased by him, therefore, the prayer made by the applicant in this petition is without any substance.

Reliance has been placed on the judgment of the Supreme Court in the case of **Dalip Singh vs. State of U.P. and others** reported in

(2010) 2 SCC 114 on the point, that a new creed of litigants has cropped up, who litigate on the basis of falsehood. Relying on the judgment of Madras High Court in the case of **Arul Selvi vs. Sathish Kumar** in **Crl.R.C.(MD) No. 470 of 2013** decided on 14.9.2015, it is submitted that the learned Single Bench has held that it is the duty of the husband to prove his own income and in this case the applicant suppressed his income. Reliance has also been placed on the judgments of Delhi High Court in the case of **Anupam Gupta vs. Sumeet Gupta** passed in **CM(M) No. 1718 of 2004** decided on 30.5.2011 and **Kusum Sharma vs. Mahinder Kumar Sharma** in **FAO 369 of 1996 and CM 15083 of 2014** decided on 29.5.2017.

5. In reply, it is submitted by counsel for the applicant that the lower Court has considered all the documents that were present before it. The documents that have been filed at the revision stage cannot be looked into in the revision petition.
6. Heard counsel for both the parties and perused the documents present on record.
7. The only conclusion that has to be drawn at the stage of deciding an application for grant of maintenance is whether the non-applicant/ husband is a man of means. It is not denied that the applicant is a man from a business house. The learned Court below has made reference to only one of the documents. There was a statement of the respondents' side also that the applicant is an established business man, owner of rice-mill, takes contract work and also gets rental income from his property. The prayer has been made by the respondents' side for a monthly maintenance of Rs.3,00,000/-, however, the learned Court below has allowed only Rs.35,000/- per month. For the purpose of making preliminary assessment at a preliminary stage, the material

produced by the respondents' side is sufficient and no meticulous approach was needed. The applicant has an opportunity in the further proceeding that is to be taken up by the learned Family Court to prove his case as is claimed by him. Therefore, after overall consideration, I am of this opinion that there is no need for any interference in the impugned order.

8. Hence, this revision petition is dismissed.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Nimmi