

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****CRMP No. 1935 of 2019**Order reserved on : 05.02.2020Order delivered on : 14.02.2020

1. Smt. Payal Agrawal W/o Ritesh Agrawal, aged about 33 year.
2. Kumari Ananya Agrawal D/o Ritesh Agrawal, aged about 8 years, Through : Natural Guardian (Mother) Smt. Payal Agrawal, W/o Ritesh Agrawal.
3. Kumari Aahna Agrawal D/o Ritesh Agrawal, aged about 2 years, Through : Natural Guardian (Mother) Smt. Payal Agrawal, W/o Ritesh Agrawal.

All R/o Sun Flower Tower, Mangla Chowk, Behind Krishna Public School, Bilaspur. P.S. & District Bilaspur (C.G.)

---- Appellants**Versus**

- Ritesh Agrawal S/o Shri Natwar Agrawal, aged about 33 years, R/o In front of Durga Temple, Ward No.5, Baradwar, P.S. Baradwar, Tehsil Sakti, Civil and Revenue District Janjgir-Champa (C.G.)

---- Respondent

For Appellants	:	Shri Sunil Kumar Soni, Adv.
For Respondent	:	Shri Ratnesh Kumar Agrawal, Adv.

Hon'ble Smt Justice Rajani Dubey**C A V ORDER****14/02/2020**

1. This criminal miscellaneous petition has been filed under Section 482 of CrPC to recall the order dated 17.07.2019 and further to hear CRR No.372/2019.
2. The petitioners have filed this petition on the ground

that respondent (husband) had preferred CRR No.372/2019 before this Court against the order dated 05.03.2019 passed by the Additional Principal Judge, Family Court, Bilaspur in M.J.C. No.230/2018, whereby the learned trial Judge granted maintenance of Rs.35,000/- in favour of the applicants herein, and on 24.04.2019, this Court issued notices to the petitioners herein. The notices were served upon petitioners herein and it was mentioned in the notice that the matter would be heard on 23.07.2019. On 23.07.2019, when petitioners inquired about the case, they were informed that on 17.07.2019 the case (CRR No.372/2019) was finally heard and the order was passed. On 23.07.2019, filing counter candidly denied accepting memo of appearance in the disposal case and this very fact was brought before this Court by way of mentioning at 2.30 pm on the next day i.e. on 24.07.2019. Hence, this petition.

3. Learned counsel for the petitioners submits that right to be heard is an integral part of the Constitution of India. The petitioners were served dasti notice bearing No.8762 dated 27.04.2019 mentioning therein that the case is fixed for hearing on 23.07.2019, but the case was heard finally on 17.07.2019 without hearing the petitioners as a consequence of which fundamental right of the petitioner has been put in stake. He further submits that the respondent withholding income certificate got the order passed in his favour and as such he is liable to be punished under Section 340 CrPC. The respondent has many sources of income but he suppressed the same, and this Court also, on the basis of only one document, modified the order of the trial Court and granted only Rs.20,000/- as interim maintenance. The order in question is ex-parte order and the respondent by playing fraud got this order passed in his favour. Thus, the order dated 17.07.2019 may be set aside restoring CRR No.372/2019. In support of his submission, he placed reliance on the decision of Hon'ble Apex Court passed on **03.12.2009**

in **Civil Appeal No.5239/2002 (Dalip Singh Vs. State of U.P. and others)**, order dated **22.01.2016** of High Court of Delhi passed in **RFA 784/2010 (H.S. Bedi Vs. National Highway Authority of India)** and order dated **30.05.2011** passed in **CM(M) No. 1718/2004 (Anupam Gupta Vs. Sumeet Gupta)**, order dated **14.09.2015** of High Court of Madras passed in **Crl.R.C.(MD) No.470/2013 (Arun Selvi and another Vs. Sathish Kumar)** and order dated **09.01.2015** of High Court of Himachal Pradesh passed in **R.S.A. No.481/2002 (Subhash Chand Sharma Vs. Smt. Shakuntla Devi)**.

4. On the other hand, learned counsel for respondent supported the order dated 17.07.2019 passed in CRR No.372/2019.

5. I have heard learned counsel for the parties and perused the record.

6. On due consideration and for the reasons mentioned in the criminal miscellaneous petition, the same is allowed. The order dated 17.07.2019 passed in CRR No.372/2019 is recalled and this petition is restored to its original number.

7. Both the parties to remain present before this Court on **26.02.2020** for argument in CRR No.372/2019.

Sd/-

(Rajani Dubey)

Judge