

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 1342 of 2018

- Akash Diwakar S/o Shri Ramdas Diwakar, Aged About 24 Years, R/o Village Maakri Near Jaitkhamb, Police Station Kunda, District Kawardha Chhattisgarh., District : Kawardha (Kabirdham), Chhattisgarh

---- Applicant

Versus

- Smt. Madhu Diwakar W/o Akash Diwakar, Aged About 20 Years, R/o Kailash Nagar Birgaon, Police Station Urla, Tahsil and District Raipur Chhattisgarh., District : Raipur, Chhattisgarh

---- Non-applicant/Respondent

For Applicant – Ms. Pragya Pandey, Advocate on behalf of Mr. Prateek Sharma, Advocate.

For Respondent/Non-applicant – Mr. S.P. Sahu, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

03-03-2020

Heard.

1. This revision petition has been brought challenging the order dated 27-10-2018 passed in Criminal MJC No.251/2016 by the Second Additional Principal Judge, Family Court Raipur ordering payment of maintenance by the applicant to the respondent of Rs.4000/- per month.
2. It is submitted that the applicant wants to contest in this revision only on one ground that he is incapable to make payment of Rs.4000/- per month for the simple reason that he is a labourer and finds labour work only in मन्रेगा and नरेगा in which he hardly earns Rs.2000/- per month and he himself is dependant upon his parents for the rest of this expenses. The evidence given by the respondent/applicant in the Court below was not convincing even then the learned Family Court has believed the same and passed the impugned order which is liable to be set aside.
3. Learned counsel for the respondent opposes the submission contending that the applicant apart from doing labour work, is also engaged in contract work and further he has also income from house rent. Therefore, he is capable to pay maintenance as ordered. Hence, the revision petition be dismissed.

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

5. On perusal of the evidence present in the record of the proceedings, it is found that respondent Smt. Madhu Diwakar, although stated in her examination-in-chief that the applicant has earnings from labour work/contract work and from house rent, but, in cross-examination she has admitted that she is ignorant and cannot disclose the source of her knowledge regarding income of the applicant. Similar is the statement of Nand Kumar who is her father who has also expressed his ignorance regarding knowledge of source of income of the applicant. On the contrary, the applicant Akash Diwakar (NAW-1) has stated clearly that he has minimum income which he is earning from the labour work which is about Rs.2000/- per month. He does not have any house in his ownership and he is not engaged in any contract work. In cross-examination his statement has remained intact.

6. Considering that there is no preponderance of probabilities in evidence of the respondent side to establish that the applicant has sufficient income to pay the maintenance, on the contrary, the applicant has claimed that he has earning of Rs.2000/- per month by doing labour work. Apart from that, he is a able bodied person he can make earnings to some more extent, but, not to the extent as has been mentioned in the application under Section 125 of the Cr.P.C. and in the evidence of the respondent. Therefore, I am of this view that the impugned order needs to be interfered with.

7. Accordingly, this criminal revision is disposed off. The impugned order is modified and it is ordered that instead of Rs.4000/- per month the applicant shall now be required to make payment of Rs.2000/- per month to the respondent from the date of filing the application under Section 125 of the Cr.P.C.

8. The petition stands disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge