

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 211 of 2020

1. Smt. Jyoti W/o Saroj Surya, Aged About 28 Years, R/o Village Rasauta Present R/o Village Uraiha, Tahsil and Police Station Pamgarh, District Jangir Champa Chhattisgarh, District : Janjgir-Champa, Chhattisgarh
2. Aayush Surya S/o Saroj Surya, Aged About 7 Years, Minor, legal warden is applicant No. 01 is Mother, R/o Village Rasauta Present R/o Village Uraiha, Tahsil and Police Station Pamgarh, District Jangir-Champa Chhattisgarh, District : Janjgir-Champa, Chhattisgarh
3. Pratyush Surya S/o Saroj Surya, Aged About 2 Years, Minor, Legal warden is applicant No. 01 is Mother, R/o Village Rasauta Present R/o Village Uraiha, Tahsil and Police Station Pamgarh, District Jangir-Champa Chhattisgarh, District : Janjgir-Champa, Chhattisgarh

---- Applicants/Petitioners

Versus

- Saroj Surya S/o Santram Surya, Aged About 32 Years, R/o Village Rasauta Tahsil and Police Station Pamgarh, District Jangir-Champa Chhattisgarh, District : Janjgir-Champa, Chhattisgarh

----Non-applicant/Respondent

For Applicants – Shri Ravi Maheshwari, Advocate.

For Non-applicant/Respondent – None, though served.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

09-02-2021

1. This criminal revision has been brought against the order dated 10-01-2020 passed by the Family Court Janjgir, District Janjgir-Champa dismissing the application of the applicants filed under Section 125 of the Cr.P.C.
2. The applicants had filed application under Section 125 of the Cr.P.C. praying for grant of maintenance against respondent. The respondent is husband of applicant No.1 and the father of the applicants No.2 and 3. This application was contested by the respondent side. After recording of the evidence in the proceeding the impugned order has been passed.
3. It is submitted by the counsel for the applicants that the impugned order is erroneous and against the provisions of law. The applicants had proved their case by producing the evidence that the respondent is liable to maintain the applicants in which he is negligent. Further, that the applicants had no means to maintain themselves, whereas the respondent is Shiksha Karmi and has income from monthly salary. The reason for dismissal given in the impugned order is this, that

the applicant No.1 is capable to earn livelihood and that the expenses of the applicant No.2 and 3 regarding their education is met with by the respondent and on this basis the application was rejected. The reasons assigned are totally erroneous and against the evidence that was present in the record of the proceeding. Therefore, it is prayed that the impugned order be set aside and relief be granted to the applicants.

4. Notice was issued to the respondent which has been returned served, but there is no appearance on his behalf.

5. Considered on the submission.

6. There appears to be no dispute that the applicant No.1 and applicants No.2 and 3, children of the respondent, who are living separately. The reasons assigned for dismissing the prayer of applicant No.1 that she is capable to earn her livelihood needs consideration.

7. Applicant No.1 Jyoti Surya (AW-1) examined herself in the proceeding in which she has stated that she has no means to earn livelihood and further she has unable to do so because she has to take care of her children. In cross-examination she has denied about being employed in school as a teacher and getting a salary of Rs.6000/- per month. She has also denied about earning Rs.6000/- as tuition fees for giving tuitions to children.

8. Mulchand Rai, (AW-2) has made similar statement and similarly suggestion were made to him in his cross-examination to which he has denied. Same is the statement of Dileshwar Ratre (AW-3).

9. Respondent Saroj Surya examined himself as NAW-1 and has stated in his examination-in-chief, that applicant No.1 is qualified, having education of Bachelor of Science who is employed as teacher in Chhattisgarh Gyan Jyoti Uchchatar Madhyamik Vidyalaya, Pamgarh, who is getting salary of Rs.6000/- per month. Apart from that, she is separately earning Rs.10,000/- from doing work of sewing and embroidery and she is also having additional income of Rs.6000/- by

giving tuitions to children. In cross-examination he has admitted that he has not produced any document with respect to employment and other income of the applicant No.1.

10. On appreciating the evidence of the applicants side and the non-applicant/respondent side it is clearly found that the statement of the applicants side has preponderance of probabilities. The statement of the respondent regarding employment and income of the applicant No.1 is a plain and oral statement which is not supported with any document. Therefore, learned Family Court has drawn an incorrect conclusion that applicant No.1 is capable of maintaining herself and this conclusion is liable to be interfered with.

11. Another ground for rejection is this, that respondent is bearing expenses of his children, i.e., applicant No.2 and 3 needs examination.

12. Saroj Surya (NAW-1) has stated in his examination-in-chief that he is bearing expenses of education of applicant No.2. In cross-examination he has admitted that he has not produced any documentary evidence with respect to the expenses borne by him for applicant No.2. This statement of the respondent has been rebutted by the statement of applicant No.1 Jyoti Surya (AW-1) that respondent is totally negligent in taking care and maintaining of all the applicants. There is no suggestion given in her cross-examination by the respondent side regarding the expenses of education of the applicant No.2, hence, again on appreciating this evidence, it appears that the statement of respondent regarding meeting the expenses of education of applicant No.2, does not have any preponderance of probability. On the other hand, there is reason to hold that there is no cogent evidence to make out that respondent has met with the expenses of education of applicant No.2 and further, there is no such statement made by him that he has in any manner paid for the maintenance of the applicant No.2 and 3 which includes their living and other requirement for their upkeep. Hence, this conclusion drawn and finding given by the family court is again erroneous finding

which needs to be interfered with.

13. After considering on the submissions and appreciating the evidence present in the record of the proceedings this revision petition is allowed. The impugned order is set aside. It is ordered that respondent shall now make payment of Rs.3000/- to applicant No.1 and Rs.2000/- each to applicants No.2 and 3 for monthly maintenance. This maintenance shall be payable from the date the application under Section 125 has been filed before the trial Court.

Sd/-
(Rajendra Chandra Singh Samant)
Judge