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HIGH COURT OF CHHATTISGARH, BILASPUR**Order Reserved on 08.12.2021****Order Delivered on 17.12.2021****CRR No. 501 of 2021**

- Sukul Ram Sahu, S/o Late Suddhu Ram Sahu, aged about 58 Years, Sanyantra Sahayak, Grade-2, Dr. Shyama Prasad Mukherjee Tap Vidyut Sanyantra, R/o Q.No. N.D.8, Near Junior Club, C.S.E.B. Colony, Korba- East, Thana, Tahsil and District- Korba- Chhattisgarh.

---Applicant**Versus**

- Ku. Kalyani Sahu, D/o Shri Sukul Ram Sahu, aged about 29 Years, Occupation- Unemployed, R/o Ganesh Chowk, Podi Bahar, Thana, Tahsil and District- Korba, Chhattisgarh.

---Non-applicant**CRR No. 811 of 2021**

- Ku. Kalyani Sahu, D/o Shri Sukul Ram Sahu, aged about 29 Years, Occupation- Unemployed, R/o Ganesh Chowk, Podi Bahar, Korba, Police Station, Tahsil and District Korba (Chhattisgarh).

----Applicant**Versus**

- Sukul Ram Sahu, S/o Late Suddhu Ram Sahu, aged about 58 Years, Plant Assistant Grade-I I, Dr. Shyama Prasad Mukherjee Tap Vidyut Sanyantra, R/o Qtr. No. Nd-8, Near Junior Club, C.S.E.B. Colony, Korba-East, Police Station, Tahsil and District Korba (Chhattisgarh).

----Non-applicant

Present:

Shri B.P. Gupta, Advocate for the applicant in CRR No.501 of 2021 and for respondent in CRR No.811 of 2021.

Shri Roop R. Naik, Advocate for the applicant in CRR No.811 of 2021 and for respondent in CRR No.501 of 2021.

Hon'ble Shri Justice Gautam Chourdiya

C A V Order

1. **Criminal Revision No.501/2021** has been filed by the applicant/father under Section 19(4) of the Family Courts Act read with Section 397 of CrPC challenging the order dated 08.04.2021 of Family Court, Korba in Case No.164/2019 granting interim maintenance @ Rs.15,000/- per month in favour of the non-applicant/daughter.
2. **Criminal Revision No.811/2021** has been filed by the applicant/daughter under Section 19(4) of the Family Courts Act against the order dated 17.09.2021 passed in Case No.164/2019 by the Family Court, Korba whereby her application for issuance of warrant against the non-applicant/father for recovery of arrears of interim maintenance of Rs.60,000/- and for sending him to imprisonment for one-one month in default of payment of each of the monthly interim maintenance, has been kept pending till final disposal of the case.
3. Since both these revisions are inter-related, they are being disposed of by this common order. For the sake of convenience, the parties shall hereinafter be referred to as per their description before the Family Court i.e. applicant Ku. Kalyani Sahu and non-applicant Sukul Ram Sahu.
4. It is not in dispute that Ku. Kalyani Sahu is the daughter of Sukul Ram Sahu. In her application under Section 125 of CrPC, the applicant averred that she is the unmarried daughter of the non-applicant. After the death of her mother Rathbai Sahu, behaviour of the non-applicant

changed and he started filthily abusing and ill-treating her. Since 2018 the non-applicant is doing nothing for her maintenance as a result of which she is facing acute financial and mental problems. She has no source of income whereas the non-applicant by working as Assistant Grade-II in Dr. Shyama Prasad Mukharjee Thermal Power Plant, Korba is drawing salary of Rs.1,82,244/-, there is Rs.60 lacs in his provident fund and gratuity, Rs. 2 lacs in State Bank of India, Rs. 5 lacs in the form of *Stridhan* and 15 tolas gold. Therefore, she prayed for grant of interim maintenance of Rs.50,000/- per month from the non-applicant.

5. The Family Court by the order dated 08.04.2021 granted interim maintenance @ Rs.15,000/- per month in favour of the applicant and fixed the matter for evidence of the applicant on 14.06.2021. However, during the course of recording of evidence of non-applicant, the applicant filed an application for issuance of warrant against the non-applicant for recovery of arrears of interim maintenance of Rs.60,000/- and for sending him to imprisonment for one-one month in default of payment of each of the monthly interim maintenance, which has been kept pending till final disposal of the case.

Criminal Revision No.501/2021:

6. Learned counsel for the non-applicant/father submits that the impugned order of the Family Court is per se illegal and has been passed ignoring the provisions of Section 125(1) of CrPC, a bare reading of which makes it clear that an unmarried adult daughter is entitled for maintenance only if she is suffering from any physical or mental disability rendering her unable to maintain herself whereas in

the present case, the applicant/daughter is a well educated able-bodied person. The Court below also overlooked the fact that the non-applicant is going to retire within four months from the date of filing of reply and as such, his per month income would be just half of the amount being received by him. Even otherwise, the amount awarded in favour of the applicant is very much on the higher side. Lastly, it is submitted that if the applicant has to claim maintenance, she may file suit before the Family Court under Section 20(3) of the Hindu Adoptions and Maintenance Act, 1956.

7. On the other hand, learned counsel for the applicant/daughter supports the impugned order and submits that the Family Court considering the hardships being faced by the applicant, the permanent source of income of the non-applicant and other material available before it, has rightly awarded interim maintenance @ Rs.15,000/- per month. If this Court allows the revision of the non-applicant by setting aside the interim maintenance order of the Court below with liberty to the applicant to take recourse to Section 20(3) of the Hindu Adoptions and Maintenance Act, 1956, it would give rise to multiplicity of litigation and cause undue hardship to the applicant. Reliance has been placed on the decision of the Hon'ble Supreme Court in the matters of ***Jagdish Jugtawat Vs. Manju Lata and others*** reported in **(2002) 5 SCC 422** and ***Abhilasha Vs. Prakash and others*** passed in ***Criminal Appeal No.615/2020***, judgment dated 15th September, 2020. **Criminal Revision No.811/2021**

8. Learned counsel for the applicant/daughter submits that the impugned order dated 17.9.2021 is bad in law and liable to be set aside. The Court below ought to have issued a warrant against the non-

applicant/father for non-compliance of its order dated 8.4.2021.

9. On the other hand, learned counsel for the non-applicant/father submits that the applicant is not at all entitled for any maintenance from the non-applicant in view of provisions of Section 125(1) of CrPC.
10. Heard learned counsel for the parties and perused the material available on record.
11. It is not in dispute that the applicant is the daughter of the non-applicant. She was 29 years old at the time of filing application under Section 125 of CrPC. It is also not disputed that she is a well educated girl, who was working as an engineer prior to filing of this application. No disability, physical or mental, has been shown by her rendering her unable to maintain herself.
12. In the matter of **Abhilasha** (*supra*), the Hon'ble Supreme Court while dealing with applicability of Section 125 of CrPC as well as Section 20 of the Hindu Adoptions and Maintenance Act, 1956 observed in para 36 as under:

“36. The purpose and object of Section 125 of CrPC as noted above is to provide immediate relief to the applicant in a summary proceedings, whereas right under Section 20 read with Section 3(b) of the Act, 1956 contains larger right, which needs determination by a Civil Court, hence for the larger claims as enshrined under Section 20, the proceedings need to be initiated under Section 20 of the Act and the legislature never contemplate to burden the Magistrate while exercising jurisdiction under Section 125 CrPC to determine the claims contemplated by Act, 1956.”
13. Though in the matter of **Jagdish Jugtawat** (*supra*), the Hon'ble Supreme Court maintained the judgment/order of the High Court

upholding the order of the Family Court which was based on a combined reading of Section 125 CrPC and Section 20(3) of the Hindu Adoptions and Maintenance Act, granting maintenance under Section 125 to the major unmarried daughter till her marriage, but this judgment is of no help to the applicant/daughter in the present case as the same was passed by the Hon'ble Apex Court in exercise of jurisdiction under Article 136 of the Constitution of India while entertaining a special leave petition to avoid multiplicity of litigation. Para 24 of judgment in ***Abhilasha*** (supra) reads as under:

“24. In the above case, an order was passed by the Family Court by granting maintenance which was based on combined reading of [Section 125](#) Cr.P.C. and [Section 20](#) of Act, 1956. Although, the High Court and this Court had declined to interfere with the order of the Family Court taking the cue from [Section 20\(3\)](#) of the Act, 1956 under which the right of maintenance is given to a minor daughter till her marriage, but the judgment of this Court in **Jagdish Jugtawat** (supra) cannot be read to laying down the ratio that in proceedings under [Section 125](#) Cr.P.C. filed by the daughter against her father, she is entitled to maintenance relying on the liability of the father to maintain her unmarried daughter as contained in [Section 20\(3\)](#) of the Act, 1956. The High Court in exercise of Criminal Revisional jurisdiction can very well refuse to interfere with the judgment of Courts below by which maintenance was granted to unmarried daughter. This Court while hearing criminal appeal against the above judgment of High Court was exercising jurisdiction under [Article 136](#) of the Constitution of India, and in the facts of that case, this Court refused to interfere with the judgment of High Court but in refusal to interfere by this Court, no ratio can be read in the judgment of **Jagdish Jugtawat** (supra) as contended by learned counsel for the

appellant.”

14. Thus, if the facts and circumstances of the present case are seen in light of the judgment of the Hon'ble Supreme Court in the matter of Abhilasha (supra) and the provisions of Section 125 of CrPC and Section 20 of the Hindu Adoptions and Maintenance Act, 1956, this Court is of the opinion that the Family Court was not justified in entertaining the application under Section 125 of CrPC filed by the applicant, who is an unmarried 29 years old daughter of the non-applicant suffering from no physical or mental disability.
15. At this stage, it is deemed appropriate to observe that Section 19 of the Family Courts Act, 1984 provides for appeal against every judgment or order, not being an interlocutory order, of a Family Court to the High Court both on facts and on law. Further, this Section also provides for revision to the High Court for examining the correctness, legality or propriety of any order passed by the Family Court under Chapter IX of Cr.P.C.
16. As per the High Court of C.G. Rules, 2007, appeal under Section 19 of the Family Courts Act, 1984 is to be heard by the Division Bench and Revision under Section 397/401 of Cr.P.C. against the order of the Family Court passed under Chapter IX of Cr.P.C. is tenable which is to be heard by the Single Bench of the High Court as per Rule 24. Therefore, two distinct proceedings cannot be clubbed together looking to the separate remedy available against them i.e. appeal and revision.
17. On the basis of aforesaid discussions, Criminal Revision No.501/2021 is allowed and the impugned order dated 08.04.2021 passed by the Family Court granting interim maintenance in favour of the applicant is

hereby set aside. However, the applicant/daughter is at liberty to take recourse to Section 20(3) of the Hindu Adoptions and Maintenance Act, 1956 for claiming any maintenance against her father/non-applicant. Since the order granting interim maintenance by the Family Court has been set aside and the application of the applicant/daughter is still pending consideration before the Family Court, Criminal Revision No.811/2021 filed by the applicant/daughter is dismissed.

**Sd/-
(Gautam Chourdiya)
Judge**