

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 29-9-2021

Delivered on 07-10-2021

CRR No. 1540 of 2019

Nagendra Kumar Chandrakar S/o Shri Roshanlal Chandrakar
Aged About 37 Years R/o Village Ghumchapali, Post- Tusda,
P.S.- Bhimkhoj (Khallari), Tahsil- Bagbahara, District-
Mahasamund, CG

----Applicant**Versus**

1. Smt. Seemarani Chandrakar W/o Shri Nagendra Kumar Chandrakar aged about 29 Years D/o Shri Anant Kumar Chandrakar
2. Vedansh Chandrakar aged about 8 Years
3. Ku. Yoshita Chandrakar aged about 6 Years,

R- 2 and 3 both Children of Shri Nagendra Kumar Chandrakar
Through Natural Guardian Smt. Seemarani Chandrakar
(Respondent No. 1).

All R/o Village Parsada, Post- Palaud, P.S.- Mandir Hasaud,
District- Raipur, CG

----Non-applicants

For Applicant : Shri Mayank Chandrakar, Adv.
For non-applicants : Shri Shubhank Tiwari, Adv.

Hon'ble Shri Justice N.K. Chandravanshi**CAV ORDER**

1. This criminal revision has been preferred by the applicant against the order dated 15-11-2019 passed by the 1st Addl. Principal Judge, Family Court, Raipur (CG), in MJC No. 404/2017 whereby non-applicants No. 1, 2 and 3 have been granted monthly maintenance amount to the tune of Rs. 6,000/-, Rs. 5,000/- and Rs. 4,000/- respectively from the date of order i.e. 15-11-2019.

2. Brief facts of the case are that the applicant and non-applicant No. 1 are legally wedded husband and wife and non-applicants No. 2 and 3 are their children born from their wedlock. Non-applicants filed an application under Section 125 of the Criminal Procedure Code, 1973 (in short, 'Cr.P.C.') on the ground that the applicant has deserted them and they have no source of income. The applicant filed reply and denied the allegation. Learned

Court below after considering the evidence adduced by both the parties, held that non-applicants are living separately from the applicant with sufficient reason. Therefore, it granted monthly maintenance amount as mentioned above. Hence, this revision.

3. At the outset, learned counsel for the applicant submits that he does not want to press for other grounds raised in the revision petition, except the quantum part of the maintenance, therefore, he is confining his arguments only on the point of quantum of maintenance granted by the Family Court. He further submits that non-applicants have not proved any document regarding income of the applicant, except Ex. P-6 to Ex. P-9, that too, of only about 2 hectare of land, whereas in cross-examination, the applicant has admitted that they have 14 acre of agricultural land and he also works in Yoshita Medical Store, which is in the name of his daughter, but proprietor of that medical store is his brother Manu Chandrakar, which is proved from Ex. D-2. Presently, non-applicant's family is not running Nikhil Travels, and they have sold vehicle. As has been admitted by the applicant, they are 5 brothers and all of them are living in joint family with their father and mother also. He next argued that due to living in a joint family with aforesaid property, income of applicant is not that much high, from which he could be able to give Rs. 15,000/- monthly maintenance in total to the non-applicants. Referring to decision of Hon'ble Supreme Court in the case of **Rajnesh -v- Neha and another** [(2021)2) SCC 324], he submits that the financial capacity of the husband, his actual income, reasonable expenses for his own maintenance, and dependent family members whom he is obliged to maintain under the law, liabilities if any, would be required to be taken into consideration, to arrive at the appropriate quantum of maintenance to be paid. There is neither fixed monthly or annual income of the applicant nor it has been proved by the non-applicants. Therefore, he prays to reduce the amount of maintenance granted to the non-applicants.

4. Per contra, learned counsel for the non-applicants submits that the applicant is a person of Malgujar family and they have

various movable and immovable properties. Looking to inflation rate and high cost of living now a days, the amount granted to non-applicants for their maintenance is not on higher side, therefore, it does not call for any interference of this Court.

5. I have heard learned counsel for both the parties and perused the record of Court below as well as the material available.

6. Non-applicant No. 1 Smt. Seema Rani Chandrakar has stated in her duly sworn affidavit/examination-in-chief that the applicant/husband is having Yoshita Medical Store, one Kirana store and they also have 25 acre agricultural land at village Ghunchapali, Distt. Mahasamund, from where they earn Rs. 5 lacs annual income. The applicant/husband also has a tractor and one goods vehicle. From aforesaid sources, they earn Rs. 50,000/- to Rs. 60,000/- per month, but except Ex. P-6 to Ex. P-9, which are documents of agricultural land of applicant and his family members, no other document has been filed and proved by the non-applicant/wife in support of her statement. She has filed marriage invitation card Ex. P-5, wherein Nikhil Travels, Manu Manish Kirana and Shekhar Medical Stores have been shown as their business firms, but this marriage card was of the year 2014, whether the applicant/husband's family still run those firms, has not been proved by the non-applicants, whereas the applicant/husband has fairly admitted in his cross-examination that they have 14 acre agricultural land from where they get 18 to 20 bags of paddy per acre. He has admitted that they have Yoshita Medical Store, which is in the name of his daughter and also proved copy of license Ex. D-2, which shows that proprietor of that medical store is Manu Chandrakar.

7. Applicant husband Nagendra Kumar Chandrakar has deposed in his cross-examination that they are living in joint family with 5 brothers, mother and father. This fact shows that many persons are dependent on whatever income they have from different sources.

8. Non-applicants have not filed any document which would show fix per month or annual income of applicant/husband. Looking to the properties their joint family have and which has been proved

and also looking to the dependent members of that income, further taking into consideration the observations made by Hon'ble Supreme Court in the case of **Rajnish** (supra), I find that granting maintenance amount Rs. 15,000/- in total, is somewhat on higher side, which needs to be modified.

9. Therefore, amount granted to the non-applicants No. 1 Smt. Seemarani Chandrakar, non-applicant No. 2 Vedansh Chandrakar and non-applicant No 3 Ku. Yoshita Chandrakar i.e Rs. 6,000/-, Rs. 5,000/- and Rs. 4,000/- is reduced to Rs. 5,000/-, Rs. 4,000/- and Rs. 3,000/- respectively per month. Thus, now they will get total Rs. 12,000/- per month from the applicant in place of Rs. 15,000/- per month. Other conditions of the impugned order shall remain intact.

10. The revision is partly allowed.

Sd/-

N.K. Chandravanshi
Judge

Pathak/-