



2026:CGHC:3104

NAFR**HIGH COURT OF CHHATTISGARH AT BILASPUR****CRR No. 510 of 2023**

1. Osin D. Ekka D/o Shri Deepak Ekka Aged About 14 Years Represented Through her Guardian / Wall Material Grand, Mother (Nani), Namely Lolen Kerketta, W/o Shri Amar Vilas Kerketta, Aged Around 67 Years, R/o Vijaypur, Post Boirdadar, Raigarh Tahsil And District Raigarh Chhattisgarh
2. Adwit D. Ekka S/o Shri Deepak Ekka Aged About 10 Years Represented Through Their Guardian / Wall Material Grand, Mother (Nani), Namely Lolen Kerketta, W/o Shri Amar Vilas Kerketta, Aged Around 67 Years, R/o Vijaypur, Post Boirdadar, Raigarh Tahsil And District Raigarh Chhattisgarh

... Applicants**versus**

Seema Bindu Ekka W/o Shri Deepak Ekka, Aged About 35 Years
Occupation Lecturer, R/o House of Ravi Yadav, Village Laamidarha,
Tahsil And District Raigarh Chhattisgarh

... Respondent

For Applicants : Ms. Pragati Pandey, Advocate on behalf of Mr. Hari
Agrawal, Advocate.

For Respondent : None.

Hon'ble Shri Ramesh Sinha, Chief Justice**Order on Board****19.01.2026**

1. Heard Ms. Pragati Pandey, learned counsel appearing on behalf of Mr. Hari Agrawal, learned counsel, for the applicants.



2. None appeared on behalf of the respondent to press this revision when the matter is called for hearing today.
3. The present revision has been filed by the applicant with the following prayer:

“It is therefore, prayed that this Hon’ble Court may be pleased to allow this petition and set-aside the order dated 08.02.2023 (Annexure P-1) passed by learned Judge, Family Court, Raigarh (C.G.) in Cr. M.J.C. No. F-04/2022, and allow the application for grant of maintenance in toto, in the peculiar facts and circumstances of the case and in the interest of justice.”

4. The undisputed facts of the case are that on 17.05.2005, the marriage of the Respondent/Non-Applciant was solemnized with one Deepak Ekka, the father of the applicants herein. Out of the said wedlock, applicant No.1 (daughter) was born on 13.11.2006 and applicant No.2 (son) was born on 12.10.2011, and both the applicants are minors as on date. On 03.01.2022, an application under Section 125 of the Code of Criminal Procedure was filed by the applicants herein through their guardian, i.e., their maternal grandmother (Nani), inter alia, on the following averment—
 - (i) That after the solemnization of marriage, the Respondent/Mother started residing with the father of the applicants in their matrimonial house at Vijaypur and, from the birth of the applicants till 12.05.2020, the Respondent, being employed in Government service, resided with the applicants and took care of and maintained them.
 - (ii) That the Respondent had been working in Government service even prior to the birth of the applicants and, as mutually agreed between the



couple, the father of the applicants used to perform household work and domestic chores. The entire financial needs of the family and the applicants were fulfilled solely from the income of the Respondent.

(iii) The respondent, being in Government service and the sole breadwinner of the family, was solely responsible for fulfilling the financial needs as well as other essential parenting requirements of the applicants.

(iv) After some time, the respondent developed an extra-marital relationship with one Ravi Yadav and, thereafter, started spending most of her time with him and became negligent towards the care and upbringing of the applicants.

(v) When the aforesaid facts came to the knowledge of her parents and brothers, they tried to counsel the respondent; however, she did not heed their advice and, on 12.05.2020, executed an agreement on stamp paper declaring her love for the said Ravi Yadav and her intention to live with him as his wife.

(vi) Pursuant thereto, on 13.05.2020, the respondent left the matrimonial house along with all household articles and started living with the said Ravi Yadav, leaving the applicants destitute. Consequently, the applicants are residing with their maternal grandmother (Nani), who is taking care of them as their guardian.

(vii) The respondent is working as a Lecturer in a Government Higher Secondary School at Berlia, District Raigarh, and is earning a monthly salary of approximately ₹55,000/-.

(viii) The applicants are studying in O.P. Jindal School and their annual school fees are approximately Rs. 1,20,000/-. Due to the desertion by the respondent, the maternal grandmother took loans from relatives and paid the school fees of applicant No.1 up to December, 2021; however, the



school fees of applicant No.2 from October to December, 2021 remains outstanding.

(ix) The monthly educational expenses of the applicants are approximately Rs. 10,000/- and a further sum of Rs. 30,000/- is required towards their food, clothing, health, and other maintenance expenses. Additionally, the applicants attend tuition classes, incurring a monthly expense of Rs. 5,000/-. Accordingly, the applicants claimed a total sum of Rs. 45,000/- per month as maintenance from their mother/respondent.

5. Upon service of notice, the respondent filed her reply denying all adverse allegations. The case set up by the respondent in her reply, inter alia, is as under:—

(a) After marriage, the respondent herself maintained the applicants and constructed a house by taking a loan in her name; however, she was forcibly ousted from the house by the father of the applicants after being physically assaulted.

(b) The respondent has been paying certain amounts to her mother, namely Lolen Kerketta (Nani of the applicants), towards the maintenance of the applicants.

(c) The father of the applicants is equally responsible for maintaining the children; however, he is a drunkard, has remained unemployed since marriage, and had falsely represented himself as a contractor at the time of marriage.

(d) The father of the applicants used to take the respondent's mobile phone, chat with her friends, and post objectionable content, which was objected to by the respondent. On raising objections, she was physically assaulted, her signatures were forcibly obtained on stamp paper, her mobile phone was retained, and she was thrown out of the matrimonial house. Since then, she has been residing in a rented accommodation.



(e) The respondent has not deserted the applicants and has, in fact, filed an application under Section 25(1) of the Guardian and Wards Act seeking custody of the children. It is alleged that the instant application has been filed by the maternal grandmother in connivance with the father of the applicants to harass the respondent.

(f) The respondent is drawing a monthly salary of Rs. 52,031/- and is fully capable of maintaining the children; therefore, custody of the applicants should be handed over to her.

6. During the course of evidence, the applicants examined Loren Kerketta (maternal grandmother) as P.W.-1, Amar Vilas Kerketta (maternal grandfather) as P.W.-2, and Deepak(a) After marriage, the respondent herself maintained the applicants and constructed a house by taking a loan in her name; however, she was forcibly ousted from the house by the father of the applicants after being physically assaulted.

(b) The respondent has been paying certain amounts to her mother, namely Lolen Kerketta (Nani of the applicants), towards the maintenance of the applicants.

(c) The father of the applicants is equally responsible for maintaining the children; however, he is a drunkard, has remained unemployed since marriage, and had falsely represented himself as a contractor at the time of marriage.

(d) The father of the applicants used to take the respondent's mobile phone, chat with her friends, and post objectionable content, which was objected to by the respondent. On raising objections, she was physically assaulted, her signatures were forcibly obtained on stamp paper, her mobile phone was retained, and she was thrown out of the matrimonial



house. Since then, she has been residing in a rented accommodation.

(e) The respondent has not deserted the applicants and has, in fact, filed an application under Section 25(1) of the Guardian and Wards Act seeking custody of the children. It is alleged that the instant application has been filed by the maternal grandmother in connivance with the father of the applicants to harass the respondent.

(f) The respondent is drawing a monthly salary of Rs. 52,031/- and is fully capable of maintaining the children; therefore, custody of the applicants should be handed over to her.

7. During the course of evidence, the applicants examined Loren Kerketta (maternal grandmother) as P.W.-1, Amar Vilas Kerketta (maternal grandfather) as P.W.-2, and Deepak Ekka (father of the applicants) as P.W.-3. The Respondent, after filing her written statement, failed to appear before the Court and was proceeded ex-parte.
8. Thereafter, by the impugned final order dated 08.02.2023, the learned Family Court, Raigarh, without adverting to the merits of the case, dismissed the application solely on the ground of maintainability, holding that under Section 125 Cr.P.C., minor children have no right to claim maintenance from their mother.
9. Learned counsel for the applicant submits that the impugned order is perverse, illegal, and contrary to the settled principles of law and evidence, and suffers from material irregularity, improper appreciation of facts, misapplication of legal principles, and wrongful exercise of jurisdiction. She submits that the learned Family Court has wrongly interpreted the provisions contained in Section 125 of the Code of Criminal Procedure. The opening words of Section 125(1) Cr.P.C.



indicate that any “person” having sufficient means, who neglects or refuses to maintain, can be directed to pay maintenance. The word “person” includes both male and female. Hence, though Clause (b) of Section 125(1) Cr.P.C. uses the word “his”, it cannot be restricted only to a male. Reliance is placed upon the judgment of the Hon’ble Supreme Court in ***Vijay Manohar Arbat v. Kashirao Rajaram Sawai & Ors., (1987) 2 SCC 278***, wherein it has been held that even a married daughter is liable to maintain her parents. She further submits that Section 8 of the Indian Penal Code provides that the pronoun “he” and its derivatives are used for any person, whether male or female. Further, Section 13(1) of the General Clauses Act, 1897 lays down that words importing the masculine gender shall include females unless there is anything repugnant in the subject or context. Therefore, the pronoun “his” occurring in Section 125(1)(b) Cr.P.C. includes both male and female. In other words, both parents whether mother or father are liable to pay maintenance to minor children, subject to fulfillment of the conditions under Section 125(1) Cr.P.C. Reliance can further be placed upon the judgment of the Hon’ble Supreme Court in ***Padmja Sharma v. Ratan Lal Sharma, (2000) 4 SCC 266***, wherein it has been categorically held that it is not the law that only the father is obliged to maintain minor children, and that an earning mother is equally bound to contribute towards their maintenance. She further submits that in ***Akhilesh Kumar Jagatramka v. Ganesh Kumar Jagatramka, 2018 SCC OnLine Chh 810***, this Hon’ble Court held that merely because there are other children, one child cannot be absolved of the statutory obligation to maintain the parents, thereby reiterating the principle of shared liability. He also submits that on merits, the learned Family Court has completely failed to appreciate that the respondent had left the



matrimonial home on her own volition due to her alleged love affair with another person. The respondent, in her reply as well as testimony, has specifically admitted that the husband (father of the petitioners) has no source of income and that she herself had been maintaining the family from her salary since the time of marriage. The respondent has failed to place any legal evidence on record to prove that she was ever subjected to cruelty or harassment by the father of the applicants. He also submits that the respondent was employed in a Government School and was earning a monthly salary of approximately Rs. 52,031/-. She further submits that the applicants, though minors aged about 14 and 10 years respectively, are of sufficient age and maturity to express their willingness or unwillingness to live with the respondent-mother. Merely because the respondent has expressed readiness to keep the applicants with her, she cannot evade her statutory liability to maintain them. The pendency of an application under Section 25(1) of the Guardians and Wards Act does not absolve her from such liability. While passing the impugned order, the learned Family Court has acted with material irregularity, without due application of mind, and in complete disregard of settled canons of law. The findings recorded by the learned Family Court are erroneous, perverse, and contrary to the material available on record, and are not based on any legal evidence. The same deserve to be re-assessed and interfered with in the interest of justice.

- 10.** I have heard learned counsel for the applicants, perused the pleadings and documents appended thereto.
- 11.** From a perusal of the impugned order, it transpires that the learned Family Court, after considering all the documents and evidence adduced by the parties, dismissed the application filed by the applicants under



Section 125 of the CrPC for grant of maintenance on the ground of maintainability, holding that under Section 125 of the CrPC, minor children have no right to claim maintenance from their mother.

12. Considering the submission advanced by the learned counsel for the applicants and perusing the impugned order and the finding recorded by the learned Family Court, I am of the view that the learned Family Court has not committed any illegality or infirmity or jurisdictional error in the impugned order warranting interference by this Court.
13. Accordingly, the criminal revision, being devoid of merit, is liable to be and is hereby **dismissed**.

**Sd/-
(Ramesh Sinha)
Chief Justice**

Abhishek