



**Bal Krishan vs. Kirna Devi and Ors.**

**Cr. Revision No. 673 of 2023**  
**Order Reserved on: 04.07.2024**

**18.07.2024 Present:** Mr. Ashok Kumar, Advocate, for the applicant/petitioner.

Mr. Divya Raj Singh, Advocate, for the non-applicants/respondents.

**Cr. MP No. 491 of 2024**

The applicant/petitioner has filed the present application for converting the criminal revision under Section 397 read with Section 401 of Cr.P.C. into the one under Section 19(4) of the Family Courts Act.

2. It has been asserted that the applicant/petitioner had earlier filed the petition under Section 19 of the Family Courts Act but an objection was raised that it was filed under the wrong provisions of law, hence, the petition was filed under Section 397 and 401 of Cr.P.C. The Court ordered on 13.12.2023 that keeping in view Sections 19 and 20 of the Family Courts Act, 1984, it is doubtful that the present petition would lie under Section 397 of Cr.P.C. The learned counsel went through the provisions and the judgments of the Courts and found that the petition was to be filed under Section 19 (4) of the Family Courts Act, hence, the



application for converting it into a criminal revision under Section 19(4) of the Family Courts Act.

3. The petition is opposed by filing a reply denying the contents of the petition. It was asserted that the petitioner's remedy is to file an appeal to the higher Courts under the provisions of the Family Courts Act; therefore, it was prayed that the present petition be dismissed.

4. I have heard Mr. Ashok Kumar learned counsel for the applicant/petitioner and Mr. Divya Raj Singh, learned counsel for the non-applicants/respondents.

5. Mr Ashok Kumar, learned counsel for the applicant/petitioner, submitted that the petition should have been filed under Section 19(4) of the Family Courts Act but it was filed under Section 397 read with Section 401 of Cr.P.C. Since, this was merely a technical error, therefore, the present application be allowed and the applicant/petitioner be permitted to convert the petition into the one under Section 19(4) of the Family Courts Act.

6. Mr. Divya Raj Singh, learned counsel for the non-applicants/respondents submitted that the petition would lie under Section 19(1) of the Family Courts Act and the present application for converting it into the one under Section 19 (4)



of Family Courts Act is not maintainable; hence he prayed that the present application be dismissed.

7. I have given considerable thought to the rival submissions at the bar and have gone through the records carefully.

8. Section 19 of the Family Courts Act, 1984 reads as under:

**19. Appeal.**—(1) Save as provided in sub-section (2) and notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908) or in the Code or Criminal Procedure, 1973 (2 of 1974), or in any other law, an appeal shall lie from every judgement or order, not being an interlocutory order, of a Family Court to the High Court both on facts and on law.

(2) No appeal shall lie from a decree or order passed by the Family Court with the consent of the parties or from an order passed under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974):

Provided that nothing in this sub-section shall apply to any appeal pending before a High Court or any order passed under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974) before the commencement of the Family Courts (Amendment) Act, 1991.

(3) Every appeal under this section shall be preferred within a period of thirty days from the date of the judgement or order of a Family Court.

(4) The High Court may, of its own motion or otherwise, call for an examine the record of any proceeding in which the Family Court situate within its jurisdiction passed an order under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974) for the purpose of satisfying itself as to the correctness, legality or



propriety of the order, not being an interlocutory order, and as to the regularity of such proceeding.]

(5) Except as aforesaid, no appeal or revision shall lie to any court from any judgment, order or decree of a Family Court.

(6)] An appeal preferred under sub-section (1) shall be heard by a Bench consisting of two or more Judges.

9. It is apparent from the bare perusal of Section 19 (2) that no appeal lies from the order passed under Chapter IX of Cr.P.C. Section 125 of CrPC falls within Chapter IX of CrPC. Hence, no appeal can be filed against an order granting maintenance and the submission of learned counsel for the non-applicants/respondents that an appeal should have been preferred in the present matter is not acceptable.

10. Section 19(4) of the Family Courts Act provides for revision against the orders passed in the proceedings under Chapter IX of CrPC. The applicant/petitioner had filed a revision but had mentioned the wrong Sections. The mere mentioning of the wrong Section will not take away the jurisdiction of a Court to grant the relief. The applicant/petitioner is only changing the Section under which, the present petition should have been filed and is not changing the substance of the petition. Since the change in the Section is merely formal, therefore, the present application is allowed and the applicant/petitioner is



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permitted to change the Section to 19(4) of the Family Courts Act from Section 397 and 401 of Cr.P.C. Necessary correction be made. The present application stands disposed of.

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11. List the matter for hearing in due course.

**(Rakesh Kainthla)**  
**Judge**

**July 18<sup>th</sup>, 2024**  
*(saurav pathania)*