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25/2/08

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**HIGH COURT OF CHHATTISGARH, BILASPUR**

**Writ Petition ( C ) No.1141/2008**

- PETITIONERS**
- 1 Ajit Kumar Nirmalkar, S/o Hariram Nirmalkar, aged about 35 years, R/o 1136 L.I.G./S./New Borsi Nagar, Durg, District Durg (C.G.)
  - 2 Vishnu Prasad Nirmalkar, S/o Hariram Nirmalkar, aged about 30 years, R/o Village : Ghumka, Tahsil and District Rajnandgaon (C.G.)

***Versus***

**RESPONDENT** Smt. Puniya Bai Nirmalkar, W/o Hariram Nirmalkar, aged about 55 years, (Mental Disease), Through: Next Friend Hari Shankar Nirmalkar, Gali No.1 Deepak Nagar, Durg, Police Station : Mohan Nagar, Durg (C.G.)

**WRIT PETITION UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA**

**Appearance :**

Shri Basant Kewartiya, Counsel for the petitioners.

**ORAL ORDER**  
**(22.02.2008)**

**SUNIL KUMAR SINHA, J.**

Heard on admission.

By way of this Writ Petition filed under Article 227 of Constitution of India, the petitioners have challenged the validity of the order dated 01.02.2008 passed by the 1<sup>st</sup> Additional Principal Judge, Family Court, Durg, in case No.412/2007, whereby, the said Court rejected the objection (I.A. No.05) filed by the petitioners/non-applicants contending that the proceedings under Section 125 of the Code of Criminal Procedure instituted by the respondent through her next friend cannot be prosecuted.

The brief facts are that the petitioners are sons of the respondent. The respondent-mother filed an application under Section 125 of the Code of Criminal Procedure for grant of monthly



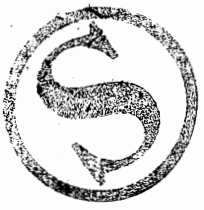
maintenance before the Family Court, Durg vide Case No.412/2007. The application was filed through her next friend namely Hariram Nirmalkar, who is her son-in-law. It was shown that the respondent was not a person of sound mind; therefore, she has filed the application through her next friend. A perusal of the impugned order would show that the aforesaid application was filed along with the medical reports of Dr. Menak Deb Sikandar and Dr. A.K. Vishwas. It is in this application, the aforesaid objection (I.A. No.5) was taken and the same was overruled.

Learned counsel for the petitioners submits that such application should not have been entertained by the Family Court and it should have been dismissed. He submits that there does not appear any provision in the Family Courts Act for filing such application and the provisions of Code of Civil Procedure would not be made applicable in such matters.

I have heard learned counsel for the petitioners at length.

Chapter IV of the Family Courts Act, 1984 deals with procedure. Section 10 deals with procedure generally. Sub-section (1) provides that subject to the other provisions of this Act and the rules, the provisions of the Code of Civil Procedure, 1908 (5 of 1908) and of any other law for the time being in force shall apply to the suits and proceedings [other than the proceedings under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974) ] before a Family Court and for the purposes of the said provisions of the Code, a Family Court shall be deemed to be a civil court and shall have all the powers of such court. Sub-section (2) provides that subject to the other provisions of this Act and the rules, the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) or the rules made thereunder, shall apply to the proceedings under Chapter IX of that Code before a Family Court.

In the matter of **Goverdhan v. Smt. Panchkunwar, 1964 M.P.L.J. Note 68**, the Madhya Pradesh High Court held that the proceedings under Chapter XXXVI of the Code of Criminal Procedure (as it then was) were of civil nature. In the said case, an



W.P.(C) No.1141/2008

ex-parte order of maintenance was passed against the husband and the husband became insane during the pendency of the proceedings. The Court held that the next friend of the husband could file an application on behalf of the insane husband to set aside the ex-parte order. This was held in the logic that since the proceedings under the said Chapter of Code of Criminal Procedure are of civil nature, such application can be entertained.

In view of the above, I do not find any infirmity in the impugned order passed by the Family Court.

The petition has no merit. The same deserves to be dismissed and is accordingly dismissed at the motion stage itself.

Sd/-  
**Sunil Kumar Sinha**  
Judge

