

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 258 of 2009**

Smt. Rukmani Bai, aged about 45 years, wife of Shri Kalanath Gandharva, resident of (hut) behind Qr. No. 10-A, street No. 30, Sector-4, Bhilainagar, Police Station Bhilai Bhatti, Tahsil and District Durg Chhattisgarh

---- Applicant**Versus**

Kalanath Gandharva, aged about 53 years, son of Dashrath Gandharva, resident of Kotma Colliery, Bhalumada, Mohalla Sundari Nagar, P.S. Jamuna, District Shahdol, Madhya Pradesh

---- Non-applicant/Respondent

For Applicant	:	Shri Suresh Tandon, Advocate appears on behalf of Shri M.D. Dhote, Advocate
For Respondent	:	None appears.

Hon'ble Shri Deepak Gupta, Chief Justice**Order on Board****04/08/2016**

1. This revision by the wife/applicant is directed against the order dated 24.2.2009 passed in Misc. Cr. Case No. 511 of 2008 whereby the learned Family Court assessed the monthly maintenance payable to the wife at the rate of Rs.800/- per month.
2. The undisputed facts are that the wife had filed a petition for grant of monthly maintenance under Section 125 Cr.P.C. before the Judicial Magistrate First Class in the year 1986 and the maintenance was fixed at Rs.250/- per month. In the year 1998 i.e. after twelve years, she filed an

application for enhancement of maintenance and the same was enhanced to Rs.500/- per month. Thereafter, ten years later in 2008 she filed another application for enhancement of maintenance amount. In this application, she stated that her husband was working as Assistant Foreman in South Eastern Coal Limited and getting salary of Rs 24,000/- per month and after deduction, he was getting Rs.13,445/- per month. The husband did not deny the income, but stated that since the wife is an able bodied person, she can also earn Rs.3,000/- per month. It is also stated that the mother of the husband and sisters were dependant on him. Though it was claimed that due to recession in the company, the S.E.C.L. has reduced the wages of the employees, but no proof in this regard was presented.

3. The Learned Court below came to the conclusion that the husband was earning Rs.23,614/- per month and after all deductions, he was still getting Rs.13,445/- per month. In this circumstances, fixation of maintenance to wife at the rate of Rs.800/- per month is a cruel joke on a wife. Normally, the wife would be entitled to 1/3rd of the earning of the husband. Even if only wages after deduction are taken into consideration, the wife would be entitled to Rs.4,500/- per month.

4. I see no reason why the Learned Court below has awarded lessor amount. Therefore, the order of Family Court is set-aside and the maintenance to the wife is enhanced from Rs.800/- to Rs.4,500/- per month from the date of filing of the application before the Learned Court below. The arrears of enhanced amount of maintenance shall be paid by the non-applicant/husband to applicant/wife in twelve equal monthly installments and the future maintenance amount shall be paid on or before 15th of every month. The applicant shall also be at liberty to file an appropriate

application for enhancement of maintenance in terms of Section 127 Cr.P.C.

5. The revision is allowed and order of the Family Court is modified to the extent indicated above.

Sd/-

(Deepak Gupta)
CHIEF JUSTICE