

HIGH COURT OF CHHATTISGARH, BILASPUR**CRIMINAL REVISION NO. 455 of 2016**

Smt. Sheela Swarnkar, wife of Shri Murli Manohar Swarnakar, aged about 60 years, resident of Halmukam house of Arjunlal Swarnakar, Opp. Ravishankar Stadium, Kota Raipur (CG).

----Petitioner

Versus

Shri Murli Manohar Swarnakar, son of late Shri Jagannath Swarnakar, aged about 63 years, resident of Vajpayee Gali, Dharmshala Road, Saarangarh, Distt. Raigarh (CG).

---- Respondent

For Petitioner	:	Shri Ankur Agrawal, Advocate.
----------------	---	-------------------------------

Hon'ble Shri Justice P. Sam Koshy

Order On Board

14/06/2016

1. Challenge in this revision is to the order dated 26.03.2016 passed by the IInd Additional Principal Judge, Family Court, Raipur, in Case No.630 of 2016. By way of the said order, the court below has rejected the application filed by the applicant under Section 127 Cr.P.C. seeking enhancement of interim maintenance awarded in her favour on 05.12.2013.
2. Learned counsel appearing for the applicant assailing the impugned

order submits that the impugned order is bad in law for the reasons firstly that the court below ought to have appreciated the fact that petitioner is an old lady, aged about 60 years, and therefore, the court below ought to have taken a sympathetic approach and should have entertained her application under Section 127 Cr.P.C. Secondly; the reasons assigned for rejection of application was not proper, legal and justified as the rejection was not on the merits of the case, but was purely on a technicality which again is improper under the provisions of Section 127 Cr.P.C. Last contention of the petitioner is that the court below failed to appreciate or rather has committed an error in not appreciating the fact that the interim maintenance granted to the petitioner was of the December, 2013 and two and half years down the line looking to price index and also expenses towards treatment that she incurs, the court below ought to have appreciated the submissions put forth by the petitioner and should have entertained the application under Section 127 Cr.P.C.

3. Counsel for the petitioner has further drawn attention of the court towards the order-sheets of the proceedings of the court below and submits that the reasons assigned by the court below for rejection of application is not proper and the petitioner cannot be blamed for non completion of the proceedings under Section 125 Cr.P.C.
4. Having heard the submission of the petitioner and on perusal of the record filed along with revision, what is apparently clear is that the petitioner had infact filed a case for grant of maintenance under Section 125 Cr.P.C. before the Family Court in the year, 2013 against the

respondent and on 05.12.2013 there is already an order of Family Court granting interim maintenance to the petitioner to the tune of Rs.3000/- per month. Another admitted position in the present case is that after granting of interim maintenance on 05.12.2013, the court below had fixed the case for the evidence of petitioner and posted the matter for 27.01.2014 and since then the matter, on some pretext or the other, got adjourned and till very recently the evidence of the petitioner could not be completed except for filing of evidence in the form of affidavit under Order 18 Rule 4 CPC on 17.03.2016. It has been informed at bar that the petitioner has subsequently to the filing of the present revision on 13.05.2016 has now been cross examined.

5. A perusal of order-sheets would also show that there has been consistent default on the part of the petitioner on most of the dates in not adducing evidence and getting the matter adjourned on some pretext or the other and it was for this reason the court below has not entertained her application for enhancement of award.
6. In the opinion of the court below, the said application for enhancement was not bonafide for the reason that on one hand the application was preferred before completion of her evidence in the original case and at the same time, insisted of getting the matter itself finally adjudicated, she had moved an application for enhancement. In the opinion of this court, the order so passed by the court below does not seem to be bad in law in any manner particularly taking into consideration the order-sheets and the proceedings drawn from 05.12.2013 till the impugned order dated 26.03.2016 was passed. Granting interim maintenance on 05.12.2013

itself would show that pending the matter the petitioner was granted interim relief to sustain herself however instead of getting the matter finally adjudicated upon, she persisted for enhancement of maintenance. The development that have in between taken place does not reflect that the petitioner had bonafidely acted in getting the matter adjudicated upon expeditiously, rather waited the matter to be lingered on and subsequently she moved an application under Section 127 Cr.P.C. for enhancement of maintenance amount.

7. In the given facts and circumstances of the case, this court is of the opinion that there is no illegality or infirmity in the order impugned passed by the court below calling for interference. The revision being devoid if merit is liable to be and is hereby dismissed.
8. It is further made clear that now the petitioner's evidence has already been concluded, all steps should be taken for speedy disposal of the matter at the earliest.
9. It is also submitted by the petitioner that there is a default on the part of the respondent in execution of interim award passed in the year, 2013. Needless to mention that the petitioner would be at liberty to initiate appropriate proceedings for execution of said award, if maintenance amount is not fully paid till date.
10. With the above made observation, the revision petition stands dismissed.

Sd/-
(P. Sam Koshy)
JUDGE