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HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 696 of 2015**

Navinchandra S/o Thakur Ram Dhruv, aged about 48 years, working as Teacher, Govt. Primary School, Rico, Sankul Kendra Mandir Hasaud, Tahsil Arang, District Raipur (CG)

---- Applicant

Versus

Smt. Jayanti Bai W/o Navinchandra, aged about 43 years, R/o village Jhadmokhli, Police Station Ranitarai, Tahsil Patan, District Durg (CG)

---- Non-applicant

For Applicant	:	Shri H. B. Agrawal, Sr. Advocate along with Smt. Iturani Mukherjee, Advocate
For Non-applicant	:	Shri B. P. Singh, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****13/05/2016**

The present Criminal Revision has been preferred against the order dated 04.08.2015 passed by the Second Additional Principal Judge, Family Court, Durg in Case No. 401 of 2014.

2. The Court below has passed the impugned order making the enhanced maintenance amount payable to the non-applicant applicable w.e.f. 22.11.2006 which according to the applicant is bad in law for the reason that it could have been applicable only from 10.07.2014 i.e. the date on which the High Court had allowed the Criminal Revision No. 14/07 by enhancing the maintenance amount from Rs.600 to Rs.2,000.

3. Brief facts, in the present case, are that the non-applicant Jayanti Bai initiated a proceeding before the Family Court, under Section 125 of Cr.P.C. against the applicant claiming for maintenance. The Family Court had on 15.07.2002 allowed the application and awarded an amount of

Rs.600 per month as maintenance to the non-applicant. The non-applicant, at a later stage, filed an application under Section 127 of Cr.P.C seeking for enhancement of the maintenance amount awarded in the year 2002. The Family Court initially vide order dated 22.11.2006 rejected the said application filed under Section 127 Cr.P.C against which the non-applicant preferred a revision petition before this Court which was registered as Criminal Revision No.14/07. This Court, vide order dated 10.07.2014 allowed the said Revision and set aside the order of rejection of the application under Section 127 by the Family Court enhancing the maintenance amount from Rs.600 to Rs.2,000 per month.

4. In the execution proceeding, the non-applicant moved an application under Section 125-3 Cr.P.C. claiming the enhanced maintenance amount from 22.11.2006 i.e. the date on which the application under Section 127 CrPC was dismissed by the Court below. To which the present applicant entered appearance and contended that the enhanced maintenance amount can be paid only from the date when it was enhanced by the High Court in Criminal Revision No.14/07 i.e. 10.07.2014 which was turned down by the Execution Court and made the enhancement w.e.f. 22.11.2006. According to the applicant, the enhanced maintenance amount would be payable to the non-applicant only prospectively and it cannot be given retrospective effect from the date the application was made or the date the Court below rejected the enhancement application.

5. Learned Senior counsel appearing for the applicant tried to emphasize on the final operative part of the Criminal Revision which reads as 'Accordingly, the revision is allowed in part.' According to the counsel for the applicant, if the maintenance had been granted prospectively, the operative part would not have been mentioned as 'allowed in part'. He

further submits that whenever the order is not declared as to from which date the maintenance has to be given, then in accordance with Section 125 Cr.P.C, it would be prospective and not retrospective, therefore, the impugned order of the Court below is bad in law and deserves to be set aside.

6. However, counsel for the non-applicant opposes the present revision on the ground that it is a case where the Execution Court has rightly held that the enhanced maintenance amount would be payable from the date when the application under Section 127 Cr.P.C was dismissed by the Court below. He submits that in a proceeding under Section 125 Cr.P.C. if the application is allowed, the maintenance amount would be payable from the date the application is made and not from the date the order is passed. Counsel for the non-applicant relies upon a decision of the Hon'ble Supreme Court reported in (2015) 6 SCC 353 (Bhuvan Mohan Singh v. Meena and Others) wherein the claim for maintenance under Section 125 was allowed with effect from the date the application under Section 125 CrPC was made.

7. Having considered the rival contentions put forth by the counsel appearing on either side and also taking note of the facts and circumstances of the case what is an admitted position in the instant case is that the non-applicant was granted Rs. 600/- per month as maintenance under Section 125 Cr.P.C. in the year 2002. It is further admitted position that in the year 2006, the non-applicant moved an application seeking for enhancement of the maintenance awarded to her which was dismissed by the Court below on 22.11.2006.

8. Another aspect which has to be borne in mind is that the applicant is admittedly a Govt. teacher and in the year 2006, there was a revision of pay and that the applicant has received the benefit of the same. It was

under this context, the non-applicant moved an application against the rejection order dated 22.11.2006 before the lower Court as well as before the High Court for enhancement of maintenance which was registered as Criminal Revision No.14/07. Taking note of the facts and circumstances of the case, particularly the salary of the applicant which has admittedly increased substantially since 2002, this Court vide its order dated 10.07.2014 enhanced the maintenance amount from Rs. 600/- to Rs.2,000/-.

9. Admittedly, the cost of living from the year 2002 to 2015 has apparently increased manifold and it is very difficult for any person to make both ends meet with an amount of Rs.600 awarded by the Family Court in the year 2002. The non-applicant had been surviving with this paltry amount of Rs.600/- and therefore, she moved an application for enhancement of maintenance amount because of the salary hike of the applicant by virtue of the revision of pay that took place in the year 2006. The fact that she has been denied by the Court below the advantage of the revision of pay that the petitioner had received and her claim application was rejected on 22.11.2006 against which there was a Revision petition which stood allowed on 10.07.2014. Therefore, the order passed by the Co-ordinate Bench in the revision petition enhancing the maintenance amount would relate back to the date on which the application was rejected i.e. 22.11.2006.

10. It was in this context the execution proceeding was initiated and the Court below reached to the conclusion that the enhanced maintenance amount would be payable to the non-applicant from the date of rejection of the application under Section 127 of CrPC.

11. A perusal of the order of the High Court particularly the operative part would clearly show that this Court had specifically ordered for setting

aside the order dated 22.11.2006 quantifying the maintenance amount to Rs.2,000 per month. Therefore, fixing of date for grant of enhanced maintenance amount by the Court below as 22.11.2006 cannot be said to be bad in law or contrary to the provision of law. The Provision of Section 125 CrPC specifically holds that any application for maintenance or interim maintenance shall be payable from the date of the order, or, if so ordered, from the date of application for maintenance or interim maintenance.

12. The Supreme Court in the case of Bhuwan Mohan Singh (Supra) in paragraph 16 has specifically dealt with the issue of making the applicability of the order under Section 125 Cr.P.C. from the date of application was made under Section 125. Paragraph 16 reads as under:

“In the present case, as we find, there was enormous delay in disposal of the proceeding under Section 125 of the code and most of the time the husband had taken adjournments and sometimes the court dealt with the matter showing total laxity. The wife sustained herself as far as she could in that state for a period of nine years. The circumstances, in our considered opinion, required grant of maintenance from the date of application and by so granting the High Court has not committed any legal infirmity. Hence, we concur with the order of the High Court. However, we direct, as prayed by the learned counsel for the appellant, that he may be allowed to pay the arrears along with the maintenance awarded at present in a phased manner. The learned counsel for the respondents did not object to such an arrangement being made. In view of the aforesaid, we direct that while paying the maintenance as fixed by the learned Family Court Judge per month by 5th of each succeeding month, the arrears shall be paid in a proportionate manner within a period of three years from today.”

13. Applying the principle and ratio laid down by the Supreme Court in the instant case and also taking into consideration the facts and circumstances of the case, this Court is of the opinion that the amount of enhanced maintenance payable to the non-applicant made effective from 22.11.2006 does not warrant any interference. Taking into consideration the financial burden falling upon the applicant, it is ordered that the arrears

from 22.11.2006 to 10.07.2014 shall be paid to the non-applicant in 25 installments of equal proportion within a period of 25 months from today.

14. With the above said observation, the Revision Petition stands allowed.

**Sd/-
(P. Sam Koshy)
JUDGE**