

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 904 of 2016

- Ramesh Gupta S/o Vijay Gupta Aged About 44 Years R/o Bandhwapara, Sarkanda, Balihari, Near Chaura, Bilaspur, Tahsil & District - Bilaspur Chhattisgarh

---- Applicant

Versus

1. Smt. Subhashini Gupta W/o Ramesh Gupta Aged About 43 Years R/o Bandhwapara, Sarkanda, Bilaspur Tahsil & District - Bilaspur Chhattisgarh
2. Ku. Payal Gupta D/o Ramesh Gupta Aged About 16 Years Minor, Represented Through Mother Smt. Subhashini Gupta, R/o Bandhwapara, Sarkanda, Bilaspur, Tahsil & District - Bilaspur Chhattisgarh

---- Respondents

For Applicant : Mr. Goutam Khetrapal, Advocate

SB: Hon'ble Shri Justice P.Sam Koshy

Order On Board

07.11.2016

1. Heard on I.A. No.1/2016 which is an application for condonation of delay.
2. For the reasons assigned in the said application for condonation of delay and the same found to be satisfactory, I.A. No.1 is allowed. The delay of 176 days in filing the present Revision Petition is condoned.
3. The present Revision petition has been filed assailing the order dated 5.1.2016 passed in Miscellaneous Criminal Case No. 196/2015 by the Family court, Bilaspur.
4. Vide the said impugned order the Court below in a proceeding under Section 127 of the Cr.P.C. has enhanced the maintenance amount payable to Respondents No. 1 & 2 by the applicant from Rs. 1500/- and Rs. 1300/- to Rs. 2000/- and Rs. 4000/- respectively.

5. Assailing the impugned judgment the Counsel for the Applicant submitted that the case of the Respondent under Section 127 Cr.P.C. was not maintainable for the reason that the original order of the maintenance i.e. the order of maintenance in an application under Section 125 Cr.P.C. was decided by way of an agreement / settlement between the parties. Once when there is already a settlement arrived at, the subsequent application for enhancement could not have been filed.
6. According to the counsel for the applicant, Respondent No.1 instead of filing the application under Section 127 of the Cr.P.C. ought to have filed application under Article 226/227 of the Constitution of India for redressal of her grievance as the original order passed by the Court below in a proceeding under Section 125 of the Cr.P.C. was disposed off by virtue of a settlement / compromise entered into between the parties.
7. It was further contended by the Counsel for the Applicant that once when the earlier proceeding under Section 125 of the Cr.P.C. stood decided vide order dated 27.02.2012 there is no substantial change in the circumstances needing for alteration in the order under Section 125 Cr.P.C. therefore also the order of the Court below is bad in law and deserves to be modified. Lastly, it was contended that the amount of maintenance enhanced by the Court below makes the award beyond the paying capacity of the Applicant. He further submits that the Applicant himself has got many other liabilities which he has to meet and that he has very meager source of income. From the said source of income it would be difficult for him to provide an amount of Rs. 6000/- as awarded by the Family court as maintenance.
8. However, on perusal of the provisions of Section 127 of the Cr.P.C. itself makes it explicit as to under what circumstances can the Court alter / modify the earlier order passed under Section 125 Cr.P.C. Another aspect which cannot be brushed aside is the fact that the order under Section 125 of the Cr.P.C, was originally disposed off vide the order dated 27.02.2012 and the

application under Section 127 of the Cr.P.C. seeking enhancement of the maintenance amount was filed on 20.03.2015 i.e. after more than 3 years time from the date of the original order. In these three years i.e. from 2012 to 2015 the cost of living in India has increased substantially and therefore there is no illegality or infirmity on part of the Respondent No.1 in moving the application seeking for enhancement of the maintenance.

9. Further the contention of the Counsel for the Applicant that the application under Section 127 Cr.P.C. is not maintainable on account of the fact that the earlier proceeding was disposed off by virtue of a settlement, is not sustainable for the reason that the compromise that took place in 2012 was also in a proceeding under Section 125 Cr.P.C. whereas in the present case it is an alternation of the order passed three years back by way of a proceeding under Section 127 Cr.P.C. It is nowhere enunciated that Section 125 Cr.P.C. proceeding if has been disposed of by virtue of a settlement determining an amount of maintenance payable would preclude or prohibit the wife from seeking alteration of the said order seeking enhancement of the amount that too after a considerable period of time. Once when there is already an order granting maintenance which has attained finality the only remedy for an alteration would be by way of a proceeding under Section 127 of the Cr.P.C.
10. The only question further remains to be adjudicated upon is whether the amount of maintenance payable to the dependence is commensurate to the source of income of the husband or not.
11. So far as the quantum of the amount is concerned if we look into the records what is clearly reflected is the fact that the Applicant husband is a municipal Corporator. In addition, the Applicant husband being a Corporator he is a R.M.P. Doctor. Another aspect which can not be ignored is that the fact that the Respondent No.2 is a grown up girl aged about 16 -17 years and is undergoing college education. Further considering the fact that he is a Corporator and a RMP Doctor what is least expected from the Applicant

husband is that of providing each one of the Respondents to maintain reasonably a decent standard of living commensurate to that of family of a Corporator and also of a Doctor in that area. In addition, another aspect which cannot be ignored is the fact that Respondent No. 2 is by now a college going student and it is any body's guess to know the minimum that a college going student would require to maintain herself and to lead a decent standard of living.

12. Considering the total facts and circumstances of the case particularly taking into consideration the status of the Applicant in addition being Corporator he is also a R.M.P. Doctor, it is not a case where the amount of maintenance which has been enhanced by the Court below be said to be one which can not be complied with by the Applicant or beyond the paying capacity of the Applicant.

13. Accordingly, this Court does not find any illegality or error on part of the Court below in enhancing the maintenance amount payable to the Respondents from Rs. 1500/- and Rs. 1300/- to Rs. 2000 and Rs. 4000/- respectively.

14. This Revision Petition for the foregoing reasons stands rejected.

Sd/-

(P. Sam Koshy)
JUDGE