

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 232 of 2016

1. Neeraj Kumar Mahto S/o Shri Ram Shankar Mahto, aged about 32 years, R/o RH No.1(Wrongly mentioned in order as RH No.6) Lunkad Avenue, Viman Nagar, Pune (M.H.).

---- Petitioner

Versus

1. Abha Kastwar W/o Shri Neeraj Kumar, aged about 29 years, D/o Shri Yogendra Kastwar, R/o H.No.408, 4th Floor, Golchha Enclave, Amlidih, Raipur (Chhattisgarh) 492001.

---- Respondent

For Petitioner – Ms. Aparna Diwan, Advocate.
For Respondent – None, not noticed.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Order on Board

15/03/2016

1. Heard the matter on motion.
2. Facts in brief for appreciation of the instant criminal revision are that before the First Additional Principal Judge, Family Court Raipur, C.G. Civil Suit No.284/12 (Smt. Abha Kastwar V. Neeraj Kumar Mahto) is pending under Section 125 of the Code of Criminal Procedure, 1973 (in short 'the Code'). In the said suit order for interim maintenance was passed. On behalf of the petitioner applications under Section 127(1), Section 340 and Section 91 of the Code had been filed. The Court below vide order dated 21-12-2015 disposed of the said interim applications and held that the application under Section 340 of the Code and the original civil suit under Section 125 of the Code as they belong two different nature, it would not be appropriate to try both the matters jointly, hence, directed that the application filed under Section 340 of the Code be registered separately and independent proceeding may be initiated. The trial Court also allowed the application filed under Section 91 of the Code and directed in para 21 of the order dated 21-12-2015 that the said application is

allowed and memo be issued to the concerned for presentation of the relevant documents. For the application filed under Section 127(1) of the Code, the Court below at para 15 held that after appreciation of the entire material it has to be held that whether the applicant is entitled or not for the maintenance amount on the basis of her economic competency. Hence, the said application was dismissed. After the said order dated 21-12-2015 the petitioner had filed the instant criminal revision.

3. It is submitted on behalf of the petitioner that they are aggrieved with the rejection of the application filed under Section 127(1) of the Code only and against the said order they have filed the instant criminal revision and it is prayed that the revision may be allowed and the impugned part of the order be quashed.

4. Heard learned counsel for the petitioner, perused the impugned order and the documents annexed along with the matter.

5. It is submitted on behalf of the petitioner that since there is change of circumstances, Section 127(1) of the Code is applicable. The appreciation of the Court below at para 15 of the impugned order is not proper, hence, it requires interference.

6. On due consideration and also for relevance for the instant criminal revision, provision of sub-section 1 of Section 127 of the Code is required to be perused which reads as under:-

“127. Alteration in allowance. – (1) On proof of a change in the circumstances of any person, receiving, under section 125 a monthly allowance for the maintenance or interim maintenance, or ordered under the same section to pay a monthly allowance for the maintenance, or interim maintenance, to his wife, child, father or mother, as the case may be, the Magistrate may make such alteration, as he thinks fit, in the allowance for the maintenance or the interim maintenance, as the case may be.”

7. From perusal of the impugned order, the material in relation with the interim application under Section 127(1) of the Code and the facts regarding issuance of interim maintenance, it goes to show that the petitioner had not

challenged the order for issuance of interim maintenance. With this, the order of the interim maintenance attains finality for the moment. The facts mentioned regarding interim application under Section 127(1) of the Code go to show that the petitioner is again praying for re-appreciation for the merits of facts required for interim maintenance. As per settled law, Section 127(1) of the Code is only applicable when there is any change in the circumstances. From perusal of the entire material, in the considered view of this Court, the petitioner failed to demonstrate regarding change of circumstances required under the provision of Section 127(1) of the Code and looking to the entire material, I do not see any illegality or impropriety in the impugned order at para 14 and 15.

8. In view of the above appreciation, the instant criminal revision is having no substance and therefore, the same is hereby dismissed.

9. The criminal revision dismissed.

Sd/-
(Chandra Bhushan Bajpai)
JUDGE