

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Criminal Revision No. 888 of 2015**

Sangeeta Sarthi w/o Shri Dhananjay Sarthi, aged about 40 years,
R/o opposite Ware House, Shastri Nagar, Fafadih, Raipur, District
Raipur, Chhattisgarh.

---- Applicant**Versus**

Dhananjay Sarthi S/o Shri Patanga Ram Sarthi aged about 44
years, R/o village & Post Jatari, Tahsil Kharsiya, District Raigarh,
Chhattisgarh.

---- Respondent

For the Applicant	:	Shri Vikas Dubey, Advocate.
For the Respondent	:	Shri Harish Khuntiya, Advocate.

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order on Board****05/05/2016**

(1) With the consent of both the parties, the matter is heard finally at the motion stage itself.

(2) Facts in brief required for adjudication of the instant criminal revision are that vide order dated 27.4.2005 in M.Cr.C. No. 53 of 2005 the trial Court directed to pay maintenance of Rs.1,000/- per month to the Applicant by the Respondent. Thereafter, the present Applicant had filed M.J.C. No. 33 of 2009 under Section 127 of the Code of Criminal Procedure, 1973 (for short 'the Code') for enhancement of the maintenance allowance before the Second Additional Principal Judge, Family Court, Raipur, Chhattisgarh. The Second Additional Principal Judge, Family Court, Raipur, vide order dated 12.8.2015, allowed the said application filed by the Applicant and directed the Respondent to pay Rs.3,500/- per month from the date of the order as maintenance allowance. As the order passed by the Court below is effective from the

date of the order, the Applicant has preferred the instant criminal revision wherein it is prayed summarily that since the said application was filed under Section 127 of the Code before the Court below on 24.11.2008, she is not responsible for the delay and also the Court below appreciated in paragraph 9 of the order regarding cost of living as shoot up more than 10 times it would be appropriate to make effective order from the date of presentation of the Application and as the trial Court had not given any reason as to why it is allowing the application from the date of order. In absence of any such appreciation, looking to the appreciation made in paragraph 9 of the order passed by the Court below, it is prayed that the instant criminal revision may be allowed and the order dated 12.8.2015 be made operational and effective since the date of the presentation of the application i.e. from 24.11.2008.

(3) On behalf of the Respondent, a written response/ objection has been filed wherein it is submitted that the Applicant is working as a Computer Instructor and making sufficient earnings from that job. The order passed by the Court below regarding enhancement of maintenance allowance from the date of the order cannot be said to be improper. It is further submitted that as per settled law, Section 127 of the Code is distinguishable from the provisions made in Section 125 of the Code and, therefore, he further submitted that the Applicant has not claimed the enhancement of maintenance allowance with effect from the date of presentation of her application. Hence, the same is not liable to be considered before this Court and the application filed on behalf of the Applicant may be dismissed.

(4) Heard learned counsel for the parties and perused the material available on record.

(5) Learned counsel for the Applicant submits that the Respondent had filed Criminal Revision No. 846 of 2015 against the impugned order with a prayer to set aside the order passed by the Court below. Vide order dated 7.10.2015, this Court dismissed the criminal revision filed by the Respondent and thereby the order dated 12.8.2015 passed by the Court below attains finality for the moment. It is further submitted that filing of the application itself makes it clear that the maintenance allowance which is granted earlier be enhanced from the date of filing of the said application. Learned counsel further submits that the appreciation made by the Court below in paragraph 9 of its order, which was not otherwise altered or disturbed by this Court while passing the order in Criminal Revision No. 846 of 2015 dated 7.10.2015, shows that the cost of living has shoot up for more than 10 times during the last 10 years. The Court below enhanced the maintenance amount for 3.5 times only the order of maintenance allowance passed on 27.4.2005 and the application for enhancement of the maintenance amount has been filed after more than 3½ years. Looking to the entire facts, the Court below ought to have directed for payment of the enhanced amount of maintenance allowance with effect from the date of the presentation of the application.

(6) Learned counsel for the Applicant placed reliance on Bhuwan Mohan Singh versus Meena and Ors., reported in 2014 AIR SCW 4201, wherein the Apex Court has held that if there is a long delay in disposal of proceedings due to adjournments taken by the husband and laxity

shown by Court in dealing with such case and thereby the wife is made to sustain for 9 years, in these circumstances, it would be justified to grant maintenance from the date of the application. Learned counsel further submits that the instant criminal revision may be allowed and the impugned order be made operative and functional with effect from the date of presentation of the application, i.e., 24.11.2008.

(7) Learned counsel for the Respondent supported the entire grounds taken in the reply and submitted that as there was no any specific pleading with regard to date of grant of enhanced maintenance allowance and the scope of Sections 125 and 127 of the Code is different, the case law cited is not applicable to the facts of the instant case and the order passed by the Court below is, therefore, justified regarding the date from which enhanced amount is directed to be paid. Hence, the instant criminal revision may be dismissed as not maintainable.

(8) From perusal of the application dated 24.11.2008, it reveals that the Applicant has stated that she is facing hardship because of getting only a meager amount as maintenance. On the other hand, the Respondent is working as a Vice-Principal in a High School earning Rs.22,000/- per month and as the pay of the Respondent would be increasing from time to time, hence, it is prayed that the amount of maintenance may be enhanced from Rs.1,000/- to Rs.5,000/- per month. The Court below while deciding the matter, though after lapse of about 7 years, has accepted the contention that the cost of living has increased 10 times since 2005. The Respondent challenged the said order enhancing the amount of maintenance in the aforesaid criminal revision,

but the same was dismissed at the motion stage itself even without noticing to the other side. Therefore, the aforesaid observation of the Court below regarding increase of cost of living and consequent enhancement in amount of maintenance attains finality for the moment. Even otherwise, this Court can take judicial note of the said fact regarding price index enhanced in the past years.

(9) From perusal of the application dated 24.11.2008 it reveals that the Applicant prayed for enhancement in the maintenance allowance from the date of the application. Despite there being all the relevant facts in the said prayer, the Court below did not assign any reason as to why it is making the order functional and operative with effect from the date of the order only. As a settled law, if any application with a prayer for enhancement of maintenance is made and if no any future date is mentioned for grant of maintenance, the Court below shall be duty bound to appreciate as to why it is not accepting the enhancement of the maintenance from the date of the application. This Court cannot accept the arguments advanced that for making the order functional and operative, the scope of Sections 125 and 127 of the Code are distinguishable. Looking to the price index and other facts, the Court below did not assign any reason. On the other hand, when the matter is pending before the Court below for about 7 years without any fault on part of the Applicant and even otherwise if the matter would have been disposed of within a very short span, even then the Applicant would have got the fruits of the order from the date of the order.

(11) The case of Bhuwan Mohan Singh (Supra) relied upon by the Applicant is applicable to the facts of the instant case. Looking to the

entire facts and circumstances and in the considered view of this Court, the impugned order dated 12.8.2015 in regard to grant of enhanced amount of maintenance deserves to be made functional/ operative from the date of filing of the application i.e. 24.11.2008.

(12) Consequently, the instant criminal revision is allowed and the order passed by the Court below in M.J.C. No. 33 of 2009 dated 12.8.2015 regarding grant of enhanced amount of maintenance is made functional/ operative with effect from 24.11.2008.

(13) The criminal revision is allowed.

Sd/-

(Chandra Bhushan Bajpai)
JUDGE