

AFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****Review Petition No. 136 of 2016**

Harihar Thakur S/o Nageshwar Thakur, Aged About 43 Years R/o- Lig- 197,  
Borsi, Vistar, P.S.- Pulgaon, Tahsil And District- Durg, (Chhattisgarh).

---- **Petitioner****Versus**

Smt. Sharda Thakur W/o Harihar Thakur, Aged About 41 Years R/o- Infront Of  
Nasine Kirana Shop, First Floor, B- Sector, Panchshil Colony, Borsi, Tahsil  
And District- Durg, (Chhattisgarh).

-----**Respondents****Single Bench:      Hon'ble Shri P. Sam Koshy, J**Application for review of order dated 08.07.2016**(By Circulation In Chamber)**

**Order**  
**(19.09.2016)**

1. The instant Review Petition has been preferred by the Petitioner seeking review of the order dated 08.07.2016 passed by this Court in Criminal Revision No.617/2016. The original proceeding i.e. Criminal Revision No.617/2016 was preferred by the Petitioner assailing the order dated 7.5.2016 passed by the 1st Additional Principal Judge, Family Court, Durg in Misc. Criminal Case No.620/2015 wherein the Family Court, in a proceeding under Section 125 Cr.P.C, had allowed the same and ordered for payment of Rs.2,000/- per month as maintenance to the Respondent/wife in the present case.

2. This Court, while hearing the said Revision Petition on 8.7.2016, after considering all the submissions made by learned Counsel for the Petitioner, had dismissed the Revision Petition on merits. Now, the present Review Petition has been filed seeking for review of the order dated 8.7.2016

primarily on the ground that the amount of maintenance of Rs.2,000/- per month granted by the Family Court to the Respondent/wife is beyond the paying capacity of the Petitioner. According to the Petitioner, the monthly income that he had pleaded before the Court below was of Rs.1,300/- whereas the Court below has passed the award for grant of Rs.2,000/- as maintenance and since he does not have sufficient source of income, he would find it difficult firstly in maintaining himself and secondly in paying the amount of maintenance ordered to be paid by the Court below. Except for this, no other ground has been taken by the Petitioner seeking for review.

3. If we peruse the order dated 8.7.2016, it would clearly reflect that this Court, while dismissing the Revision Petition, in paragraph-12, had taken note of this ground and this Court had reached to the conclusion that no strong case has been made out for interfering with the order passed by the Family Court granting maintenance.

4. The ground which has been raised by the Petitioner which has also been considered and not found to be strong enough calling for an interference with the order of the Court below. Entertaining the Review Petition would amount to deciding the case on its merits and reconsidering of the said ground again by the same Court in exercise of its review jurisdiction, would not be permissible.

5. It is well settled that review proceedings have to be strictly confined to the ambit and scope of Order 47 Rule 1 of CPC.

6. A review is by no means an appeal in disguise but lies only for patent error. Under the garb of a review application, the Applicant cannot be allowed to reargue his case.

7. The review jurisdiction is extremely limited and unless there is mistake

apparent on the face of record, the Order/judgment does not call for review. The mistake apparent on record means that the mistake which is self evident, needs no search and stares at its face. Surely, review jurisdiction is not an appeal in disguise. The review does not permit rehearing of the matter on merits. Under Order 47 Rule 1 CPC, a judgment may be open to review inter alia, if there is a mistake or an error apparent on the face of the record.

8. An error which is not self evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the Court to exercise its power of review under Order 47 Rule 1. The jurisdiction under review does not permit an erroneous decision to be reheard and corrected. Review Petition cannot be allowed to be an appeal in disguise.

9. The law so far as the review is concerned, it is always an error apparent on the face of record which has crept in and by no stretch of imagination can the power of a review be exercised by a Court for rehearing the matter afresh. In the garb of a Review Petition, the Petitioner cannot be permitted to argue the entire case afresh as the same would amount to converting the Review Petition into an Appeal. Further, from the pleading of the Review Petition also, there is no ground raised by the Petitioner of there being any error apparent on the face of record on the part of the Court in the passing of the judgment, neither is there any pleading wherein it is alleged that there were certain factual discrepancies while deciding the Writ Petition. In the opinion of this Court, it is only under these circumstances can a review lie.

10. In the instant case, the Petitioner has not been able to point out any manifest much less an error on the face of record to have been committed in

the course of deciding the Criminal Revision No.617/2016.

11. In the light of the observation made in the preceding paragraphs, if we consider the grounds raised by the Petitioner in the Review Application, it would clearly establish that the same would not be a strong ground for entertaining the Review Application and ordering for re-hearing of the Revision Petition itself.

12. Even otherwise, on the merits, the ground raised by the Petitioner calling for interference with the impugned order does not seem to be a strong case for the reason that once if the Petitioner accepts the fact that the Respondent is his wife, there is no reason whatsoever available for the Petitioner/husband to take care of his wife and provide her a decent standard of living. The husband cannot shy away the responsibility of maintaining his family particularly his wife and children only on the ground that he does not have sufficient source of income.

13. Recently, the High Court of Gujarat in the case of *Sunil Bhagatraj Udasi vs. State of Gujrat, Criminal Revision Application (For Maintenance) No.696 of 2016* decided on 8.9.2016 where the husband had expressed his inability to maintain his wife and children on the ground of his becoming a 'sanyaasi', has ordered that once he had entered into a marriage and has a wife and child, irrespective of his becoming 'sanyaasi' it is his bounden duty to maintain his family. Applying the same analogy in the instant case also, the husband i.e. the Petitioner cannot take the plea that since he is earning only Rs.1,300/- per month, therefore, he cannot shoulder the responsibility of maintaining his wife. Thus, on the merits also, this Court does not find any strong case made out for recalling of the order dated 8.7.2016.

14. Since the Petitioner has failed to point out any infirmity or an error on

the face of the record in the factual matrix of the case, this Court is of the opinion that instant Review Petition is not sustainable and the same deserves to be and is accordingly dismissed. No order as to costs.

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

Priya