

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 31 of 2016**

Pushpa Bai W/o Kapil Sahu Aged About 32 Years R/o Bandi, Post Pipariya, Tahsil Kawardha, Present Address Ramnagr, Kawardha, P.S. Kawardha, Tahsil Kawardha, Civil & Rev. Distt. Kabirdham, Chhattisgarh.

---- Petitioner**Versus**

Kapil Sahu S/o Khedu Sahu Aged About 38 Years Occupation Agriculturist, R/o Village Bandi, Post & P.S. Pipariya, Tahsil Kawardha, Distt. Kabirdham, Chhattisgarh.

---- Non-applicant.

For Petitioner	:	Shri Ajit Singh, Advocate
For Non-applicant	:	Shri Malay Shrivastava and Shri Gagan Tiwari, Advocates.

SB: Hon'ble Shri Justice P.Sam Koshy**Order On Board****07/10/2016**

1. The present Revision Petition has been preferred assailing the order dated 05.11.2015 passed by the Family Court, Kawardha, in Misc. Criminal Case No. 409/2015.
2. By way of the said impugned order the Court below in a proceedings under Section 127(3) Cr.P.C. has enhanced the maintenance amount payable to the petitioner-wife from Rs.800/- to Rs.1000/- per month.
3. Learned counsel appearing for the petitioner submits that the court below has not properly appreciated the fact that the respondent-Husband has also got agricultural field of around 5 Acres and from which also he receives income. Further, even if he is a daily wage worker, minimum wage of non-skilled worker is more than Rs.200/- per day. If Rs. 200/- is

taken into consideration as his daily wage, then his monthly income would be Rs.6000/-. The amount of maintenance enhanced by the court below i.e. Rs.200/- (from Rs. 800/- to Rs. 1000/-) only is not commensurate to the income of the respondent-husband.

4. On the other hand, opposing the petition counsel for the respondent-husband submits that he is a daily wage employee and that he earns only Rs.140-145 in a day. So far as landed property at the family is concerned, he has only one share and if the said property is divided in other family members, he would be getting only small share in the said property and thus, the amount enhanced by the court below cannot be said to be in any case on lower side calling for any interference. Accordingly, the revision petition deserves to be rejected.
5. Having considered the rival contention put forth on either side and on perusal of the record would clearly reflect is that indisputably as on date the respondent and petitioner is Husband and Wife and that the marriage still survives as it has not been dissolved by any competent court of law. As long as the petitioner is the legally wedded wife of the respondent, it is the bounden duty of the respondent-husband to take care of the wife and children. It is also responsibility of the husband to provide a decent standard of living to the family members.
6. The decisions of the Supreme Court and other High Courts in the recent past is that even if in a case where the husband does not have any source of income, it is his responsibility to maintain the family members. In the instant case also once when the entitlement of maintenance has been

granted by the court below in a proceeding under Section 125 CrPC entitling her for the maintenance amount, the respondent-husband cannot escape from the said liability of payment of compensation. So far as the reasonable amount to be given to the petitioner-wife is concerned, the court should consider the minimum amount that a person would require for sustaining herself to ensure both ends meet.

7. In the instant case, the petitioner-wife was earlier being paid Rs.800/- as maintenance as per order of the family court dated 28.10.2013. Three years down the line and looking to the present cost of living, this court is of the opinion that enhancement of Rs. 200/- per month is too paltry an amount with which she could hardly be able to sustain herself.
8. Even assuming the contention of the respondent-husband that there is other share holders in the agricultural fields belonging in the joint family, then also, it has to be presumed that he would definitely be getting some income from the said land from which also the petitioner-wife would have been entitled for same benefits.
9. At this juncture it would be trite to refer to the judgment of the Supreme Court in case of **Shamima Farooqui v. Shahid Khan**¹ whereby the Hon'ble Supreme Court in paragraph 15 has held as under:

“15.....It can never be forgotten that the inherent and fundamental principle behind Section 125 CrPC is for amelioration of the financial state of affairs as well as mental agony and anguish that woman suffers when she is compelled to leave her matrimonial home. The statute commands there has to be some acceptable arrangements so that she can sustain herself.....Be it clarified that sustenance does not mean and can never allow to mean a mere survival. A woman, who is constrained to leave the marital home, should not be allowed to feel that she has

¹ AIR 2015 SC 2025

fallen from grace and move hither and thither arranging for sustenance. As per law, she is entitled to lead a life in the similar manner as she would have lived in the house of her husband. And that is where the status and strata of the husband comes into play and that is where the legal obligation of the husband becomes a prominent one. As long as the wife is held entitled to grant of maintenance within the parameters of Section 125 CrPC, it has to be adequate so that she can live with dignity as she would have lived in her matrimonial home.....”

10. Likewise, again the Supreme Court in the case of **Bhuwan Mohan Singh**

v. Meena and Ors.² at paragraph No. 3 has held as under :-

“3...The concept of sustenance does not necessarily mean to lead the life of an animal, feel like an unperson to be thrown away from grace and roam for her basic maintenance somewhere else. She is entitled in law to lead a life in the similar manner as she would have lived in the house of her husband. That is where the status and strata come into play, and that is where the obligations of the husband, in case of a wife, become a prominent one.....”

11. Applying the principles of law laid down in the above-referred cases to the facts and circumstances of the present case, this court is of the opinion that the amount of maintenance provided by the court below definitely deserves enhancement. Considering the overall facts of the case particularly today's cost of living as also minimum requirement for a person to survive and as such it would be proper to enhance maintenance amount from Rs.1000/- to Rs.2000/-per month to be paid by the respondent-husband to the petitioner-wife.

12. The revision petition is accordingly allowed to the above extent.

Sd/-
(P. Sam Koshy)
Judge

inder

² AIR 2014 SC 2875