

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****Criminal Revision No. 656 of 2015**

1. Smt. Mela Bai W/o Rajkumar Aged About 36 Years R/o Village Khuntu, P.S. & Tah.L Kawardha, At Present R/o At Village Marpa, P.S. & Tah. Kawardha, District Kabeerdham Chhattisgarh
2. Balak Das S/o Raj Kumar Aged About 7 Years Through His Mother Smt. Mela Bai, R/o Village Khuntu, P.S. & Tah.L Kawardha, At Present R/o At Village Marpa, P.S. & Tah. Kawardha, District Kabeerdham Chhattisgarh
3. Amar Das S/o Rajkumar Aged About 2 Years Through His Mother Smt. Mela Bai, R/o Village Khuntu, P.S. & Tah.L Kawardha, At Present R/o At Village Marpa, P.S. & Tah. Kawardha, District Kabeerdham Chhattisgarh

**---- Applicants****Versus**

- Rajkumar S/o Bhagwat Aged About 40 Years R/o Village Khuntu, P.H. No. 18, P.S. & Tah. Kawardha, Distt. Kabeerdham Chhattisgarh

**---- Non-applicant**


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| For Applicants    | : | Mr. J.K. Shastri, Advocate    |
| For Non-applicant | : | Mr. Ashutosh Shukla, Advocate |

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**SB: Hon'ble Shri Justice P.Sam Koshy****Order On Board****05/09/2016**

1. The present Revision Petition has been preferred challenging the order dated 28.07.2015 passed by the Family Court, Kabeerdham (C.G.) in Misc. Criminal Case No. 83/2015 whereby the Court below in a proceeding under Section 127 Cr.P.C. has enhanced the maintenance amount payable to the Applicants by Rs. 100/- each

from what they were awarded in the original proceeding under Section 125 Cr.P.C. decided on 27.01.2014.

2. Learned Counsel for the Applicants submits that enhancement of Rs. 100/- each by the Court below is on the lower side and it is very hard for the Applicants to survive with the even enhanced Rs. 300/- cumulatively awarded in their favour.
3. The Counsel for the Applicants further submits that the original proceedings under Section 125 Cr.P.C. in MCC No. 218/2013 on 27.01.2014 was allowed with an amount of Rs. 500/- per month to Applicant No.1 and Rs. 400/- per month each to the Non-applicants No. 2 & 3. Subsequently, the present proceeding under Section 127 CrPC had been initiated by the Non-applicants on 16.02.2015. The Court below vide the order dated 28.07.2015 has enhanced the maintenance amount by Rs. 100/- each payable to the Applicants i.e. Applicant No. 1 was ordered for maintenance amount of Rs. 600/- in place of Rs. 500/- and Applicants No. 2 & 3 have been awarded Rs. 500/- each in place of Rs. 400/-.
4. The Counsel for the Applicants submits that if the entire amount of maintenance which have been awarded cumulatively be taken into consideration which will be Rs.1600/- for 3 persons in anybody's imagination would not be easy for three persons to sustain themselves with such pitiable amount awarded by the Court below and therefore the impugned order needs to be modified suitably.
5. Learned Counsel for the Non-applicant submits that the Applicants have not been able to prove the income of the Non-applicant and the

evidence on behalf of the Non-applicant husband was that he has no other source of income except for the agricultural income which is negligible and pitiable. Therefore the award passed by the Family Court does not warrant any interference and the same is legal and justified.

6. He further submits that the Court below has also not taken into consideration the fact that the original order passed only in year 2014 and within less than one year's time the application for enhancement has been filed, therefore there was no substantive enhancement made by the earlier award dated 27.01.2014.
7. Having considered the rival contention put forth by the counsel on either side, what is relevant at this juncture to consider is that in today's world cost of living is on higher side. It is very difficult for any person to sustain herself throughout a month with only Rs. 600/- a month which has been awarded in favour of the Applicant No.1.
8. True it is that the Applicants have not been able to establish actual income of the Non-applicant but so far as the relationship between the Applicants and the Non-applicant is concerned it is undisputed that the Applicants are wife and children of the Non-applicant. It is the duty casted upon the husband to take care of his family members and the Court below ought to have appreciated the fact that when the Application under Section 125 CrPC or for that matter under Section 127 CrPC was decided, in addition to the income of the husband the Court below should have also borne in mind the bare minimum amount required for survival at today's cost of living. Merely

because the Applicant has failed to establish the husbands monthly income does not mean that the Court below can pass a token amount to be paid as maintenance. The amount payable should be such with which the claimant can survive decently and maintain herself with reasonable standard of living.

9. Taking into consideration the entire facts and circumstances of the case, it would be proper to interfere with the impugned maintenance amount awarded in favour of the Applicants and amount so awarded stands modified to, each of the Applicants being entitled for an amount of Rs. 1000/- per month as maintenance amount.

10. It is further made clear that the said amount shall be payable to the Applicants from the date from which the application under Section 127 CrPC moved by the Applicants stood decided by the Court below.

11. With the aforesaid direction the Revision Petition stands allowed.

Sd/-

**(P. Sam Koshy)**  
**JUDGE**