

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 349 of 2016**

- Neeraj Kumar Pathak S/o Shri Premnath Pathak Aged About 33 Years R/o Village Khorpa, Tahsil - Abhanpur, District Raipur Chhattisgarh. Presently Through Commanding Officer, 165, Field Regiment, Pin-926165 C/o 56 A P O.

---- Applicant**Versus**

- Smt. Ritu Pathak W/o Neeraj Pathak Aged About 26 Years R/o Bhola Prasad Pandey, Block Colony, Abhanpur, District - Raipur Chhattisgarh.

---- Non-applicant

For Applicant
For Non-applicant

Shri P.R. Patankar, Advocate
Shri Ashish Surana, Advocate

SB: Hon'ble Shri Justice P.Sam Koshy**Order On Board****04/10/2016**

1. The present Revision Petition has been preferred under Section 19(4) of the Family Court Act assailing the order dated 17.03.2016 passed by the Principal Judge Family Court, Raipur in Criminal M.J.C. No. 712/2014.
2. By way of the said impugned order the Court below in the proceedings under Section 125 Cr.P.C. has allowed the same and has ordered for payment of maintenance to the Non-applicant wife at

the rate of Rs. 15,000/- per month.

3. A brief fact relevant for adjudication for the present Revision is that the Applicant and the Non-applicant are undisputedly husband and wife who had entered into marriage on 28.01.2012. The Applicant is working in Army and is presently posted as Sipahi. After a couple of years of marriage the relationship between the two got strained and the Non-applicant is said to have started living separately out of the matrimonial home. Later on the Non-applicant wife is said to have moved an application before the Family Court at Raipur seeking for grant of maintenance from the Applicant husband under the provisions of Section 125 of the Cr.P.C. The matter was put to trial and initially vide its order dated 24.04.2015 the Court below granted an interim maintenance to the Non-applicant wife at the rate of Rs. 10,000/- per month till the final adjudication of the main case under Section 125 CrPC. After the pleadings were complete and evidence were recorded the Court below finally vide its impugned order dated 17.03.2016 allowed the application and ordered for payment of Rs. 15,000/- per month to the Non-applicant wife. It is this order which is under challenge in the present Revision Petition.
4. Assailing the said order the Counsel for the Applicant submitted that the order of the Family Court granting maintenance is on higher side as Rs. 15,000/- is an exorbitant amount which has been awarded. Further, it was also contended by the Counsel for the Applicant that the amount of Rs. 15000/- payable to the Non-applicant wife is

beyond the paying capacity of the Applicant on account of the fact that at the time of passing of the impugned order the gross salary of the Applicant was somewhere around 34,000/- and take home salary was only 16000/- rupees, and of which if 15.000/- is given to the Non-applicant wife the Applicant would be left with no money for his self sustenance.

5. The Counsel for the Applicant in furtherance to his submission also submitted that it is the case where in fact the Non-applicant wife ought to have availed the remedies available in the department as under as the service rules governing the army personnel have its own provision for granting maintenance amount from the department in case if the Army personnel does not take care of his wife and children.
6. The Counsel for the Applicant further submitted that even if the gross salary of the Applicant husband is taken into consideration even then granting of Rs. 15000/- would be almost 45% of the total emolument which the Applicant is drawing and which also shows that an exorbitant amount of maintenance has been awarded by the Court below and thus prayed for quashing /setting aside the same.
7. Learned Counsel lastly submitted that the interim arrangement made by the Court below of Rs. 10,000/- was being duly honoured by the Applicant and the said figure was a reasonable figure and the Court below should have finalized the award at Rs. 10,000/-.
8. Learned Counsel for the Non-applicant however opposing the

Petition submits that taking into consideration the entire facts and circumstances of the case, the impugned order does not warrant any interference as it is a well reasoned and justified order passed by the Court below.

9. The Counsel for the Non-applicant wife in addition to the pleading which have come on record has during the course of the argument shown to the Court the latest pay slip of the Applicant husband wherein it clearly indicates that the monthly gross salary of the Applicant is over Rs. 45,000/- per month and according to the Counsel for the Non-applicant from the said gross salary of 45,000/- the amount awarded by the Court below is only $\frac{1}{3}$ rd of his salary and which cannot by in any stretch of imagination be construed as exorbitant or on higher side calling for interference and prayed for rejection of the same.
10. Having considered the rival contention put forth on either side and on perusal of the record would clearly reflect that indisputably as on date as is evident from the pay slip for the month of August, 2016 the salary of the Applicant is more than 45,000/- per month. Relationship between the Applicant and Non-applicant wife is that of husband and wife is not in dispute. The two persons are staying separately is also not in dispute. Also, there is no valid dissolution of the marriage till date and for all practical purposes they remain as husband and wife.
11. In the aforesaid given facts and circumstances so far as the grant of maintenance to the Non-applicant wife is concerned, she is entitled

for the same. Further more Counsel for the Applicant has not argued so far as justification of Non-applicant wife living separately is concerned and also her entitlement for maintenance amount. In these circumstances the payment awarding maintenance to the Non-applicant wife is not under question. Further what is to be seen and adjudicated is whether the amount awarded by the Court below is exorbitant or it is justified.

12. 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 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

¹ AIR 2015 SC 2025

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.....”

13. 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.....”

14. In view of the said principle laid down by the Supreme Court, this Court is of the opinion that the Court below has not committed any error of law in granting Rs. 15,000/- per month as maintenance to the Non-applicant wife. What cannot be brushed aside is the fact that apart from the salary which the Applicant husband is receiving he is also receiving the whole lot of fringe benefits which are received to an army personnel and which makes life of the army personnel more comfortable and which the Non-applicant wife would be denied on account of her staying separately and the benefit of which is being

2 AIR 2014 SC 2875

drawn by the Applicant husband. Another fact which cannot be forgotten is that on coming into force the 7 pay commission the salary of the Applicant husband would still get enhanced substantially and in the given factual background if Rs. 15000/- has been awarded to the Non-applicant wife as maintenance, the same cannot be said to be bad in law or beyond the paying capacity of the Applicant.

15. Thus, the Petition being devoid of merits deserves to be and is accordingly rejected.

16. No order as to costs.

Sd/-

**(P. Sam Koshy)
JUDGE**