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HIGH COURT OF CHHATTISGARH, BILASPUR

CRIMINAL REVISION NO. 376 OF 2016

Homeshwar Singh S/o Gopal Singh, aged about 48 years, occupation, Service, R/o Village Kodabhat, Present Address, Deepka Colony, House No. MD 126, Police Station, Deepka, Distt. Korba (CG).

... Petitioner

Versus

Meera Singh W/o Homeshwar Singh, aged about 44 years, R/o village Pacheda, Police Station & Tahsil Janjgir, Distt. Janjgir Champa (CG).

... Respondent

For Appellant	:	Ms. Indira Tripathi, Advocate.
For Respondent	:	Shri Vineet Pandey, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order On Board

27.09.2016.

1. The present revision has been preferred under Section 19(4) of the Family Courts Act assailing the order dated 23.04.2016 passed by the Family Court, Janjgir, in Case No. 184 of 2015.
2. The impugned order passed on 23.04.2016 is a proceeding under Section 127 CrPC whereby the court below has enhanced the amount of maintenance payable to the respondent-wife from Rs.1600/- to Rs. 15000/- per month.
3. The undisputed facts in the instant case is that, the petitioner and the respondent are the Husband and Wife who entered into marriage on 19.05.1991, however, after some time, the relations between the two got strained and the respondent-wife left the matrimonial home and

started living separately. Later on, the wife initiated a proceeding under Section 125 CrPC against the petitioner-husband seeking for grant of maintenance for her sustenance. The Family Court, in the year, 1998 allowed the said application under Section 125 CrPC and ordered for maintenance of Rs.750/- per month to be paid to the respondent-wife by the petitioner-husband. Subsequently, in the year, 2006, the respondent-wife moved an application under Section 127 CrPC seeking for enhancement of maintenance amount granted in the year, 1998. The Family Court vide its order dated 02.08.2007 allowed the said application under Section 127 CrPC and enhanced the maintenance amount from Rs.750/- to Rs.1600/- per month.

4. After about 8 months of time from the enhancement that was made in the year, 2007, on 16.07.2015 the respondent-wife moved another application seeking for further enhancement of the maintenance amount which was being paid to her by the petitioner-husband.
5. According to respondent-wife, in due course of time, there has been substantial increase in the salary of the petitioner-husband and further with the passage of time, the cost of living has also increased manifold and thus, it is very difficult for her to sustain with the paltry amount of Rs.1600/- which she is receiving and which was awarded in her favour in the year, 2007. According to respondent, as the petitioner-husband has received substantial growth in his salary package, she should also be given sufficient maintenance amount commensurate to the status and standard which the husband maintains. Therefore, the amount of Rs.1600/- awarded on 02.08.2007 be revised and she be paid at least

Rs. 25,000/- per month from the salary which was being received by the petitioner-husband. According to wife, in due course of time on account of pay revision, the petitioner-husband is getting gross salary of more than Rs.1,00,000/- per month and payment of Rs.25,000/- if made to the wife would not in any manner adversely affect the Husband.

6. The petitioner-Husband opposing the said application for further enhancement denied the salary part which was claimed by the wife to be of more than Rs.1,00,000/-per month. It was also contended by the Husband that the wife was also in between working as Angan Badi Worker and she is getting monthly salary of around Rs. 4000/- and with the Rs.1600/- that she is already paying, it is sufficient for maintaining herself.
7. The Court below finally vide order impugned dated 23.04.2016 after considering the salary which the petitioner-husband receives and other facts and circumstances of the case, reached to the conclusion that the amount of maintenance which the respondent-wife was receiving deserves to be enhanced and has accordingly enhanced it from Rs.1600/- to Rs.15,000/- per month. It is this order which is under challenge in this revision petition.
8. Assailing the said order of enhancement, counsel for the petitioner-husband submitted that the amount of maintenance enhanced by the court below is very exorbitant as the amount has been enhanced from Rs.1600/- to Rs. 15000/- per month which is almost 10 times of the

earlier award amount. The court below has failed to appreciate the fact that the respondent-wife was already getting an income of about Rs. 4000/- per month as Angan Badi Worker and therefore, there was evidence of their being sufficient means for her sustenance and there was no requirement of enhancement of maintenance amount at this juncture. According to petitioner-husband, the monthly salary which the respondent was drawing and with the enhanced amount of maintenance of Rs.1600/- that she was already getting together was sufficient for the wife to maintain herself, and thereafter, even if the amount had to be enhanced, it should have been enhanced marginally and it could not have been enhanced 10 times to make it Rs.15000/- from Rs.1600/- per month which was being paid to her.

9. It was also contended that the court below has also failed to appreciate the fact that the salary of the petitioner-husband as claimed by the wife was not Rs.1,00,000/-, but was only Rs.34,803/-and from which payment of Rs.15,000/- per month as maintenance to the respondent-wife would be an exorbitant figure. It was lastly contended that there were other family members of the petitioner who were dependent upon him and their responsibilities were also upon the petitioner. Thus, for all these reasons, the amount of maintenance enhanced by the court below would make it beyond the paying capacity of the petitioner and he would find it difficult to maintain himself from the remaining amount if the said order of enhancement is honoured. Therefore, the order impugned deserves to be interfered with and quashed.

10. Counsel for the respondent-wife, however, opposing the petition submits that the contention of the petitioner-husband of getting salary of Rs.34,803/- is totally incorrect and he is trying to mislead the court. According to her, an amount of Rs.34,803/- which he is referring is infact his basic salary and apart from basic salary, he is getting Dearness Allowance and other fringe benefits attached to the post. Thus, the gross salary of the petitioner comes to more than Rs. 1,00,000/- per month. Therefore, from the above amount of Rs. 1,00,000/-, if an amount of Rs. 15,000/- has been marked to be paid to the respondent-wife as maintenance, the same cannot be said to be exorbitant or on higher side. Thus, prayed for rejection of the revision.
11. Having considered the rival contentions put forth on ether side and on perusal of records, what clearly reflects from the proceedings and also from the record is that, so far as entitlement of maintenance by the respondent-wife is concerned, it stood established as early as in the year, 1998 when the original proceedings under Section 125 CrPC was allowed and an amount of Rs. 750/- per month was ordered to be paid to the wife by the petitioner. The said finding, in due course of time, has attained its finality and granting of maintenance thus has become obligatory on the part of the petitioner-husband. Further, the said amount of Rs.750/- was enhanced after about 7 years of time vide order dated 02.08.2007 to Rs.1600/- per month and which also has attained its finality. Now after about 8 years of time from 02.08.2007, the respondent-wife taking into consideration the rise in price and the cost of living getting increased each day, again moved

an application for enhancement of that amount of Rs.1600/- which she was getting since 2007. The court below, taking into consideration the salary of the petitioner-husband, enhanced the maintenance amount from Rs.1600/- to Rs.15000/- per month.

12. What is to be seen is the fact that admittedly in due course of time, the petitioner by virtue of the periodical revision of wage structure in the establishment i.e. Coal Mines has received a substantial growth in the monthly salary that he is getting. The admitted fact in the instant case is that, the petitioner-husband is working as Foreman in the E&M Department of South Eastern Coalfields Limited and the basic salary which the petitioner himself has admitted is of Rs.34,803/- which in fact he draws and with the other emoluments that he receives, the gross amount which he receives is much more than the amount what is claimed by the petitioner. Along with revision petition itself, there are certain pay slips of the petitioner and perusal of which reflects that apart from the basic salary of Rs. 34,803/- that he draws, he also gets VDA, SDA and other such fringe benefits attached to the post in the said department and the gross monthly salary of the petitioner is around Rs.75,000/-per month. Apart from the salary that the petitioner receives, he also receives other benefits which an employee of the Coal Mines is entitled for; like the facility of free quarter, electricity, water and medical facilities etc. on account of which also there is substantial saving made by the employees.
13. So far as grant of maintenance is concerned, it is by now a well settled law that the maintenance payable to the wife should always be

commensurate to the status of the husband. In the instant case, admittedly the petitioner-husband is working as a Foreman in the SECL drawing gross salary of around Rs. 75,000/-with which he maintains reasonably a good standard of living and it is expected that his wife also is entitled to maintain a reasonable standard of living commensurate to the status of her husband. Even though the respondent-wife is working as Angan Badi worker, but for the said work she gets only an amount of Rs.4000/- per month as compared to Rs.75,000/-which the petitioner-husband receives per month. In today's cost of living anybody can guess and visualize that what standard of living can be maintained with the salary of Rs.4000/- per month. Even if the amount i.e. Rs.1600/-which has been awarded to the respondent-wife way back in the year, 2007 if added to the salary of Rs. 4000/- which she draws even then, she would find it very difficult to sustain herself with total Rs.5600/-in a month particularly when her husband a Foreman in SECL whose salary package is more than Rs.75,000/- in a month.

14. 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

¹ AIR 2015 SC 2025

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 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.....”

15. 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.....”

16. In the light of the observations made by the Supreme Court in the above referred case as also the findings given by the court below, this court does not find any illegality in the order passed by the Family

2 AIR 2014 SC 2875

Court while enhancing the amount of maintenance payable to the respondent-wife from Rs. 1600/- to Rs.15000/- per month.

17. It is not the question of the maintenance being enhanced by 10 times. What is to be appreciated is the fact that what she was getting since 2007 was only Rs.1600/- which in todays time if it is divided in to the number of days in a month, it would come only to around Rs.50/- in a day which would be too paltry maintenance amount to sustain for an individual particularly when the Husband is drawing salary of Rs.75000/- per month.
18. Thus, the revision petition, being devoid of merit is liable to be and is accordingly dismissed. No order asto costs.

Sd/-
(P. Sam Koshy)
JUDGE