

HIGH COURT OF CHHATTISGARH, BILASPUR**CRIMINAL REVISION NO. 539 OF 2016**

Dinesh Jain, S/o Late Pukhraj Jain, aged about 52 years, profession- Professor P.G.B.T. College, Tarbahar, Bilaspur, R/o 19, Kajra Awasiya Parisar, Lodhipara, P.S. & P.O. Sarkanda, Bilaspur, Civil & Revenue District- Bilaspur (C.G.)

... Petitioner**Versus**

1. Manjula Jain, W/o Shri Dinesh Jain, aged about 40 years
2. Meesha Jain (wrongly mentioned in certified copy of the order as Meena), D/o Dinesh Jain, aged about 13 years, through her Natural Guardian Smt. Manjula Jain.

Both R/o House No.24, Ward No.46, Jabdapara, Bilaspur (C.G.)

... Respondents

For Petitioner	:	Mr. Vivek Chopda, Advocate.
For Respondents	:	Mr. Nirupama Bajpai, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board**24/10/2016**

1. The present revision under Section 19(4) of the Family Courts Act, 1984 has been preferred by the Petitioner assailing the order dated 5.5.2016 passed by the Family Court, Bilaspur in M.J.C. No. 224 of 2015. By the impugned order dated 5.5.2016, the Court below has in a proceeding under Section 127 of CrPC enhanced the earlier amount of maintenance, i.e, Rs.3000/-, granted to the Respondents to the tune Rs.7500/- per month.

2. Facts relevant for the adjudication of the present case are that indisputably the Petitioner and Respondent No.1 are husband and wife. It is pertinent to mention at this juncture that it was the second marriage of both the Petitioner and Respondent No.1. Down the line there was a strained relationship between them on account of which Respondent No.1 left the matrimonial home and started living separately and filed an application for grant of maintenance under Section 125 of CrPC before Family Court, Bilaspur. The said application under Section 125 of CrPC was registered as M.J.C. No. 65 of 2010 which was decided on 12.5.2010 where the Court

allowed the said application and ordered for payment of Rs.3000/- per month as maintenance to the Respondents by virtue of settlement which was entered into between the disputing parties before the Court.

3. Subsequently, in the year 2011 an application under Section 127 of CrPC was again preferred by Respondents and pending the said proceeding, again a settlement was arrived at between the disputing parties and by virtue of the said settlement it was agreed that the Petitioner shall provide for accommodation and also shall meet the expenses towards the said accommodation to be occupied by the Respondents and accordingly the said proceeding under Section 127 of CrPC got disposed of on 2.11.2011.

4. Thereafter, after about four years time, the second application for enhancement of maintenance was again filed on 4.4.2015 which has been registered as M.J.C. No. 224 of 2015. After considering the pleadings of the parties and the evidence which has come on record, the Court below allowed the said application under Section 127 of CrPC and increased the maintenance amount which was first granted that is from Rs.3000/- to Rs. 7500/- per month. It is this order which is under challenge in the present revision.

5. Counsel for the Petitioner submits that the Court below has committed an error of fact as well as on law in granting enhancement beyond the paying capacity of the Petitioner. He further assails the said order on the ground that there was no occasion for enhancement with the maintenance amount already been provided by the Court below particularly for the reason that it was the Petitioner who was bearing the expenses of the Respondents and the expenses of the residence in which the Respondents were residing and the said amount itself is a good figure and if that is added in the amount of maintenance which was otherwise being

provided to the Respondents. He further submits that the Petitioner also has got huge liabilities to abide with by virtue of which it would be difficult for his sustenance if the impugned order is complied with. He further submits that taking into consideration the peculiar facts and circumstances of the case, the impugned order deserves to be modified or recalled appropriately.

6. In addition to this, Counsel for the Petitioner assails the order of enhancement on the ground that Respondent No.1 also has her own source of income, receiving money from the All India Radio where she works part time and in addition she works as a Librarian in one of the educational institutes from where also she has sufficient income and with all these and the maintenance amount of Rs.3000/- that she was getting, it was sufficient for the Respondents for their maintenance.

7. Counsel for the Respondents however opposing the petition submits that so far as the fact that Respondent No.1 working as a Librarian is concerned, it is submitted that she was initially working as Librarian at a study centre of the Sunderlal Vishvidyalaya. However, subsequent to the shifting of the study centre to the University campus itself, the Respondent No.1 who was working as a contract labour at the said study centre has lost her employment and she is not getting any money from the said study centre. The Counsel further submits that subsequent application for enhancement being filed is after about 4 years from the earlier order dated 2.11.2011 was passed, during these four years time, the cost of living has increased substantially and which compelled the Respondent No.1 to move an appropriate application under Section 127 of CrPC for enhancement of the maintenance amount. The Counsel next submitted that taking into consideration the fact that the salary of the Petitioner is more than Rs.50,000/- per month, the enhancement made in the amount of maintenance from Rs.3000/- to Rs.7500/-, i.e., by Rs.4500/- cannot be said

to be exorbitant or on the higher side and thus prayed for the rejection of the revision petition.

8. Considering the rival contentions put forth on behalf of either side and on perusal of the records what is an admitted position is that initially the maintenance amount of Rs.3000/- per month was granted to the Respondents vide order dated 12.5.2010. Further, admitted fact is that the said order of maintenance has already attained finality as the same was passed on account of a settlement entered into between the parties. In between, indisputably, there was another proceeding under Section 127 of CrPC which too has been decided on 2.11.2011 in the light of the compromise entered into between the parties. In the light of the compromise which was arrived at on 2.11.2011, it was agreed that the Petitioner shall continue to make payment of maintenance uninterruptedly to the Respondents. Now by efflux of time that is of more than four years, since cost of living has also increased substantially the Respondents have invoked the provisions of Section 127 of CrPC and sought for enhancement of the maintenance amount. The said application moved on the part of the Respondents cannot be said to be bad in law or to be malafide in any manner. Once when the Petitioner has accepted the Respondent No.1 to be his wife and that the status of the wife has not been changed as there was no legal dissolution of the marriage from any competent Court of law and further as per the two orders passed on 12.5.2010 and again on 2.11.2011 the Petitioner has agreed for payment of regular amount of maintenance to the Respondents, he is duty bound to provide sufficient amount of maintenance with which the Respondents can maintain a decent standard of living. In addition, what is also to be borne in mind is that when the status of the Respondent is not disputed of being the wife of the Petitioner, she is entitled for such amount as maintenance with which she can maintain a

reasonably fair standard living commensurate to the status of the Petitioner which he enjoys.

9. In the given facts and circumstances of the case where admittedly the Petitioner who is working as a Professor in one of the Colleges and is getting a salary of more than Rs.50,000/-, it cannot be said that the amount of Rs.7500/- which has been enhanced from Rs.3000/- which was earlier being paid to the Respondents is exorbitant or on the higher side in any manner.

10. The impugned order does not warrant any interference and the revision accordingly stands dismissed.

Sd/-

(P. Sam Koshy)
Judge

/Sharad/