

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****CRR No. 965 of 2016**

- Smt. Anugya Mishra D/o Shri Kamal Shankar Tiwari Aged About 29 Years W/o Shri Santosh Mishra, Present R/o Chikhli, Ward No.5, Rajnandgaon, Chhattisgarh.

**---- Applicant****Versus**

- Santosh Mishra S/o Shri Jagatpal Mishra Aged About 38 Years Property Dealer & Borewell Contractor, R/o Near Radha Krishna Mandir, Sanjay Nagar , Police Station- Tikrapara, Raipur, Chhattisgarh.

**---- Non-applicant**


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| For Applicant:    | Mr. P.K.C. Tiwari, Sr. Advocate along with Mr. Kripesh G. Kela, Advocate. |
| For Non-applicant | Mr. D. Kushwaha, Advocate                                                 |

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**Hon'ble Shri Justice P. Sam Koshy****Order on Board****07.02.2017**

1. The present Revision Petition has been preferred assailing the order dated 30.08.2016 passed by the Family Court, Rajnandgaon in Misc. Criminal Case No. 44/2015. Vide the said impugned order the Court below in a proceeding under Section 125 of the Cr.P.C. has allowed the same and have ordered for Rs. 1500/- per month to the applicant as maintenance amount. It is this order which is under challenge by the Claimant seeking for enhancement of the maintenance amount.
2. Learned Counsel for the Applicant assailing the said order submits that it is the case where though the present Applicant has alleged the source of income of the Non-applicant to be more than Rs. 50,000/-

per month and the Non-applicant himself has admitted in his reply that his monthly income is around Rs. 15000/- per month. That even if Rs.15000/- is taken into consideration as income of the Non-applicant even then Rs. 1500/- awarded by the Court below is at lower side and therefore deserves to be interfered.

3. It was further contended by the Counsel for the Applicant that the amount of Rs. 1500/- awarded by the Court below is too meager an amount with which she can sustain herself particularly taking into consideration the present day cost of living.
4. Learned Counsel for the Non-applicant however opposing the Petition submits that the Non-applicant herein does not have regular source of income and in addition he has two children and other dependents also who are to be taken care of by the Non-applicant. If the amount of maintenance is enhanced he would find it difficult to sustain other persons who are solely dependent on him and he submits that the amount of Rs. 1500/- awarded by the Family Court is proper, legal and justified and does not warrant any interference.
5. Having heard the rival contention put forth on either side and on perusal of the record what is undisputed is the fact that the relationship between the Applicant and the Non-applicant of husband and wife is not under challenge. Further it is also not in dispute that the relationship between the two got strained. It is also not in dispute that for compelling reasons the present Applicant has left the matrimonial home and started living separately. Further what is also not in dispute is the order dated 30.08.2016 under Section 125 Cr.P.C. granting maintenance to the Applicant has not been challenged by the Non-

applicant husband any further. Thus, the order awarding maintenance has attained finality.

6. The only issue which has been raised before this Court is the quantum of amount awarded by the Court below. Another aspect which has been raised is the applicability of the maintenance amount which should have been awarded from the date of application and not from the date of order of the Court below.
7. From the reply which has been filed before the Court below there is categorical admission on part of the Non-applicant before the Court below that his income is Rs. 15000/-. Another aspect which cannot be brushed aside is the fact that the Non-applicant husband after filing his reply did not contest the case on merits and thus the Court below was compelled to proceed further *ex parte* against the Non-applicant and passed the order granting maintenance which has not been further challenged by the Non-applicant husband before any forum of law. Therefore, evidence adduced by the Applicant has not been rebutted neither has she been cross examined nor is there an effective denial on his part in respect of the contention that she has raised. Further what is also to be borne in mind is that it is any body's guess as to what would be a reasonable amount required for a person to sustain himself for leading a decent standard of life coupled with other basic necessities of life for sustenance. The amount of Rs. 1500/- which has been awarded by the Court below is definitely too meager an amount with which the applicant could sustain herself in the present days cost of living. If the said amount is distributed among 30 days of a month it comes to just Rs. 50/- a day i.e. which is too insufficient an amount

with which one can manage the daily basic requirement in the high cost of living of present day.

8. Taking into consideration the admission on part of the Non-applicant in his reply before the Court below an amount of Rs. 15000/- to be his monthly income, this Court is of the opinion that ends of justice would meet if the amount of maintenance is enhanced from Rs. 1500 to Rs. 3000/- per month.
9. It is also ordered that the said amount of Rs. 3000/- shall be payable to the present Applicant from the Non-applicant husband with effect from the date of application that was made under Section 125 of the Cr.P.C before the Court below.
10. Thus, the present Revision Petition stands allowed and the impugned order dated 30.08.2016 stands modified to the extent that the present Applicant shall be entitled for maintenance for an amount of Rs. 3000/- per month as maintenance amount and shall be applicable from the date the application was moved before the Court below.

Sd/-

(P. Sam Koshy)  
**JUDGE**