

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL REVISION NO. 35 OF 2017

Hariprasad Dixena, S/o Bhagwat, aged about 52 years, occupation-Teachership, R/o Madan Chowk, Pali, P.S. & Tah. Pali, District Korba (C.G.)

... Applicant

Versus

1. Dorpati Bai, W/o Hariprasad, aged 29 years.
2. Rashmi, D/o Hariprasad, aged 13 years.
Through, legal Guardian Dorpati Bai, W/o Hariprasad, both are R/o Windhyavasini Ward, Kawardha, Tah. Kawardha, District Kabirdham (C.G.)

... Non-applicants

For Applicant : Mr. Ishwar Jaiswal, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

31/01/2017

1. The present Criminal Revision under Section 19(4) of the Family Courts Act has been preferred by the Applicant assailing the order dated 8.12.2016 passed by the Family Court, Kabirdham, in Misc. Criminal Case No. 706 of 2016 and Misc. Criminal Case No. 633 of 2016.
2. Vide impugned order dated 8.12.2016, the Court below has rejected the application under Section 127 of CrPC preferred by the present Applicant whereas the application under Section 127 of CrPC preferred by the present Non-applicants seeking for enhancement of the maintenance amount has been allowed and the maintenance amount payable to Non-applicants No. 1 and 2 has been enhanced from Rs.5000/- to Rs.10,000/- to be distributed between the two in the ratio of Rs.5,500/- to non-applicant No.1/wife and Rs.4,500/- to non-applicant No.2/minor daughter.
3. Learned Counsel for the Applicant submits that it is a case wherein the Court below has been entertaining the application for enhancement of the maintenance amount at very frequent interval and the maintenance amount has also been enhanced much beyond the paying capacity of the

applicant/husband. He further submits that it is a case where admittedly the present Applicant is working as a Teacher under the State Government. However, at a short span of one year the Non-applicants have moved fresh application for enhancement of the maintenance amount which should not have been entertained by the Court below but should have been refused or rejected. According to the Counsel for the Applicant, because of the strained relationship with the Non-applicants, the present Applicant has in between got married and has also got two children and his wife to be taken care of and that the amount of maintenance which has been enhanced by the Court below would be beyond his paying capacity and he would find it difficult in maintaining himself and the other persons who are dependent upon him with the balance amount. In addition, there are also certain statutory deductions which are made from his salary. Thus, for all these reasons, the amount of Rs.10,000/- which has been enhanced by the Court below may kindly be interfered with and reduced suitably.

4. Having considered the contentions put forth by the Counsel for the Applicant and on perusal of the record what clearly reflects is that, originally an application under Section 125 of CrPC was preferred and which got disposed of by way of a compromise that was entered into between the parties, on 7.5.2006, and it was agreed by the present Applicant to pay an amount of Rs.400/- to non-applicant No.1/wife and Rs.1200/- to non-applicant No.2/minor daughter, total amounting to Rs.1600/-. Subsequently, in the year 2015, an application for enhancement was filed by the Non-applicants which was allowed vide order dated 15.9.2015 and the amount of maintenance was enhanced from Rs.400/- to Rs.3000/- in favour non-applicant No.1/wife and from Rs.1200/- to Rs.2000/- in favour of non-applicant No.2/minor daughter and thus total Rs.5000/- was enhanced in favour of the Non-applicants. Meanwhile, the applicant/husband moved an application under Section 127 of CrPC before the Court below seeking for reduction of the amount of

maintenance vide application dated 28.9.2016. Immediately, thereafter, the Non-applicants also moved an application before the Court below for further enhancement of the maintenance amount vide their application dated 26.10.2016. The application moved by the Non-applicants has been registered as Misc. Criminal Case No. 706 of 2016 and the application filed by the Applicant has been registered as Misc. Criminal Case No. 633 of 2016. Vide impugned order dated 8.12.2016, it these two applications which have been decided by the Court below and the Court below has rejected the application moved by the applicant/husband for reduction of the maintenance amount and at the same time the application moved by the Non-applicants seeking for further enhancement has been allowed. The total amount of Rs.5000/- which was earlier ordered to be paid as maintenance to the Non-applicants, has been enhanced from Rs.3000/- to Rs.5,500/- in favour of non-applicant No.1/wife and from Rs.2000/- to Rs. 4,500/- in favour of non-applicant No.2/minor daughter. Thus, the enhancement has been made from Rs.5000/- to a total of Rs.10,000/- in favour of the Non-applicants, which is under challenge in the present Criminal Revision.

5. Counsel for the Applicant has fairly admitted that the salary of the Applicant undisputedly being a Teacher under the State Government is more than Rs.40,000/-. Therefore, if Rs.40,000/- is taken as a salary of the Applicant and then if the amount of maintenance which has been awarded is taken into consideration, it is only 1/4th of the salary of the Applicant which has been ordered to be paid to the two Non-applicants, i.e., the wife and minor daughter. Another aspect which cannot be brushed aside is the fact that the Non-applicant No.2, i.e., the minor daughter, is a school going girl, aged about 13-15 years, and that at this age, her educational expenses is definitely much higher as compared to the earlier periods.

6. Further, it is a settled position of law that the maintenance amount payable should always be commensurate to the paying capacity and the status of the husband. In the instant case, undisputedly, the applicant/husband is a government Teacher. Therefore, the maintenance amount should be commensurate to the status of a government Teacher and it should be an amount with which the claimant can have a decent standard of living. Keeping this in view, if 1/4th of the salary of the Applicant is given for the maintenance of his wife and minor daughter, it can by no stretch of imagination be said to be either exorbitant or on the higher side.

7. In the given facts and circumstances of this case, this Court is of the opinion that no strong case has been made out calling for interference with the impugned order.

8. The Criminal Revision being totally devoid of merits the same is accordingly dismissed.

Sd/-
(P. Sam Koshy)
Judge