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HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL REVISION NO. 25 OF 2017

Smt. Rekha Bai, W/o Gaurishankar Dixena, aged about 50 years, R/o Seepat Chowk, Sarkanda, Police Station- Sarkanda, Tahsil, Civil and Revenue District Bilaspur (C.G.), present address Village- Mungadih, Police Station- Pali, Tahsil- Pali, District Korba (C.G.)

... Petitioner

Versus

Gaurishankar Dixena, S/o Late Shivnath Dixena, aged about 52 years, R/o Village Mungadih, Police Station- Pali, Tahsil- Pali, Civil and Revenue District Korba (C.G.)

... Respondent

For Petitioner	:	Mr. Rohitasva Singh, Advocate.
For Respondent	:	Mr. Ravish Verma, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

17/02/2017

1. The present Criminal Revision under Section 19(4) of the Family Courts Act, has been preferred by the Petitioner assailing the order dated 7.12.2016 passed by the Judge, Family Court, Camp Court Katghora, District Korba, in M.J.C. No. 351 of 2015.
2. Vide impugned order dated 7.12.2016, the Court below in a proceeding under Section 127 of CrPC has enhanced the maintenance payable to the Petitioner by the Respondent from Rs.1000/- to Rs.2000/- per month.
3. It is case where the challenge is made on the ground that the amount of maintenance is not sufficient and the impugned order deserves to be modified suitably so that the Petitioner can get a sufficient amount with which she can maintain a decent standard of living.
4. The undisputed facts in the instant case are that, the present Petitioner and the Respondent were married somewhere in the year 1978-79. However, subsequently, due to strained relationship between the two they got separated and it is alleged that the parties has also got mutual divorce. In the year 1995, an application under Section 125 of CrPC was moved by the Petitioner against

the Respondent seeking maintenance, which was registered as M.J.C. No. 14 of 1995. The said application was allowed on 17.12.1995 and it was ordered that the Respondent shall be liable to pay an amount of Rs.400/- per month to the Petitioner.

5. Subsequently, in the year 2000, the Petitioner again filed an application under Section 127 of CrPC seeking for enhancement of the said amount of maintenance, which was registered as M.J.C. No. 39 of 2000. The said case was also allowed vide order dated 12.12.2002. Vide the said order, the amount of maintenance was enhanced from Rs.400/- to Rs.1000/-.

6. After about 13 years, the subsequent application under Section 127 of CrPC was filed seeking for a further enhancement of the maintenance, which was registered as M.J.C. No. 351 of 2015 before the Family Court, Korba. It is this case which stands decided vide the impugned order dated 7.12.2016 whereby the amount of maintenance has been enhanced from Rs.1000/- to Rs.2000/- per month, which is under challenge in the present Criminal Revision.

7. Learned Counsel for the Petitioner submits that the amount of maintenance made by the Court below is too meagre. Counsel for the Petitioner relying upon the judgment of Hon'ble Supreme Court rendered in the case of *Bhuwan Mohan Singh v. Meena & Others* [2015 (6) SCC 353] has prayed for a maintenance with which the Petitioner can maintain a decent standard of living. He submitted that the maintenance to be awarded to the wife should be commensurate to the status of the husband and the salary and paying capacity of the husband, which in the instant case has not been properly construed by the Court below and thus he prayed for a suitable modification of the impugned order.

8. Learned Counsel for the Respondent takes a preliminary objection that the proceeding under Section 127 of CrPC being interlocutory in nature is not

appealable under Section 19(4) of the Family Courts Act and therefore the criminal revision is not maintainable and that the proper remedy available to the Petitioner is that of filing of a writ petition. The second ground of defence is, that the liabilities which are upon the Respondent also should be borne in mind by the Court and which has been taken into consideration by the Court below while allowing the application under Section 127 of CrPC. According to the Counsel for the Respondent, the Respondent has the liability of taking care of his aged mother, disabled sister and his son and daughter born from the present Petitioner and also the subsequent wife with whom he has remarried. Thus, there are five persons totally dependent upon him and the expenses for their sustenance are huge. In addition, his two grown up children are undergoing educations which also incur huge expenses and therefore there is no scope of any enhancement to the amount which has been granted by the Court below. He thus prayed for the rejection of the criminal revision.

9. So far as the objection of the Counsel for the Respondent of the present criminal revision being not maintainable, this Court at this juncture would like to refer to the decision of the Madhya Pradesh High Court reported in 2004 (2) M.P.L.J. 101 (*Aruna Choudhary v. Sudhakar Choudhary*) in which under similar circumstances while dealing with the objection it was held that, in a proceeding under Section 125 as also under Section 126 the only remedy to challenge is by filing of a criminal revision before the High Court and that too would be heard by a Single Bench. The said judgment of the Madhya Pradesh High Court was based upon a series of decisions of different High Courts as also the Supreme Court. Applying the same principle and analogy what is also to be construed is the fact that the proceeding under Section 127 is for modification of the earlier order and an application under Section 127 can be periodically filed. It could be filed either by the wife for seeking enhancement or it can be filed by the husband seeking for stoppage of the maintenance to

be paid. Since it is an application which can be made at a regular interval, the said order would automatically become revisable and it cannot be said to be interlocutory in nature. Thus, the objection so raised by the Counsel for the Respondent stands overruled in the light of the aforesaid decision.

10. So far as the dependency of the Respondent is concerned, it is undisputed that the Respondent may have the liability and responsibility of taking care of his next of kin like; his mother, disabled sister as well as his children and the second wife. But, all these would not disentitle his first wife an amount reasonable for maintaining herself, as she otherwise is entitled for maintenance.

11. So far as the grant of maintenance is concerned, Counsel for the Respondent has fairly submitted that the Petitioner is entitled for maintenance and for the reason that the proceeding under Section 125 of CrPC was never questioned by the Respondent, he submits that it is only the quantum which has to be decided by this Court and this Court should bear in mind the responsibility and liability of the Respondent also.

12. At this juncture, it would be relevant to refer to the decision of the Hon'ble Supreme Court in the case of *Bhuwan Mohan Singh* (supra) wherein, in paragraph 2, the Supreme Court has held as under:

“2. ...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...”

The said decision has been made also relying upon the observations of the Supreme Court in *Chaturbhuj v. Sita Bai* [2008 (2) SCC 316]. The Supreme Court in the case of *Bhuwan Mohan Singh* (supra) has referred to the said judgment in paragraph 10, which for ready reference is reproduced herein under:

“10. In *Chaturbhuj v. Sita Bai*, reiterating the legal position the Court held:

“Section 125 CrPC is a measure of social justice and is specially enacted to protect women and children and as noted by this Court in *Captain Ramesh Chander Kaushal v. Veena Kaushal* falls within constitutional sweep of Article 15(3) reinforced by Article 39 of the Constitution of India. It is meant to achieve a social purpose. The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife. It gives effect to fundamental rights and natural duties of a man to maintain his wife, children and parents when they are unable to maintain themselves. The aforesaid position was highlighted in *Savitaben Somabhai Bhatiya v. State of Gujarat.*”

13. The authoritative decision of the Supreme Court in the aforesaid two decisions by itself makes it clear that the amount of maintenance which the wife is entitled for, should be commensurate to the paying capacity of the husband as also commensurate to the status of the husband. In the instant case, the undisputed fact as per the reply of the Respondent before the Court below itself is that he is a Lecturer with the State Government and that his gross salary in the year 2013 itself was more than Rs 40,000/- per month. By efflux of time and revision of pay, the salary must have increased in due course of time. Now, if the amount of maintenance which has been granted to the Petitioner by the Court below which is only Rs.2000/- a month, if distributed between 30-31 days of a month which the Petitioner would be getting per day is somewhere around Rs.67-70 per day which is too meager an amount with which a person can meet the basic necessity of food, shelter and clothing required for sustaining a person. Even a labourer today earns more than Rs.200/- a day which comes to around Rs.6000/- a month and the amount of maintenance to a wife whose husband is drawing a salary of more than Rs.40,000/- a month fixed at Rs.2000/- by the Court below is definitely not acceptable. The amount ought to have been something reasonable with which the wife could have maintained a decent standard of living. Thus, the impugned order deserves for modification. In the opinion of this Court, the

amount of maintenance which the Petitioner is entitled for deserves to be enhanced at least to Rs.5000/- a month.

14. Accordingly, the impugned order is modified to the extent that the amount of maintenance stands enhanced from Rs.2000/- to Rs. 5000/-. The present Criminal Revision stands accordingly allowed.

Sd/-
(P. Sam Koshy)
Judge

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