

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 132 of 2017

- Manoj Gupta S/o Shri Mahaveer Gupta, Aged About 33 Years R/o Kunkuri Road Kansabel Police Station Kunkuri, Civil And Revenue District Jashpur Chhattisgarh

---- Applicant

Versus

1. Smt. Narmada Gupta W/o Shri Manoj Gupta, Aged About 27 Years Minor Through Natural Guardian Mother Smt. Narmada Gupta, R/o Village Kudekela, Thana Chhal, Tahsil Dharamjaygarh, District Raigarh Chhattisgarh
2. Master Yash (Chissu) S/o Shri Manoj Gupta, Aged About 3 Years Minor Through Natural Guardian Mother Smt. Narmada Gupta, R/o Village Kudekela, Thana Chhal, Tahsil Dharamjaygarh, District Raigarh Chhattisgarh

---- Respondents

For Applicants : Mr. Sunil Sahu, Advocate

For Respondents : Mr. J.A. Lohani, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order on Board

19-5-2017

1. This revision is against the order dated 18-10-2016 passed by 2nd Additional Sessions Judge, Raigarh in Criminal Revision No.20220000043/2016, whereby the petition filed by the respondents for grant of maintenance is allowed.
2. The short facts of the case are that the respondents have preferred an application under Section 125 of the Cr.P.C., before the Judicial Magistrate First Class seeking maintenance of Rs.6,000/- per month for wife/respondent No.1 and Rs.4,000/- per month for son/respondent No.2 in the year 2009. Before the court below in such application for maintenance, the evidence of the applicants

was closed and subsequently the evidence of respondent/husband was partly recorded. Subsequently, after such evidence, an application under Order 6 Rule 17 of the Cr.P.C. was filed seeking enhancement of the claim on the ground that the husband had different means of income whereby he was earning Rs.3,50,000/- per month. Consequently, by such amendment application she claimed maintenance of Rs.1,50,000/- per month for wife and son. The said application was dismissed by order dated 5-3-2016 on the ground that the application was belated and not tenable. Against such order, a revision was preferred by the wife and son and the revisional Court allowed the same petition. Feeling aggrieved and dissatisfied with the said order, the applicant has preferred the instant revision petition.

3. Learned counsel appearing for the applicant would submit that the application for amendment seeking enhancement of compensation was filed at very belated stage after evidence of the applicant and the said application having been filed at belated stage cannot be considered. It is further submitted that the applicants/wife and son were at liberty to move a suitable application at an appropriate stage under Section 127 of the Cr.P.C., therefore, filing of the application like the nature of amendment was not tenable and the court below has failed to exercise its jurisdiction, therefore, the order dated 18-10-2016 passed by the court below be set aside.
4. On the other hand, learned counsel appearing for the respondents would submit that despite the order of interim maintenance, meager amount was paid in periodical intervals. He would further submit that when evidence of the wife was adduced, she could know the capacity of the husband to earn and source was much higher, then

it is prayed for, therefore, in order to avail just compensation, an application was filed which was eventually allowed by the revisional Court and there is no perversity in the order of the revisional Court.

5. Perused the order dated 18-10-2016 which shows that an application under Section 125 of the Cr.P.C., was filed by wife and son against husband on 8-9-2009. Initially income of the husband was projected of Rs.50,000/- per month wherein an amount of Rs.10,000/- per month was claimed towards maintenance for wife and son. The evidence of the wife was adduced on 4-12-2012 and thereafter the case was fixed for recording the evidence of non-applicant/husband. It appears that evidence of non-applicant could not be adduced and eventually on 6-8-2015 an application claiming enhancement was filed wherein it is stated that the income of the husband inflated to the extent of Rs.3,50,000/- per month and consequently enhancement of compensation of 1,50,000/- per month towards maintenance for her and son was claimed.
6. Perusal of the order of the court below would show that certain documentary evidence was also filed to support the same.
7. Considering the fact that initially an application under Section 125 of the Cr.P.C., was filed in the year 2009 and the proceeding continued till the date of filing of the amended petition on 6-8-2015, it can be reasonably presumed that income inflated from the date of filing of the application in the year 2009, therefore, certainly such amount of compensation can also be asked for. In this case, it appears that respondent has not adduced any evidence and still he is free to rebut the same.
8. Taking into totality of the case, I do not find any illegality or perversity in the order passed by the revisional Court which is

within its scope and had not acted exceeding jurisdiction or failed to exercise jurisdiction vested in it.

9. Consequently, the revision petition has no merits and it is accordingly dismissed.

Sd/-
(Goutam Bhaduri)
Judge

Raju