

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 822 of 2012**

1. Ku. Nida Naz D/o Shahjade Ezaz Aged About 11 Years
2. Ku. Iffat D/o Shahjade Ezaz Aged About 8 Years

Both Minors Through Natural Guardian Mother Shabnam D/o A.M. Siddiqui
R/o Housing Board, LIG 57, Industrial Area, Bhilai C.G.

Through Power of Attorney A.M. Siddiqui S/o A.R. Siddiqui, aged 59 years,
R/o LIG -57, M.P. Housing Board Colony, Bhilai, Tah. & Distt. Durg (C.G.)

----Applicants**Versus**

- Shahjade Ezaz S/o Gulam Faruq R/o Nayapara, Shankar Chowk, Distt. Raipur C.G.

---- Respondent

For Applicants	:	Ms. Fouzia Mirza, Advocate
For Respondent	:	Shri M.L. Sen & Shri Durgesh Goyal, Advocates

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****13/10/2017**

1. This revision is directed against the order dated 26.08.2009 passed in MJC No. 76/2009 whereby the application to enhance the amount of maintenance of Rs.1500/- to each of the applicants, was dismissed.
2. The facts as would reveal from records shows that the applicants who were indisputably the minor daughters of the respondent had initially filed the MJC bearing No.128/2004 while they were aged about 5 years & 3years respectively. On such application being filed, on 18.10.2004 the amount of Rs.1500/- to each of the children totaling to Rs.3000/- was allowed. Subsequently, on 31.12.2008 an application under Section 127 of Cr.P.C.

was filed. Wherein both the applicants claimed that the quantum of maintenance which has been awarded to the children is inadequate taking into consideration the expenses with the age has increased. Consequently, a prayer was made that the same may be enhanced to Rs.3000/- each amounting to Rs.6000/-. The said application was prosecuted on behalf of minors by A. M. Siddiqui, who was the maternal grandfather of the applicants. Learned Court below taking into the statement of the respondent/father Shahjade Ezaz that he was able to save only Rs.6000/- from his monthly salary and he was looking after his father, wife and another children and accepted the version of the respondent and dismissed the application under Section 127 of the Cr.P.C. filed by the children for enhancement.

3. Learned counsel for the applicant would submit that the respondent is working as Lecturer in Government J.R. Dani Girls Higher Secondary School, Raipur and the pay-slip of the year 2015 as has been placed on record would show that he was getting the gross salary of Rs.52567/- and net salary of Rs.47387/- the then in the year 2015. It is further contended that on earlier occasion also in the month of December the matter was heard before the other Bench and the respondent was directed to place on record the recent salary slip and also deposits if any made in the name of the daughters. However, the same was not complied till date. Consequently, the entitlement of the minor children has suffered and accordingly it should be enhanced looking to the increase in prices of various commodities.
4. Per contra, learned counsel for the respondent submits that there are other three dependents on the respondent including wife, children & father and father is ailing, therefore, it would not be proper to enhance the amount of

maintenance.

5. Perused the record of the court below. Perusal of the order would show that the entire refusal to enhance the amount of maintenance is based on the sole testimony of the respondent. The order dated 09.12.2016 passed by this Court would show that the respondent was directed to produce the recent salary-slip for the month of November, 2016 payable in December, 2016 showing his total emoluments and deductions therefrom. He was also directed to inform that whether he is depositing any amount in the name of his daughters or not and was further directed to place on record the relevant pass-book of the bank. From the last date of order of December, 2016, 10 months have passed and nothing has been placed on record by respondent father.
6. The copy of the pay-slip which has been placed on record by the applicants shows that the gross salary of the respondent in the year 2015 was Rs.52567/- and net salary was Rs.47387/-. It is not disputed by the parties that the respondent is working as a Lecturer in Government J.R. Dani Girls Higher Secondary School, Raipur.
7. In view of the fact that the respondent failed to place on record the salary-slip, which was directed to be produced by the Court, the Court is constrained to take the adverse inference and accept the document filed by the applicants, which shows that in the year 2015 net salary of the respondent after deduction was Rs.47387/-. Learned trial Court as appears instead of evaluating actual income of respondent completely relied on the deduction slip, which was placed by the respondent during the proceeding under Section 127 of the Cr.P.C. The fact that the respondent is working in a government school, the salary-slip which has been produced by the

applicants appears to be reasonable qua the quantum of salary which is being received by him. No document has been filed by the respondent to show that how much amount is being deposited in the account of the daughters. In view of the same, the initial order of maintenance which was passed on 18.10.2004 requires to be altered in view of the changed circumstances. The court cannot ignore that the inflation which is existing in the society and increase of the price index and various commodities and the judicial notice can be taken of that. The salary-slip though is of the year 2015 is placed and even if taking the salary according to that, the amount is shown to be of Rs.47387/-. The respondent has failed to produce the recent salary slip to show the actual salary is being received. It appears that the respondent is trying to avoid to show the different enhancements in the salary with other emoluments. The salary slip of the year 2015 also shows that considerable payment was being drawn. As the time has rolled by and amount as was originally granted cannot be said to be satisfactory as compared to the salary drawn by the respondent. Therefore, it would be just and proper to enhance the amount of maintenance to the daughters to the extent of Rs.5000/- each, considering the facts in entirety i.e. the sale of salary and inflation of prices. Accordingly, it is ordered that the respondent shall pay an amount of Rs.10000/- i.e. Rs.5000/- each to the two minor daughters until further orders. The necessary amount shall be deducted from the salary of the respondent.

8. With the above observation, the revision stands finally disposed off.

Sd/-

Goutam Bhaduri
Judge

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