

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 188 of 2017**

Rajesh Kumar Mishra S/o Late Shri Chandrika Prasad Mishra, aged about 41 years, Occupation Govt. Service, Clerk, Up-Sanchalak Pashu Chikitsa Sevaya, Janjgir R/o Village/Thana/Tahsil - Janjgir, District Janjgir Champa, Chhattisgarh.

---- Applicant

Versus

Smt. Madhuri Mishra W/o Shri Rajesh Kumar Mishra, Aged About 37 Years Occupation Grihani, R/o Village, Thana, Tahsil Champa, District Janjgir Champa, Chhattisgarh.

---- Respondent

For Applicant : Shri Bharat Rajput, Advocate.

Hon'ble Shri Justice P.Sam Koshy**Order On Board****15/02/2017**

The present Criminal Revision has been preferred assailing the order dated 23.01.2017 passed in M.J.C No. 452 of 2007 whereby the Family Court, Janjgir, District Janjgir-Champa (CG) in a proceeding under Section 127 CrPC has enhanced the maintenance amount from Rs.1,000/- to Rs. 3,000/- payable to the respondent w.e.f. the date of application under Section 127 of Cr.P.C. was filed i.e. from 30.08.2007.

2. Counsel for the applicant submits that the impugned order is bad in law on the ground that the Court below has allowed the application under Section 127 CrPC from the date of filing of the application i.e. 30.08.2007. He submits that the present

applicant alone cannot be held liable for the delayed litigation and that the cause of delay in finalisation of the litigation also has been on the respondent and therefore, the present applicant should not be saddled with the liability for making payment with retrospective effect which would be detrimental to the interest of the applicant. He further submits that in the instant case there is no factor by which it could be said that the delay occurred because of the fault only on the part of the present applicant. That in the absence of any fault on the part of the applicant, the making of the order effective from a back date is not proper and deserves to be interfered. Counsel for the applicant assails the impugned order on the ground that the amount enhanced by the Court below is also on the higher side and it is much beyond the paying capacity of the applicant. According to the counsel for the applicant, the Court below has not appreciated the fact that the wife is also working with one Sarda Indane Gas at Champa and she has definitely enough source of income to sustain and therefore she should not be entitled for any enhancement. According to him, the Court below has not considered the evidence relating to the employment of the respondent. They had produced sufficient material to show that the wife at many places has been shown as the Manager of the said Gas Agency, therefore, she must be having a handsome salary and there was no occasion for enhancement of the maintenance amount earlier awarded by the Court below. Thus, prayed for setting aside of the impugned award.

3. Having considered the contentions put forth by the counsel for the applicant and on perusal of the record what is an admitted fact is the present applicant and the respondent being husband and wife and the relationship of husband and wife is not under challenge nor is disputed by the applicant. The other admitted fact is that the respondent had initially filed a proceeding under Section 125 CrPC along with her son which was decided in the year 2001. In the said proceeding, the Family Court had ordered for payment of Rs.1,000/- as maintenance to the respondent and

Rs.700/- to the child born between the applicant and the respondent. In due course of time, since the child had crossed the age of majority, the liability of payment of maintenance to the son stood extinguished. Subsequently, an application for enhancement was filed by the respondent somewhere in the year 2004-05 but the same was rejected at the first instance by the Court below. Thereafter, a fresh application for enhancement was filed on 30.08.2007 which was entertained. In the said proceeding, the present applicant is said to have moved an application taking preliminary objection of the maintainability of the second application under Section 127 of CrPC which was allowed and the claim application of the respondent was rejected by the Court below vide order dated 19.04.2011. This rejection order dated 19.04.2011 was subjected to challenge in Criminal Misc. Petition No. 733/2011 which was allowed by this Court on 29.03.2012 holding that the rejection of the claim application under the principle of *res-judicata* was bad in law and therefore remitted the matter back to the Principal Judge, family Court, Janjgir for deciding the case afresh. Thereafter, proceedings were initiated again and now the impugned order has been passed enhancing the maintenance amount from Rs.1,000/- to Rs.3,000/- payable to the respondent w.e.f. 30.08.2007 i.e. from the date on which the application under Section 127 CrPC was moved.

4. It is relevant to point out at this juncture that this Court in Criminal Revision No. 696/2015 decided on 13.05.2016 (Navinchandra V. Smt. Jayanti Ba) has already dealt with the said issue and reached to the conclusion that it is the discretionary power of the Court below to decide as to from which date the payment of maintenance should be given. It is also relevant to refer to the decision of the Hon'ble Supreme Court in the case of Bhuwan Mohan Singh v. Meena and Others reported in (2015) 6 SCC 353 wherein in para-16 the Supreme Court has held as under:

“In the present case, as we find, there was enormous delay in disposal of the proceeding under Section 125 of the code and most of the time the husband had taken adjournments and sometimes the court dealt with the matter showing total laxity. The wife sustained herself as far as she could in that state for a period of nine years. The circumstances, in our considered opinion, required grant of maintenance from the date of application and by so granting the High Court has not committed any legal infirmity. Hence, we concur with the order of the High Court. However, we direct, as prayed by the learned counsel for the appellant, that he may be allowed to pay the arrears along with the maintenance awarded at present in a phased manner. The learned counsel for the respondents did not object to such an arrangement being made. In view of the aforesaid, we direct that while paying the maintenance as fixed by the learned Family Court Judge per month by 5th of each succeeding month, the arrears shall be paid in a proportionate manner within a period of three years from today.”

5. In view of law laid down by the Supreme Court in the aforesaid case of Bhuwan Mohan Singh, this Court is of the opinion that the finding of the Court below holding the respondent entitled for enhanced payment of maintenance from the date of application cannot be said to be illegal. Once the payment of maintenance part is not disputed, taking into consideration that the previous maintenance was awarded about ten years back and if now the maintenance amount is sought to be enhanced from the date of application under Section 127 CrPC, the same cannot be said to be in any manner illegal. Thus, this Court does not find any strong reason for interference with the impugned order.

6. Only because the wife in between has secured an employment to sustain a decent standard of living, would not itself become detrimental of her claim seeking maintenance from her husband.

7. Accordingly, the present Criminal Revision being devoid of merit stands dismissed.

Sd/-

(P. Sam Koshy)
JUDGE