

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 262 of 2017**

- Blasiyus Kerketta S/o George Karketta R/o Town & Country Planing Surveyar, Housing Board Colony, Raigarh, District Raigarh, Chhattisgarh.

---- Applicant**Versus**

- Smt. Deepmala Kerketta W/o Blasiyus Kerketta Aged About 31 Years R/o Village Dokda, Police Station Kansabel, District Jashpur, Chhattisgarh.
- Abhisarika Kerketta S/o Blasiyus Kerketta Aged About 10 Years Through Natural Guardian I.E. Mother Namely Smt. Deepmala Kerketta, R/o Village Dokda, Police Station Kansabel , District Jashpur, Chhattisgarh.

---- Non-Applicants

For Applicant	:	Shri Manoj Paranjpe and Shri Abhishek Vinod Deshmukh, Advocates
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SB: Hon'ble Shri Justice P. Sam Koshy
Order On Board

07/03/2017

1. The present Revision Petition has been preferred under Section 19(4) of the Family Court Act assailing the order dated 23.12.2016 passed by the Judge Family Court, Jashpur in Miscellaneous Criminal Case No. 80/2015.
2. By way of the said impugned order, the Court below in a proceeding under Section 127 of the Code of Criminal Procedure, 1973 (for short, 'the Code') has allowed the application and enhanced the maintenance amount from Rs.2,000/- to Rs.6,000/- payable to the Non-Applicants.

3. The Applicant in the instant case has challenged the impugned order on two grounds. Firstly, it is alleged that the Court below has committed an error in allowing the application from the retrospective date i.e. from the date of filing of the application 21.08.2014. Learned counsel for the Applicants submits that the Court below could not have made the order effective from a retrospective date while allowing the application for enhancement of maintenance under Section 127 of the Code and prayed that the same should only be prospective. He relied upon the judgment of High Court of Madhya Pradesh in the case of **Ramaji Vs. Shanti Bai** decided on 18.10.2016.
4. The second contention of the Applicant was that the enhancement of maintenance was also exorbitant as vide order impugned, Rs.2,000/- has been enhanced by 3 times and has become Rs.6,000/- which is also on the higher side, the same requires reconsideration. Learned counsel for the Applicant further tried to emphasis the fact that meanwhile a decree of divorce has been passed on the ground of cruelty and desertion between the Applicant and Non-Applicant No.1, that should also be a ground for dis-entitling grant of maintenance to the Non-Applicants.
5. Dealing with the first issue as to whether the Court below has justified in making the order under Section 127 of the Code effective from a retrospective date i.e. from the date of application which is 21.08.2014 is appropriate, legal or justified, we may refer to the provisions under Section 127 of the Code first. Section 127 of the Code reads as under :

“127. Alteration in allowance. (1) On proof of a change in the circumstances of any person, receiving, under section 125 a monthly allowance, or ordered

under the same section to pay a monthly allowance, to his wife, child, father or mother, as case may be, the Magistrate may make such alteration, as he thinks fit :

Provided that if he increases the allowance, the monthly rate of five hundred rupees in the whole shall not be exceeded.

(2) Where it appears to the Magistrate that, in consequence of any decision of a competent Civil Court, any order made under section 125 should be cancelled or varied, he shall cancel the order or, as the case may be, vary the same accordingly.

(3) Where any order has been made under section 125 in favour of a woman who has been divorced by, or has obtained a divorce from, her husband, the Magistrate shall, if he is satisfied that-

(a) the woman has, after the date of such divorce, remarried, cancel such order as from the date of her remarriage;

(b) the woman has been divorced by her husband and that she has received, whether before or after the date of the said order, the whole of the sum which, under any customary or personal law applicable to the parties, was payable on such divorce, cancel such order,-

(i) in the case where, such sum was paid before such order, from the date on Which such order was made,

(ii) in any other case, from the date of expiry of the period, if any, for which maintenance has been actually paid by the husband by the woman;

(c) the woman has obtained a divorce from her husband and that she had voluntarily surrendered her rights to maintenance after her divorce, cancel the order from the date thereof.

(4) At the time of making any decree for the recovery of any maintenance or dowry by any person, to whom a monthly allowance has been ordered to be paid under section 125, the Civil Court shall take into account the sum which has been paid to, or recovered by, such person as monthly allowance in pursuance of the said order."

6. Plain reading of the said provision does not reflect any hint as regards the effective date of applicability of the order to be made by the concerned Court. If there is no such provision envisaged under Section

127 of the Code then for all practice purposes, principles of Section 125 of the Code would apply.

7. Plain reading of sub-Section (2) of Section 125 of the Code empowers the Magistrate, the discretionary to decide the effective date of applicability of maintenance to the claimant. For ready reference sub-Section (2) of Section 125 of the Code reads as under :

“(2) Any such allowance for the maintenance or interim maintenance and expenses of proceeding shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance or interim maintenance and expenses of proceeding, as the case may be.”

8. At this stage, it would also be relevant to refer the judgment passed by Hon'ble Supreme Court in the case of **Bhuvan Mohan Singh v. Meena and Others, (2015) 6 SCC 353** which deals with sub-Section (2) of Section 125 of the Code. Referring to its earlier decision passed in the case of **Shail Kumari Devi v. Krishnan Bhagwan Pathak, (2008) 9 SCC 632** the Supreme Court observed as under :

“15. * * * *

“43. We, therefore, hold that while deciding an application under Section 125 of the Code, a Magistrate is required to record reasons for granting or refusing to grant maintenance to wives, children or parents. Such maintenance can be awarded from the date of the order, or, if so ordered, from the date of the application for maintenance, as the case may be. For awarding maintenance from the date of application, express order is necessary. No special reasons, however, are required to be recorded by the court. In our judgment, no such requirement can be read in sub-section (1) of Section 125 of the Code in absence of express provision to that effect.”

9. Relying on the aforesaid observation and whether the Court below was justified in granting the maintenance from the date of application, in

Para 16 it observed as under :

“16. 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 pray 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.”

10. In the instant case, if we look at the fact, the earlier order for grant of maintenance was passed on 21.07.2011 in Misc. Case No. 37/2010. Vide the said order dated 21.07.2011, Non-Applicants No.1 and 2 were awarded maintenance of Rs. 1,500/- and 500/-, respectively. The Non-Applicants in the present case in the year 2014 moved an application under Section 127 of the Code. The said application was filed on 21.08.2014. It is this application, which was decided vide the order under challenge. From the petition, it appears that it took almost 2 years and 4 months to decide the application under Section 127 of the Code. Applying the principles and ratio laid down by the Supreme Court in the case of **Bhuwan Mohan Singh** (supra) as well as in the case of **Shail Kumari Devi** (supra), this Court is of the opinion that granting of enhanced amount of maintenance from the date of application under Section 127 of the Code cannot be faulted with. The judgment referred

by learned counsel for the Applicant i.e. the case of **Ramaji (supra)** cannot be held applicable in the present case for the reasons that when we compare all the facts of the present case with the aforesaid case, we find that the facts of those case are entirely different hence the said judgment cannot be automatically made applicable in the present case and the same would depend upon the given facts of each case.

11. So far as the quantum of maintenance which has been enhanced by the Court below is concerned, taking into consideration the facts which have come on record on the date when the application under Section 125 of the Code was decided by the Court below, the salary of the Applicant was Rs.13,000/-, which at the time of passing of impugned order in the proceeding under Section 127 of the Code, was about more than 30,000/-, therefore, the enhancement made by the Court below cannot be said to be exorbitant or on the higher side.
12. So far as the order of divorce having already been passed, the same would not apply for the reasons that the issue of grant of maintenance already stood finalized while deciding the original application under Section 125 of the Code itself.
13. In view of the above, no strong case is made out calling for interference with the order impugned. Thus, the petition being devoid of merits deserves to be and is accordingly rejected.
14. No order as to costs.

Sd/-
(P. Sam Koshy)
JUDGE