

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL REVISION NO. 739 OF 2016

1. Smt. Rameshwari Kharmsheel, W/o Komal Singh Kharmsheel, aged about 42 years.
2. Minor Mouksh Singh, S/o Komal Singh Kharmsheel, aged about 11 C/o Guardian Mother Smt. Rameshwari Kharmsheel, W/o Komal Singh Kharmsheel, both caste- Kanwar, presently R/o M-633 Adarsh Nagar, Kusmunda, Thana Kusmunda, Tahsil- Katghora, District Korba (C.G.)

... Applicants

Versus

Komal Singh Kharmsheel, S/o Suraj Singh Kharmsheel, aged about 45 years, caste Kanwar, R/o Gewra Locality, near Kankalin Mandir, Thana Kusmunda, Tahsil Katghora, District Korba (C.G.)

... Non-applicant

For Applicants	:	Mr. Arvind Shrivastava, Advocate.
For Respondent	:	Mr. Chitranjay Singh Patel, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

16/01/2017

1. The present Criminal Revision has been preferred by the Applicants assailing the order dated 8.2.2016 passed by the Family Court, Camp Court Katghora, District Korba, in M.J.C. No. 302 of 2015.
2. By way of the said impugned order, the Court below in a proceeding under Section 125 of CrPC has allowed the application and while allowing the said application, has ordered the non-applicant/husband for payment of Rs.1500/- to applicant No.1/wife and Rs.1000/- to applicant No.2/minor son, as monthly maintenance.
3. The present revision petition has been filed challenging the quantum only and have sought for enhancement.
4. Counsel for the Applicants submits that it is a case where the Non-applicant is an employee of South Eastern Coalfields Limited and is working as Fitter. The salary slip of the Non-applicant for the month of January, 2016 has been enclosed along with the present revision petition, which has not

been disputed by the Non-applicant, wherein the gross salary of the Non-applicant has been shown to be Rs.55,052/- and the net salary has been shown as Rs.44,029/-. Counsel for the Applicants further submits that if this the gross salary of the non-applicant/husband then the amount of maintenance awarded by the Court below is definitely on the lower side and thus it deserves to be enhanced suitably. According to the Counsel for the Applicants, the amount of Rs.1500/- and Rs.1000/- which has been awarded is to meagre an amount with which both the Applicants could decently survive together even if the maintenance amount is added. It was also contended by the Counsel for the Applicants that Applicant No.2 is aged about 11 years and is school going and his educational expenses also is increasing day by day therefore on this ground also the amount deserves to be enhanced particularly when the Non-applicant has sufficient source of income for grant of maintenance.

5. Counsel for the Non-applicant however opposes the revision petition on the ground that the salary slip and the other documents have not been proved before the Court below and therefore the same cannot be taken into consideration by this Court at this juncture for enhancing the amount of maintenance. He further submits that the order passed by the Court below is a well reasoned and a speaking order and the same does not warrant any interference.

6. Having considered the rival contentions put forth by either side and on perusal of the record, what is not in dispute in the instant case is the fact that the non-applicant/husband was proceeded ex parte before the Court below and the impugned order was passed on 8.2.2016. The Non-applicant in spite of notice of the ex parte order, has not made any efforts for challenging the same either before the same forum or before the revisional court and as such it has to be inferred that the Non-applicant does not have any objection so far as the allowing of the application under Section 125 of CrPC filed by the

Applicants is concerned and as such the said issue of the Applicants being entitled for amount of maintenance from the Non-applicant stands established and does not warrant any interference.

7. The only issue which now needs to be considered is the fact that the amount of maintenance awarded by the Court below is justified or not and whether it deserves for any enhancement.

8. The fact that the Applicants in the present revision petition have supported their contentions with the latest salary slip of the Non-applicant wherein the gross salary of the Non-applicant is shown to be more than Rs.55,000/- and the net take home salary is more than Rs.44,000/-. This salary slip being of Non-applicant is not disputed. Thus, by all respect, the amount of Rs.2,500/- which has been given for the two Applicants is not justified nor is there any reason assigned by the Court below for reaching to the conclusion for grant of maintenance of Rs.1500/- and Rs.1000/- to Applicants No. 1 and 2 respectively.

9. It is a settled position of law by a series of decisions of the Supreme Court that the maintenance amount under Section 125 of CrPC has to be commensurate to the status of the husband as also considering the income of the husband. In the present case, admittedly the non-applicant/husband is an employee of South Eastern Coalfields Limited. The salary slip which has been enclosed along with present revision petition is also not in dispute. Accepting the fact that the husband of Applicant No.1 and father of Applicant No.2 is an employee of a public sector undertaking, the Applicants therefore would be entitled for having a decent standard of living commensurate to the status of the husband. Thus, in the opinion of this Court, the amount of Rs.1500/- granted to Applicant No.1 and Rs.1000/- granted to Applicant No.2 is not sufficient and the same deserves to be enhanced.

10. Accordingly, taking into consideration the take home salary of the Non-applicant, this Court is of the opinion that the amount of maintenance deserves to be enhanced suitably and is accordingly enhanced by raising the amount of maintenance payable to applicant No.1/wife from Rs.1500/- to Rs.6000/- (Six Thousand only). So far as applicant No.2/minor son is concerned, the amount of maintenance stands enhanced from Rs.1000/- to Rs.4000/- (Four Thousand only). Thus, in all, total Rs.10,000/- is awarded as maintenance to both the Applicants. The impugned order dated 8.2.2016 stands accordingly modified.

11. With the aforesaid modification, the Criminal Revision is allowed.

Sd/-
(P. Sam Koshy)
Judge