

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 1070 of 2016**

1. Vishvamati W/o Shri Baldau, aged about 36 years, Caste Sahu, R/o Village Makke, Police Station Pipariya, Civil & Revenue District Kabirdham, Chhattisgarh, at present R/o Ramnagar, Ward No-01 Kawardha, Police Station & Tahsil- Kawardha, Civil & Revenue District Kabirdham, Chhattisgarh.
2. Ku. Shailendri Sahu D/o Shri Baldau, aged about 16 years, Caste- Sahu, Minor through her legal guardian mother Smt. Vishvamati, R/o Village Makke, Police Station Pipariya, Civil & Revenue District Kabirdham, Chhattisgarh, at present R/o Ramnagar, Ward No-01 Kawardha, Police Station & Tahsil- Kawardha, Civil & Revenue District Kabirdham, Chhattisgarh.
3. Ku. Shivrani D/o Shri Baldau, aged about 14 years, Caste Sahu, Minor through her legal guardian mother Smt. Vishvamati, R/o Village Makke, Police Station Pipariya, Civil & Revenue District Kabirdham, Chhattisgarh, at present R/o Ramnagar, Ward No-01 Kawardha, Police Station & Tahsil- Kawardha, Civil & Revenue District Kabirdham, Chhattisgarh.

---- Applicants**Versus**

Baldau S/o Shri Kejuram Sahu, aged about 40 years, Caste- Sahu, Occupation- Agriculture, R/o Village- Makke, Post Sonbarsa, Police Station & Tahsil- Pipariya, Civil & Revenue District Kabirdham, Chhattisgarh.

---- Respondent

For Applicants	:	Shri Paras Mani Shriwas, Advocate
For Respondent	:	Shri Dharmesh Shrivastava, Advocate

SB: Hon'ble Shri Justice P.Sam Koshy**Order On Board****23/02/2017**

1. The present criminal revision has been preferred assailing the order dated

29.08.2016 passed by the Family Court, Kabirdham (CG) in Misc. Criminal Case No. 376/2016.

2. The applicants had initially filed an application under Section 125 of CrPC for maintenance which was partly allowed and vide order dated 13.06.2005 the respondent was directed to pay an amount of Rs.1,000/- to applicant no.1 and Rs.500/- to each of the applicants 2 & 3 as maintenance. Subsequently, the applicants moved an application under Section 127 of CrPC for enhancement and vide order dated 23.04.2014 the maintenance amount was enhanced from Rs.1,000/- to Rs.1,300/- payable to applicant no.1 and from Rs.500/- to Rs.700/- payable to applicants 2 & 3. Thereafter, in the year 2016, the applicants again moved an application under Section 127 of CrPC before the Family Court, Kabirdham and the case was registered as Misc. Criminal Case No. 376/16. The Family Court vide impugned order dated 29.08.2016 enhanced the maintenance amount from Rs.1,300/- to Rs.1,500/- payable to applicant no.1 and from Rs.700/- to Rs.900/- payable to applicants 2 & 3. It is this order which has been assailed by the applicants stating that the enhanced amount of only Rs.200/- to each of the applicants is too meager for their sustenance taking into consideration the present day cost of living and also the paying capacity of the non-applicant.
3. Counsel for the applicants submits that the respondent is getting much from the agricultural land and taking into consideration his income, the enhanced amount awarded by the Court below is too small a figure and therefore, the same deserves to be modified and enhanced accordingly.
4. Counsel for the respondent however submits that no substantive proof of

income has been proved by the applicants to establish the source of income of the respondent and in the absence of which, the enhanced maintenance amount awarded by the Court below is sufficient. He further submits that the total amount of maintenance which the respondent is making is Rs.3,300/- which is quite a substantive amount for maintenance of the applicants and therefore it does not deserve to be enhanced or modified in any manner.

5. Having considered the arguments put forth by the counsel on either side it would be relevant at this juncture to refer to the judgment of the Supreme Court in the case of **Shamima Farooqui v. Shahid Khan**¹ wherein the Hon'ble Supreme Court in paragraph 15 has held as under:

“15.....It can never be forgotten that the inherent and fundamental principle behind Section 125 CrPC is for amelioration of the financial state of affairs as well as mental agony and anguish that woman suffers when she is compelled to leave her matrimonial home. The statute commands there has to be some acceptable arrangements so that she can sustain herself.....Be it clarified that sustenance does not mean and can never allow to mean a mere survival. A woman, who is constrained to leave the marital home, should not be allowed to feel that she has fallen from grace and move hither and thither arranging for sustenance. As per law, she is entitled to lead a life in the similar manner as she would have lived in the house of her husband. And that is where the status and strata of the husband comes into play and that is where the legal obligation of the husband becomes a prominent one. As long as the wife is held entitled to grant of maintenance within the parameters of Section 125 CrPC, it has to be adequate so that she can live with dignity as she would have lived in her matrimonial home.....”

6. Likewise, the Supreme Court in the case of **Bhuvan Mohan Singh v. Meena and Ors.**² at paragraph No. 3 has held as under :-

“3.....The concept of sustenance does not necessarily mean to lead the life of an animal, feel like an unperson to be thrown away from grace and roam for her basic maintenance somewhere else.

1 AIR 2015 SC 2025

2 AIR 2014 SC 2875

She is entitled in law to lead a life in the similar manner as she would have lived in the house of her husband. That is where the status and strata come into play, and that is where the obligations of the husband, in case of a wife, become a prominent one.....”

7. In view of the said principle laid down by the Supreme Court, this Court is of the opinion that taking into consideration the averments which have been made by the applicants in respect of the availability of the agricultural land and the agricultural income of the respondent particularly keeping in view the present day cost of living, the amount which has been enhanced by the Court below is definitely on the lower side and deserves to be enhanced.
8. Accordingly, the impugned order stands modified to the extent that the maintenance amount which was ordered to be paid is now enhanced from Rs.1,500/- to Rs.2,500/- payable to applicant no.1 and from Rs.900/- to Rs.1,250/- to applicants 2 & 3 each, totaling Rs.5,000/- per month.
9. With the aforesaid modification in the impugned award, the present Criminal Revision stands allowed and disposed of.

Sd/-
(P. Sam Koshy)
JUDGE