

**HIGH COURT OF CHHATTISGARH, BILASPUR****Writ Petition (227) No. 130 of 2015**

Priyanka Gupta, W/o Shri Shwetabha Vikram Gupta, aged about 32 years, resident of B-2, Samta Colony, Raipur, Tahsil & District Raipur (C.G.)

**---Petitioner/Non-applicant**

**Versus**

Shwetabha Vikram Gupta, aged about 32 yeas, son of Shri Shardul Vikram Gupta, resident of Sewa Upawan Nagwa, Varanasi, Uttar Pradesh.

**---- Respondent/applicant**

|                |                               |
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| For Petitioner | : Mr. Sunil Otwani, Advocate. |
| For Respondent | : Mr. Sumit Singh, Advocate.  |

**Hon'ble Shri Justice Sanjay K. Agrawal**

**Order On Board**

**10/10/2018**

1. Petitioner herein is a wife facing application for divorce under Section 13 of the Hindu Marriage Act, 1955 (henceforth "Act, 1955"), in which, the Family Court, Raipur by its order dated 25.06.2013 granted interim maintenance of Rs.10,000- per month to her. Thereafter, she preferred an application for enhancement of the amount of interim maintenance on the ground that annual income of her husband / respondent herein, is Rs. 20,78,712/-, which is based on subsequent information received by her. The said application was rejected by the Family Court on the ground that once the amount of interim maintenance decided, it cannot be reopened on any ground, against which instant writ petition has been filed questioning the same.

2. Mr. Sunil Otwani, learned counsel appearing for the petitioner would submit that the application for enhancement of interim maintenance has been filed by the petitioner / wife based on subsequent information which she has received about income of her

husband, as earlier she could not place on record the correct income of her husband before the family court, as such, amount of interim maintenance ought to have been enhanced by the Family Court and, therefore, the Family Court has committed an error in rejecting the petitioner's application for enhancement of the amount of interim maintenance by the impugned order, which is liable to be set aside.

3. Per contra, counsel for the respondent would submit the learned Family Court is rightly rejected the aforesaid application as there is no provision in Section 24 of the Act, 1955 to change or modify the amount of maintenance already decided and, therefore, the writ petition deserves to be dismissed.

4. I have heard learned counsel appearing for the parties and perused the order impugned with utmost circumspection.

5. At this stage, it would be appropriate to notice Section 24 of the Act, 1955, which states as under:-

**“24. Maintenance *pendente lite* and expenses of proceeding.** - Where in any proceedings under this Act it appears to the court that either the wife or the husband, as the case may be has no independent income sufficient from her or his support and the necessary expenses of the proceeding, it may, on the application of the wife or the husband, order the respondent to pay to the petitioner the expenses of the proceeding, and monthly during the proceeding such sum as, having regard to the petitioner's own income and the income of the respondent, it may seem to the court to be reasonable.”

6. A careful perusal of the aforesaid provision would show that there is nothing in this section, which can disable the court, in an appropriate case, passing an order varying, modifying, rescinding or temporarily suspending any order made by it under this Section,

even though there is no provision relating to the same. [**See: Anuradha Vs. Santosh Nath<sup>1</sup> & Laxmi Priya Vs. Kamaprasad<sup>2</sup>**] Orders of interim maintenance cannot be static and must take into consideration the changing income of the spouse directed to pay maintenance, such orders should be reviewed from time to time. [ **See: Rajshree Dixit Vs. Rajesh Dixit<sup>3</sup>**].

7. Similarly, in the matter of **Devki Vs. Purshottam<sup>4</sup>**, it has been held by the Rajasthan High Court that the court can, in the exercise of its discretion, vary an order for interim maintenance if there is such change in the circumstances of the parties justifying variation.

8. In view of the aforesaid legal position, the impugned order deserves to be and is accordingly set aside. The Family Court is directed to consider the petitioner's application for enhancement of amount of interim maintenance afresh within a period of twenty days from the date of receipt of certified copy of order on its own merit in accordance with law.

9. The writ petition is allowed to the extent indicated hereinabove.

10. Copy of this order to sent to the Family Court, Raipur through FAX or e-mail.

Sd/-  
(Sanjay K. Agrawal)  
Judge

D/-

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1 AIR 1976 Del 246  
2 AIR 1992 Ori 88  
3 AIR 2005 Bom 352  
4 AIR 1973 Raj 2

