

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 1461 of 2017**

- Bhagwan Prasad S/o Ramdev Ram, Aged About 35 Years R/o Latori, Post Jagmala Police Station Lakhanpur, District Surguja, Chhattisgarh

---- **Petitioner****Versus**

- Hemlata Sengar W/o Bhagwan Prasad, Aged About 30 Years R/o Village Jagannathpur, Post Pratappur, District Surguja, Chhattisgarh

---- **Respondent**

For Petitioner	:	Ms. Rashul Bhawanani, Advocate
For Respondent	:	Shri Rahul Mishra, Advocate

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****19/06/2018**

1. Heard.
2. The present petition is against the order dated 30.08.2017 passed in criminal revision No.09/2017 by the Additional Sessions Judge, Pratappur (C.G.). By such order the maintenance which has been awarded by the JMFC, Pratappur in criminal proceeding No.167/2011 dated 08.08.2016 granting a maintenance of Rs.3000/- per month to the wife/respondent was upheld.
3. Learned counsel for the petitioner submits that the main grievance against this order is that the Court below has directed to pay the maintenance from the date of the application and as per the settled principle, since no reasons have been assigned as to why the maintenance has been granted from the date of the application, it cannot be sustained and according to the

provisions of Section 125 Cr.P.C. it is from the date of order, the maintenance could have been granted. It is stated that the order granting maintenance from the date of application is to be set aside.

4. Perused the documents filed along with the petition. The record would show that on 08.08.2016 the JMFC, Pratppur has passed a maintenance order of Rs.3000/- per month from the date of application i.e. from 16.07.2009. The record of the Court below was called for. The record would show that the petition for maintenance under Section 125 Cr.P.C. was filed by the wife/respondent on 16.07.2009. The facts as pleaded are that on 23.03.2005 Hemlata Sengar, the respondent was married to the petitioner Bhagwan Prasad. Thereafter, she was subjected to torture for demand of dowry. The evidence as came on record shows that the wife was left at her maternal home for the reason that unless & until, the goods and the money which has been demanded in dowry is not paid, the husband would not take her back. Since the wife was kept in her maternal home, the social meeting was held. Thereafter, she was taken back by the husband and till two months she was there and thereafter again the demand of dowry resumed and she was subjected to torture for demand of dowry. The wife has deposed that subsequently, the husband had kept one girl namely Mankunwar @ Phulkunwar as her wife and a child was also born, for which a report was made, which was exhibited as Ex. P-1. The similar facts were supported by Laxmi Devi, mother of the respondent/wife.
5. Whereas, against this the husband has deposed that the wife was leaving of her own will without any reason and she refused to join the matrimonial home. The husband further stated that the lady namely Mankunwar was kept for domestic help, however, the facts & evidence as has come on record would show that due to the relations two childs were born out of the

relation with Mankunwar, which is corroborated by Devnarayan (DW-2), the witness on behalf of the non-applicant too.

6. With respect to the income, the wife has deposed that non-applicant/husband owns land more than 15 acres, two shops are also owned by him and a pickup vehicle was also owned and he used to earn Rs.15000/- per month. As against this the non-applicant stated that he earlier had owned the shop, however, it was closed. The fact also was admitted that the non-applicant owns a tractor. It was further stated that he had a tractor, but the ownership has been disowned. It is also been admitted that the non-applicant owns a pickup van, which is used for the business. Therefore, it appears that the quantum of the amount which has been given to the non-applicant of Rs.3000/- taking into the inflation which is existing into the society cannot be said to be exorbitant for survival of a human being.
7. Now with respect to the grant of the maintenance from the date of application, the record of the Court below was perused. The record would show that on 16.07.2009 the application for maintenance was preferred and despite several efforts, the non-applicant was not served. The non-applicant entered his appearance in the month of September, 2010 though the application for interim maintenance was filed and the same remained undecided and several interim applications in the meanwhile were filed by the husband. Thereafter, the case was fixed for evidence from time to time and the evidence of the wife were recorded. Thereafter, the case was fixed for evidence for both the parties from time to time and on few of the occasions though the applicant's witnesses were present but examination was not conducted at the behest of the husband/non-applicant. In the meanwhile, certain interim applications were filed by the non-applicant.

Eventually, the case was decided in the year 2016 after evidence of the non-applicant.

8. Therefore, the record would show that there have been enormous delay in decision of the proceeding under Section 125 of the Cr.P.C. and facts would show that most of the time at the behest of the non-applicant/husband, the case was adjourned though the petition under Section 125 CRPC was filed in July 2009. In reality no amount was paid in between during pendency of proceeding to consider how wife will sustain herself. In view of this and in view of the principles laid down in the case of ***Bhuwan Mohan Singh Vs. Meena and others*** {(2015) 6 SCC 353}, I do not find any illegality to grant maintenance from the date of application to the wife. This fact cannot be ignored that even in the absence of maintenance, the wife sustained herself. Had there been any intention on the part of the husband to maintain the wife, same would have been reflected in the order sheet of Court below. The Court also remained dormant to the issue. In view of this, I do not find any reason to interfere in the order of maintenance granting to wife from the date of application. In the facts of this case, the husband is allowed to pay the maintenance of arrears in three phases to the wife and the entire arrears of maintenance should be paid in three installments within a period of 60 days from the date of the order.

9. with such observation, the petition stands disposed of.

Sd/-

Goutam Bhaduri

Judge

Ashu