

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 128 of 2019**

1. Mrs. Sangeeta Swarnkar W/o Mohit Kumar Swarnkar Aged About 35 Years
2. Miss Avantika Swarnkar D/o Mohit Kumar Swarnkar Aged About 9 Years Minor Through Guardian Mother Mrs. Sangeeta Swarnkar,
Both R/o Street No. 05, Vidhyut Nagar Avinash Kirana Stores Durg District Durg Chhattisgarh, District : Durg, Chhattisgarh

---- Applicants**Versus**

- Mohit Swarnkar S/o Ramakant Aged About 40 Years R/o Prem Nagar, Sikola-Bhata Durg District Durg Chhattisgarh, District : Durg, Chhattisgarh

----Respondent**And****CRR No. 159 of 2019**

- Mohit Swarnkar S/o Ramakant Aged About 40 Years R/o Prem Nagar, Sikola-Bhata Durg District Durg Chhattisgarh, District : Durg, Chhattisgarh

---- Applicant**Versus**

1. Smt. Sangeeta Swarnkar W/o Mohit Kumar Swarnkar Aged About 35 Years
2. Ku. Avantika Swarnkar D/o Mohit Kumar Swarnkar Aged About 9 Years Minor Through natural Guardian Mother Mrs. Sangeeta Swarnkar, wife of Mohit Kumar Swarnakar (Applicant No.1)

Both at present R/o Street No. 05, Vidhyut Nagar Avinash Kirana Stores Durg District Durg Chhattisgarh, District : Durg, Chhattisgarh

----Respondents

For Applicants	: Shri Jitendra Gupta, Advocate in CRR No. 128/2019
For Respondent	: Shri Krishna Tandon, Advocate
For Applicant	: Shri Krishna Tandon, Advocate in CRR No. 159/2019
For Respondents	: Shri Jitendra Gupta, Advocate

Hon'ble Smt. Justice Rajani Dubey**Order On Board****24.9.2019**

1. Heard on admission.
2. Since, both the Criminal Revisions arise out of the same order, they are being heard and disposed of by this common order.
3. Criminal Revision No. 128/2019 has been filed by the applicants, who are wife and daughter of the respondent for enhancement of the amount of maintenance against the order dated 24.12.2018, passed by the 3rd Additional Principal Judge, Family Court, Durg(CG) in Misc. Cr. Case No. 1099/2017, whereby the Judge, Family Court has granted maintenance of Rs.11,000/- p.m. in favour of applicant No.1(wife) and Rs.6,000/-p.m. in favour of applicant No.2(daughter), total Rs.17,000/- per month. Whereas, Criminal Revision No. 159/2019 has been filed by the husband/applicant for modification of the above order and reduce the amount of maintenance granted to the wife and daughter(respondents).
4. It is an admitted fact before the Family Court that marriage between applicant No.1 in CRR No.128/2019 (for the sake of convenience applicant No.1 is referred to as wife) and the respondent (hereinafter referred to as husband) was solemnized in the month of June 2007 and out of their wedlock, applicant No.2 has born. The wife and daughter have filed an application under Section 125 Cr.P.C. before the Family Court, Durg for grant of maintenance on the ground that soon after marriage, the wife was being harassed

with cruelty by the husband and his parents on account of demand of dowry and the husband used to left her at her parental house. Once she has also made a complaint to Mahila Thana, Durg where they were made to understand and the husband bring back the wife and daughter to his house. The wife and daughter earlier had filed application for grant of maintenance but on compromise the husband again took them to his house and kept them in a rented house at village Rewalidih and thereafter, the wife was again tortured and she was ousted from house. The wife has pleaded that she has no source of income and she is unable to maintain herself and her daughter. She is living separately since 20.3.2017. The husband is a govt. servant working in Railway department and getting salary of Rs.90,000/- per month, therefore, the wife and daughter have prayed for grant of maintenance of Rs.20,000/-, 20,000/-, total Rs.40,000/- per month.

5. In reply, the husband denied all the allegations and stated that the wife along with daughter is residing separately on her own will, therefore, she is not entitled for any maintenance and they have never tortured her. The husband also stated that his parents are dependent on him. He submits that as financial assistance he has deposited Rs.1,77,170/- in the Bank Account of father of the wife, but till date the amount has not been returned to him.
6. The Family Court after hearing counsel for the parties and appreciating the oral and documentary evidence granted maintenance of Rs.11,000/- per month in favour of wife and

Rs.6,000/- per month in favour of daughter. Hence, the wife and daughter have filed this revision for enhancement of the maintenance amount.

7. Learned counsel for the applicants (wife and daughter) in CRR No. 128/2019 submits that it is a well settled principle of law that 35% of the amount of salary or income of the husband should be awarded to wife as maintenance amount, but the learned Family Court has failed to get this principle of law. He submits that Rs.25,000/- has been awarded as maintenance to the parents of the husband in a fabricated case but it is only on papers to show and to escape the liability of maintenance to the wife and daughter. He further submits that the maintenance amount is on lower side and it should be more than the amount of parents of the husband. The husband is earning Rs.93,711/- per month (Annexure A6), therefore, the amount of maintenance should be enhanced suitably.
8. Learned counsel for the applicant (husband) in CRR No. 159/2019 submits that the order passed by the learned Family Court is contrary to law and facts of the case, therefore, it is liable to be modified and the amount of maintenance granted be reduced accordingly. He submits that in fact, the wife herself is not ready to reside peacefully with the husband, therefore, she herself has violated the conditions of the compromise and also left her husband's house on 20.3.2017. The allegations levelled against the husband are false and without sufficient reason, the wife has left the matrimonial house. In cross-examination, the wife herself has

admitted that she is not ready to live with the husband and there is no satisfactory reason submitted on the part of the wife alleged against the husband. He further submits that after marriage, the married couple was living with parents of the husband, who were aged about 64 and 69 years, but when the wife objected to live with them, for peace, the couple was living separately and subsequently, the parents of the husband moved an application for maintenance and total amount of Rs.25,000/- is being paid by the husband to his parents as per court order.

- 9.** Learned counsel for both the parties have vehemently controverted the arguments advanced by them.
- 10.** I have heard learned counsel for the parties and perused the impugned order and material on record.
- 11.** It is not in dispute that applicant No.1 in CRR No.128/2019 and respondent (applicant in CRR No. 159/2019) are legally wedded husband and wife and applicant No.2 is their daughter. The Family Court has appreciated the oral and documentary evidence of both the parties in paragraphs 6 to 15 and found that the wife has sufficient reason to live separately from her husband. This finding is based on proper appreciation of evidence and this Court do not find any irregularity or illegality in granting maintenance to the wife. Accordingly, the CRR No.159/2019 filed on behalf of the husband has no merits and the same is hereby dismissed.

12. Now, the question remains for consideration before this Court is whether the maintenance awarded to the wife and daughter is liable to be enhanced or not?
13. Admittedly, marriage between the parties is solemnized in June 2007 and applicant No.2 is their daughter. There is no comparison between the maintenance given by the husband to his parents and wife and child, but the maintenance to wife and child has to be awarded as per their requirement. The husband is serving in Railways and his gross salary is Rs.93,711/- per month (Annexure P6). The principle of law laid down in the matter of **Dr. Kulbhushan Kumar Vs. Raj Kumari and Another (1970) 3 SCC 129** was followed with approval recently by Their Lordships of the Hon'ble Supreme Court in the matter of **Kalyan Dey Chowdhury Vs. Rita Devi Choudhery, (2017) 14 SCC 200**. Para 15 of the report states as under :

“15. The review petition under Order 47 Rule 1 CPC came to be filed by the respondent wife pursuant to the liberty granted by this Court when the earlier order dated 2-2-2015 awarding a maintenance of Rs.16,000/- to the respondent wife as well as to her minor son was under challenge before this Court. As pointed out by the High Court, in February 2015, the appellant husband was getting a net salary of Rs.63,842/- after deduction of Rs. 24,000/- on account of GPF and Rs.12,000/- towards income-tax. In February 2016, the net salary of the appellant is stated to be Rs.95,527/-. Following *Dr. Kulbhushan Kumar v. Raj Kumari* (supra), in this case, it was held that 25 % of the husband's net salary would be just and proper to be awarded as maintenance to the respondent wife. The amount of permanent alimony awarded to

the wife must be befitting the status of the parties and the capacity of the spouse to pay maintenance. Maintenance is always dependant on the factual situation of the case and the court would be justified in moulding the claim for maintenance passed on various factors. Since in February 2016, the net salary of the husband was Rs.95,000/- per month, the High Court was justified in enhancing the maintenance amount. However, since the appellant has also got married second time and has a child from the second marriage, in the interest of justice, we think it proper to reduce the amount of maintenance of Rs.23,000/- to Rs.20,000/- per month as maintenance to the respondent wife and son”.

14. Reverting to the facts of the present case in the light of principle of law laid down by the Hon'ble Supreme Court in the above stated judgments (supra), it is quite vivid that income of the husband is Rs.93,711/- as per salary slip of the respondent for the month of October 2017 obtained by the wife through R.T.I. filed as Annexure P6. The husband has stated in his reply and examination in chief that he has to maintain his parents and for that he is giving Rs.25,000/- per month. Be that whatever it may, as per law it is husband's foremost duty to maintain his wife and child and he cannot escape from his liability. In the present case, the husband is a well settled person and a govt. employee getting salary of Rs.93,711/- per month and he can well maintain his wife and child. Applicant No.2 is daughter of the respondent and now she is aged about 9 years and is a school going child and had to expend on tuition fee and bus charges etc.; she is living with her mother, applicant No.1. Looking to the status of the respondent/father and

the expenditure on studies, it is obligatory to enhance the maintenance awarded to applicant No.2. In the light of Hon'ble Supreme Court's decision in above mentioned cases, minimum 25% of the total income should be granted as maintenance to the wife and children.

- 15.** Accordingly, Criminal Revision No.128/2019 filed on behalf of the wife and daughter is partly allowed. The amount of maintenance awarded to the wife for Rs.11,000/- is increased to Rs.17,000/- per month and the maintenance awarded to daughter for Rs.6,000/- is increased to Rs.12,500/-per month, total Rs.29,500/-. It is directed that the respondent/husband now shall pay to the applicants 1 and 2, Rs.29,500/- per month as the enhanced amount of maintenance from the date of receipt of copy of this order.
- 16.** Both the criminal revisions stand disposed of at the admission stage itself.

Sd/

(Rajani Dubey)
JUDGE