

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 500 of 2019**

- Md. Sagir Qureshi S/o Bafati Mohammad Aged About 40 Years R/o Musalman Mohalla Karbala Square, Ward No.5 Balouda, Tahsil Balouda, District- Janjgir-Champa, Chhattisgarh.

---- Applicant**Versus**

1. Smt. Tarmin Fatima W/o Md. Sagir Qureshi Aged About 35 Years
2. Md. Laraib S/o Shri Md. Sagir Qureshi Aged About 11 Years (Minor) Through Its Legal Guardian Mother Smt. Tarmin Fatima,
Both R/o Ganesh Pooja Chouk No. 02, Ward No. 15, Ompur Colony,
Village Panchayat Ragiamar, P.S. Balco, District- Korba, Chhattisgarh.

----Respondents

For Applicant: Shri Jeet Patel, Advocate

Hon'ble Smt. Justice Rajani Dubey**Order On Board****23.7.2019**

1. Heard on admission.
2. This revision is directed against the order dated 18.3.2019, passed by the Principle Judge, Family Court, Korba, District Korba(CG) in MJC No. 116/2018, whereby the Judge Family Court has granted maintenance of 5000/- per month to the respondents, on their application filed under Section 127 Cr.P.C.
3. Facts of the case in brief are that marriage of the applicant and respondent No.1 was solemnized on 16.1.2006 according to Muslim customs and traditions and out of their wedlock respondent No.2 was born. The respondents/non-applicants filed

application under Section 125 Cr.P.C. and the Court below vide order dated 20.11.2015, passed in MJC No. 145/2014 ordered for maintenance of Rs.3000/- per month. On 15.10.2018, the respondents again filed application under Section 127 Cr.P.C. for enhancement of the amount of maintenance and the Family Court by partly allowing the application, granted maintenance of Rs.3000/- per month to respondent No.1(wife) and Rs.2000/- per month to respondent No.2 (son), in all Rs.5000/-. Hence, this revision.

4. Respondent No.1 has stated that earlier she was giving tuitions but now she is unemployed and she has responsibility of her son, who is studying in class 6th, therefore, Rs.3000/- is very less amount looking to the hike in price. She has to pay school fees, tuition fees etc. of her son and she is living with her son in the rented house and has to pay rent, therefore, the amount of maintenance may be enhanced.
5. The applicant in reply, denied all the allegations and submits that respondent No.1 along with her son is residing separately on her own will and she has left the house without any reason. Earlier she was giving tuitions to the students and getting sufficient amount to maintain herself and her son. During guardianship proceedings she has specifically stated that she is getting more amount than the applicant and can take better care of her son. Therefore, the order passed by the learned Family Court is bad in law, perverse and erroneous. The Family Court has failed to appreciate the documents placed before it in correct perspective

and respondent No.1 has get divorce from the applicant (her husband) vide order dated 18.3.2019. A divorced muslim woman is entitled for maintenance only within the Iddat period by her former husband and that Iddat period is prescribed about three months. He submits that as per Section 3(1)(a) of the Muslim Women (Protection of Rights on Divorce) Act 1986, there is a reasonable and fair provision and maintenance to be paid to the wife within the iddat period by her former husband. The applicant has already paid Mahr amount to respondent No.1, therefore, the applicant is not liable to pay any maintenance. He submits that he has no source of income and maintenance amount is on higher side, therefore, the order dated 18.3.2019 is liable to be set aside.

6. I have heard learned counsel for the applicant and perused the order dated 18.3.2019.
7. The applicant has filed deposition sheet of respondent No.1 in which, there is no suggestion regarding divorce. The applicant has also filed the copy of order dated 18.3.2019 passed in Civil Suit No.173A/2015 before this Court, whereby order of dissolution of marriage has been passed in favour of respondent No.1, but no such order has been placed before the Family Court and there is no mention in the order of the Family Court that any case for divorce is pending between the parties. The applicant on the ground of decree of dissolution of marriage is saving himself from paying maintenance to respondent No.1. The Family Court after evaluation of the evidence available on record, had passed an

order and granted monthly maintenance of Rs.3000/- to respondent No.1(wife) and Rs.2000/- to respondent No.2(son), in all Rs.5000/-, which cannot be said to be disproportionate or unreasonable looking to the present price index. The order passed by the Family Court does not suffer any irregularity or illegality and the same is not liable to be interfered with.

8. The revision has no merits. The same is dismissed at the motion stage itself. However, the applicant will be at liberty to file application under Section 127 Cr.P.C. on the ground of divorce before the Family Court.

Sd/

(Rajani Dubey)

JUDGE