

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 04.12.2018

Judgment delivered on 08.03.2019

CRR No. 459 of 2006

Vinod Dubey, aged about 47 years, son of Shri Chhannulal Dubey,
Employee – Nagar Panchayat Than Khamhariya, District Durg, CG
R/o Near Bus Stand, Bemetara, District Durg, CG

--- Applicant

Versus

Shiv Pyari Bai alias Sharad Dubey, aged about 42 years, wife of
Vinod Dubey, R/o Sardar Patel Ward, Mungeli, Tahsil Mungeli,
District Bilaspur, CG

--- Respondent

For Applicant	-	Shri V.G. Tamaskar, Advocate.
For Respondent	-	Shri Pawan Kesharwani, Advocate.

Hon'ble Smt. Vimla Singh Kapoor, J.

CAV Order

Order under challenge in this revision petition is dated 01.06.2006 passed by Additional Sessions Judge (FTC) Mungeli in Criminal Revision No. 62/2005 enhancing the maintenance amount to Rs. 1,200/- per month from that of Rs. 775/- which was awarded in favour of the respondent/wife by JMFC Mungeli vide order dated 02.03.2005 passed in Criminal Case No. 63/2003.

2. Applicant/husband has pleaded that first by allowing the application under Section 125 of the Code of Criminal Procedure filed by the respondent/wife and her daughter Meenakshi, maintenance of Rs. 125/- per month was awarded in favour of respondent No.1 herein and Rs. 75/- per month in favour of her daughter vide order dated 07.03.1983 passed by JMFC Mungeli in Misc. Criminal Case No. 68/1982 which as per the agreement dated 13.03.1996 (Ex. D-1) was enhanced to Rs. 775/- per month. Subsequently, by order dated 11.02.2000 passed in Misc. Cr. Case No. 97/1998 the daughter having attained majority was held dis-entitled to receive any maintenance from her father and thus the amount of Rs. 775/- was

made payable to the respondent/wife alone. Though in the document of Ex. D-1 it was agreed by the respondent/wife that she would not seek any enhancement in the maintenance amount beyond Rs. 775/- per month yet on 16.11.2003 she again moved an application under Section 127 of the Code of Criminal Procedure seeking enhancement of the maintenance amount to Rs. 2,000/- per month from that of Rs. 775/- per month which however was rejected vide order dated 02.03.2005. Against the order dated 02.03.2005 the respondent/wife preferred Criminal Revision No. 62/2005 which has been allowed vide order dated 01.06.2006 enhancing the maintenance amount to Rs. 1,200/- from that of Rs. 775/- per month. Hence this revision by the petitioner/husband.

3. Counsel for the petitioner/husband submits that though respondent/wife had agreed by way of document of Ex. D-1 not to seek any enhancement from the petitioner/husband beyond Rs. 775/- per month yet the Court below has ignored the said fact and enhanced the maintenance to Rs. 1,200/- by passing the order impugned. He submits that the petitioner/husband has taken a specific plea that respondent/wife earns Rs. 4,000/- per month by taking tuition and doing stitching work and by adding Rs. 775/- which he is paying her as monthly maintenance her total monthly income comes at par with his salary which comes to Rs. 4,500/- per month, and therefore, it would be difficult for him to pay Rs. 1,200/- per month to her. He further submits that apart from giving maintenance to his wife, petitioner/husband is also required to take care of his old aged diabetic and BP patient father also pays Rs. 500/- per month to his step mother living separately from his father, and therefore also amount of Rs. 1,200/- per month to be paid as maintenance would be excessive and troublesome for him.

4. On the other hand, counsel for the respondent/wife supports the order impugned and submits that looking to present day standard of living and the steep hike in the price of essential commodities, the amount of Rs. 1,200/- per month cannot be said to be excessive and therefore the order impugned does not call for any interference in this revision petition.

5. Heard counsel for the parties and perused the material on record.

6. Though the petitioner/husband has taken a stand that the respondent/wife derives the monthly income of Rs. 4,000/- by way of tuition and stitching work, no document to this effect has been filed by him in support thereof. This unsubstantiated plea taken by the petitioner/husband cannot be made a basis for depriving the respondent/wife of receiving maintenance from him. Likewise, the document of Ex. D-1 where respondent/wife had agreed not to seek any enhancement in the maintenance amount beyond Rs. 775/- cannot come in the way of legal proceedings going on between the parties as the law at all costs has to take its own course looking to the facts and evidence so adduced. As far as the case in hand is concerned, respondent/wife has been receiving the maintenance of Rs. 775/- per month from the year 1996. Naturally, the cost of maintenance in this considerable long period of 10 years must have gone up manifold making it difficult for the respondent/wife to maintain herself smoothly. Being husband, the petitioner cannot leave his wife to wander here and there in the pursuit of maintaining herself but he is legally bound to provide her a respectable living. Amount of Rs. 775/- which could be sufficient for her honourable living in the year 1996 cannot be equally sufficient after ten years also because in the meanwhile the cost of living must have doubled from the one which was existing then. Order impugned awarding Rs. 1,200/- per month as maintenance to the respondent/wife thus appears to be just and proper and no interference therewith is required by this Court.

7. Revision therefore being without any substance is liable to be dismissed and it is dismissed as such with the affirmation of order under challenge therein.

Sd/-

(Vimla Singh Kapoor)

Judge