

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 536 of 2018**

1. Smt. Priti Shrivastava W/o Shri Prateek Shrivastava Aged About 30 Years By Caste Kayastha, R/o Village Namnakal, Near Water Tank Ambikapur, District Surguja Chhattisgarh.
2. Akshay @ Duggu S/o Shri Prateek Shrivastava Aged About 2 Years By Caste Kayastha, R/o Village Namnakal, Near Water Tank Ambikapur, District Surguja Chhattisgarh.

---- Applicants

Versus

- Prateek Shrivastava S/o Shri Vinod Shrivastava Aged About 32 Years By Caste Kayastha, R/o B-9, Minikuwi Saheb Parisar, Yadav Colony, Jabalpur Madhya Pradesh Presently Address 303 Wasupujya Apartment, Near Goverdhan Park Society, Juna Wards Bus Stand Ahamadabad Gujarat.

Now At Present Address Working As Branch Manager Cenra Bank, Panna, District Panna M. P.

---- Respondent

For Applicants	:	Mr. D.N. Prajapati, Adv.
For Respondent	:	None, though notice has been served.

Hon'ble Smt. Justice Rajani Dubey
Order on Board

12.09.2019

1. The applicants have preferred this revision against the order dated 11.04.2018 passed by Judge, Family Court Ambikapur, District Surguja (C.G.), in Miscellaneous Criminal Case No. 77/2016, whereby the learned trial Court allowed the application of applicants and awarded Rs. 3,000/- per month in favour of applicant No.1 and Rs. 2,000/- per month in favour of applicant No. 2 (total Rs. 5,000/- per month) as maintenance.

2. Brief facts of the case are that applicant No.1 Smt. Priti Shrivastava and respondent are wife and husband and they performed marriage according to the Hindu rites and rituals in the month of December 2013 and applicant No. 2 is their child. After

some time of marriage respondent used to harass, abuse and ill treated the applicant and also tortured for demand of dowry. Prior to the marriage, applicant No.-1 was in employment in the private school and saved sum of Rs. 75,000/- and deposited the same in her bank account and, after marriage, respondent and his family members forcefully withdrawn the applicant's deposited money and, after sometime, respondent ousted the applicants from the matrimonial house and threatened them not to comeback in the house. Respondent is posted as Branch Manager in Canara Bank and earns Rs. 85,000/- per month and applicant No.-1 is unable to maintain herself so she filed application under Section 125 of Cr.P.C. and demanded Rs. 45,000/- per month for their maintenance.

3. In his reply, respondent (husband) denied all the allegations levelled against him and submitted that he or his family member never tortured the applicant No.-1 (wife) in the name of dowry. She is living separately at her own will so she is not entitled to get any amount of maintenance from him.

4. After hearing both the parties vide impugned order dated 11.04.2018, learned Family Court partly allowed the application and directed the respondent to pay Rs. 3,000/- per month in favour of applicant No.1 and Rs. 2,000/- per month in favour of applicant No. 2 (total Rs. 5,000/- per month) as maintenance. Hence, this revision petition filed by the applicants for enhancement of the maintenance amount.

5. Learned counsel for the applicants submits that the impugned order passed by the Court below is illegal and bad in law. Learned trial Court passed the impugned order without considering the proper facts and ground of the applicants and granted only Rs. 5,000/- per month whereas, the non applicant is posted as Branch Manager in Canara Bank and earns about Rs. 85,000/- per month. He further submits that before Family Court applicant produced evidence of AW-2 Ms. Rashmi Mishra, who is also posted as Branch Manager in Canara Bank in Abmikapur and her salary slip as Ex. C-1 and stated that she gets other allowances like house, telephone and petrol allowances. He also

submits that applicant No.-1 has no source of income to maintain herself and her son. Therefore, order dated 11.04.2018 of the trial Court is liable to be modified and the maintenance amount may be enhanced suitably.

6. No one appeared on behalf of the respondent though notice has been duly served.

7. Heard learned counsel for the applicants and perused the material on record including the impugned order.

8. Before Family Court, this is an admitted fact that applicant No.-1 and respondent are legally married husband and wife and applicant No. 2 is their son. It is clear from order-sheet dated 10.07.2017 that on that date, respondent (husband) was not present before the trial Court. Learned trial Court adjourned the case for evidence on 11.07.2017, and on the next date of hearing respondent again remain absent and thus trial Court left with no other option but to proceed ex-parte.

9. In support of his case the applicants examined 3 witnesses. Applicant produced the salary slip (Ex. C/1) of Ms. Rashmi Mishra (AW-2), who is also posted as Branch Manager in Canara Bank, Abmikapur, and stated that her salary is Rs. 58,360/- plus additional allowance like house, telephone and petrol allowances. These witnesses have not cross-examined by respondent before trial Court. Learned trial Court, after relying upon the applicants' witnesses, granted Rs. 5,000/- per month as maintenance to the applicants.

10. The principle of law laid-down in the matter of **Dr. Kulbhushan Kumar v. Raj Kumari and Another** reported in **[(1970) 3 SCC 129]** was followed with approval recently by their Lordships of the Supreme Court in the matter of **Kalyan Bey Chowdhury v. Rita Devi Choudhery** reported in **[(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 *Dulbhusan 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."

11. Reverting to the facts of the present case in the light of principle of law laid-down by the Supreme Court in the above stated judgments (supra), it is quite vivid that income of the respondent/husband has been held by the Family Court to be about 60,000/- per month which was not rebutted by the respondent/husband before the Family Court. As such, taking income as about Rs. 60,000/- per month as accepted by the

Family court, the Family court ought to have granted 25% of the total income as maintenance to the applicant (wife), which comes to Rs. 15,000/- per month.

12. Considering the totality of the facts and circumstances of the case and evidence adduced by the applicants, this court is of the view that applicants are entitled for enhancement of maintenance amount.

13. In the result, the impugned order of the Family court is modified and it is directed that the respondent/husband shall now pay Rs 10,000/- per month to applicant No.1 (wife) and Rs. 5,000/- per month to applicant No. 2 (son) (total Rs. 15,000/- per month) towards maintenance from the date of receipt of this order.

14. Accordingly, the revision is partly allowed to the extent indicated herein above.

**Sd/-
(Rajani Dubey)
JUDGE**

Vijay Sahu