

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 504 of 2013**

- Santoshi Nayak W/o Shri Khageshwar Nayak Aged About 23 Years R/o Village Devalgarh, Thana - Basna, Tah. - Pithora, Distt. Mahasamund C.G.

---- Applicant

Versus

- Khageshwar Nayak S/o Jagdish Nayak Aged About 27 Years R/o Village Bhikhapali Thana Basna, Tah. Pithora, Distt. Mahasamund C.G.

---- Respondent

For Applicant	: Ms. Ankita Shrivastava, Advocate
For Respondent	: None present though notice has been served.

Hon'ble Smt. Justice Rajani Dubey**Order On Board****11/09/2019**

This revision is directed against the order dated 20.02.2013 passed by the Principal Judge, Family Court, Raipur, Camp Court Mahasamund in M.J.C. No. 78/2011 whereby the Family Court has granted Rs. 1,000/- per month as maintenance in favour of the applicant. The present revision is for enhancement of maintenance.

2. Brief facts of the case are that the applicant/wife filed application under Section 125 Cr.P.C. before the trial court on the ground that the marriage between applicant and non-applicant was solemnized as per Hindu rituals and customs on 04.02.2010 and immediately after

marriage, the non-applicant started harassing the applicant for demand of dowry. It is further alleged that when the applicant was suffering from illness, the non-applicant did not bother for any medical assistance for her treatment. It has been stated that after coming to know about her illness, her father arranged for her treatment. It is stated that due to cruelty meted out to the applicant, she refused to go back to her matrimonial house. Thereafter, a society meeting was convened and she returned to her matrimonial house where she was again ill treated by her in-laws for demand of cash of Rs. 50,000/- and a motorbike. It is stated that since 5.7.2010, the applicant is residing with her parents and is dependent on her father and is not able to maintain herself. It is stated that the non-applicant has sufficient means of earning and therefore she demanded Rs. 10,000/- as maintenance from him.

3. In his reply, the non-applicant denied all the allegations made against him and pleaded that the applicant herself is not willing to live with him and is residing with her parents without any reason. He has further stated that the non-applicant is physically weak and is unable to do any work, he is dependent on his father and therefore not capable to give the maintenance amount.

4. After recording the evidence and hearing the submissions of learned Family Court, vide order dated 20.03.2013 allowed the application of the applicant and granted Rs. 1,000/- per month as maintenance in her favour. Hence, the present revision filed by the applicant/wife for enhancement of the amount of maintenance.

5. Counsel for the applicant submits that the learned court below

did not take into account the earnings of the husband/non-applicant who is a *raj mistri*, earning Rs. 25,000/- per month, and is also having agricultural land measuring 12 acres with joint ownership of his father. She submits that looking to the present cost of living, the applicant is not able to maintain herself for a sum of Rs. 1,000/- which is a very meagre amount, therefore suitable maintenance be awarded to her.

6. Heard counsel for the applicant and perused the material available on record.

7. Before the Family Court, there is no dispute on the point of marriage between the parties and the applicant is residing separately along with her parents. It is clear from the order sheets that after filing reply, the non-applicant did not appear before the trial court and on 17.10.2012, trial court proceeded ex-parte against him. Applicant examined herself as AW-1, her father Gyan Singh AW-2, and Akshay Nayak AW-3. These witnesses were not cross-examined by the non-applicant therefore the trial court found that the applicant has sufficient reason to reside separately but in para 10, it has been mentioned that the applicant did not produce any document related to agricultural land of non-applicant hence the trial court granted Rs. 1,000/- per month as maintenance. The wife is entitled to lead a life at part the standard of the husband. In the matter of **Baby Rashmi Mehra v. Sunil Mehra** reported in I (1997) DMC 149, wherein it was held that no rigid formula about percentage of income can be fixed for giving maintenance. The quantum depends upon the status and income of the parties.

The leading case of privy council, **Ekradeshwari v. Homeshwar** reported in AIR 1929 privy council 128, was also referred to in this

case wherein it was observed that maintenance depends upon a gathering together of all the facts and the situation, amount of free estate, the past life of the married parties and the family and survey of the members, on reasonable view of change of circumstances, possibly required in future, regard having of course be given to the scale and mode of living and the age, habits and wants and class of life of the parties.

Hon'ble Supreme Court in the case of **Kulbhushan v. Raj Kumari**, expressed its agreement with the aforesaid observation of the privy council. In this case, it was also observed by the single Judge of Delhi High Court that in one case the maintenance may be 25% while in another it may be 50% or even less or more. The quantum depends upon the position of status of the parties including financial position of the defendant and the reasonable demands of the claimant or any other factor. There can be no quarrel with the principle laid down in these cases. **Dharmi Chandra v. Smt Sobha Devi**, AIR 1987 Rajasthan 159, it was held that "general rule is that wife should not be relegated to a lower standard of living than that which the husband enjoys".

In the matter of **Dr. Kulbhushan Kumar vs. Raj Kumari and Anr. Reported in (1970) 3 SCC 129**, 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 dependent on the factual situation of the case and the court

would be justified in moulding the claim for maintenance passed on various factors.

8. Thus considering the overall circumstances in the present case, I am of the view that a sum of Rs. 3,000/- would be sufficient to maintain herself. It is therefore, directed that the non-applicant shall pay a sum of Rs. 3,000 per month to the applicant/wife for the reason that it is the obligation of the husband to maintain his wife and he cannot refuse to maintain her by pleading that he is unable to do so due to financial constraints as long as he is capable of earning. Accordingly, the revision is partly allowed.

Sd/-

(Rajani Dubey)
Judge