

HIGH COURT OF CHHATTISGARH, BILASPUR
CRR No. 875 of 2018

- Devprasad Namdev, S/o Late. Anoop Prasad Namdev, aged about 50 years, R/o Haldibadi, P.S.- Chirmiri, Tehsil-Khadgawan, District – Koriya, Chhattisgarh.

---- Applicant

Versus

1. Smt. Gomtibai Namdev, W/o Late. Anoop Prasad Namdev, aged about 71 years, R/o - Haldibadi, Chirmiri, P.S.- Chirmiri, District – Koriya, Chhattisgarh.
2. Ganesh Prasad Namdev, S/o Late. Anoop Prasad namde, Aged about 55 years, R/o Gulshan Nagar, West Chirmiri Podi, P.S. Podi, Tehsil – Baikunthpur, District- Koriya, Chhattisgarh.
3. Smt. Parwati Namdev, D/o Late. Anoop Prasad Namdev, aged about 47 years, R/o Dodripara, Chirmiri, P.S. Chirmiri, District- Koriya, Chhattisgarh.

---- Respondents

For Applicant	:	Mr. Pushkar Sinha, Advocate
For Respondent	:	Mr. Adil Minhaj, Advocate

Hon'ble Smt. Justice Rajani Dubey
Order on Board

11.07.2019

1. The applicant has preferred this revision against the order dated 19.06.2018 passed by Judge, Family Court Manendragarh, District – Koriya (C.G.) in M.J.C. No. 101/2017 rejecting the application filed by the applicant under Section 127 of the Code of Criminal Procedure.

2. Brief facts of the case are that the applicant filed an application under Section 127 of Cr.P.C. for alteration/modification of maintenance amount of Rs. 7,000/- per month, which was granted in favour of respondent/non-applicant No.-1 (mother of the applicant), while deciding the application under Section 125 of

Cr.P.C., filed by the non-applicant No.1, before the Family Court, Manendragarh. Respondent No.1 had filed an application before Family Court under Section 125 of Cr.P.C. for grant of maintenance of Rs. 20,000/- against the present applicant and respondent No. 2 & 3. Respondent No. 1 is mother of applicant and respondent No. 2 & 3. In Miscellaneous Criminal Case No. 47/2017, on the basis of compromise, Family Court passed the order that applicant, respondent No. 2 & respondent No. 3 will pay amount of Rs. 7,000/-, 7,000/- & 5,000/- respectively to respondent No-1. At that time of settlement, the applicant could not assess his income and ready to pay amount of Rs. 7,000/- per month to non-applicant No.-1, but after passage of time, he analyzed his real income and found himself unable to pay such huge amount as his shop of motor-parts is not running well. According to him, his monthly income is Rs. 5,500/- only so he moved application for modification/alteration under Section 127 of Cr.P.C., but the Family Court did not consider his application and dismissed the said application. Hence, this revision petition.

3. Counsel for the applicant submits that impugned order passed by the learned Family Court is bad in law, being perverse, erroneous and contrary to the facts and circumstances of the present case. The learned Family Court ought to be considered that there is a change in circumstances and now petitioner/applicant is not in a position to pay such a big amount, which was decided by the Family Court as his business is not running well and also he has liabilities of his family members for their livelihood. He further submitted that applicant never refused or neglected his mother. He kept his mother in his house to take care of her for such a long time but some time ago, his sister (respondent No. 3) took the respondent No. 1 (mother) away in her home and immediately after that his mother (respondent no. 1) filed a case for maintenance. There is some dispute between

applicant and his sister (respondent No. 3) and his sister wants to harass the applicant so she has pressurized to her mother to file a maintenance case before the Court. He also submits that respondent No. 3 (sister of applicant) get the compassionate appointment in HECL after the death of their father, and it is the duty of the person, who get compassionate appointment, to maintain the other family members who were dependent upon the deceased. So, if there is any liability exists for maintenance of respondent No. 1, then only respondent No. 3 is liable for that. Respondent No. 2 and 3 are employee of HECL, they are getting salaries more than Rs. 70,000/- each per month, whereas in comparison to that the applicant is now facing heavy financial crisis as his business is not running well. Applicant is looking after two children and his wife and he has the responsibility for their livelihood. Appellant's son was studying at Amity University in Gwalior and for that purpose petitioner/applicant need most of his income for securing the better future of his son. But it is unfortunate for applicant that now he called back his son from there as he is not in a position to bear the cost of University and other expenses. Respondent No. 1 is in no need of any maintenance amount from the applicant as she has sufficient means for her livelihood, which is reflecting from her bank account and there is enough money to maintain herself. So, order of Family Court is liable to be set-aside or modified.

4. On the other hand, supporting the impugned judgment, learned counsel for the respondent No. 1 submits that the Court below was fully justified in awarding the maintenance.

5. Respondent No. 2 & 3 are not present even after serving of notice.

6. Heard learned counsel for the parties and perused the material on record including the impugned order.

7. It is clear from the trial Court's record that respondent No. 1 is a 71 years old lady. She filed an application under Section 125 of Cr.P.C. against applicant and respondent No. 2 & 3 before the trial Court on 03.11.2017, and Trial Court recorded their statements and delivered an order by which both the parties entered into an agreement that applicant, respondent No. 2 & respondent No. 3 will pay amount of Rs. 7,000/-, 7,000/- & 5,000/- respectively to respondent No-1. After few days, on 05.12.2017 applicant filed an application under Section 127 for modification of order dated 03.11.2017, which was rejected by the learned Family Court.

8. In the order dated 19.06.2019, learned Family Court reviewed and considered the evidence produced by the applicant as described in Para 14 of it. Learned trial Court found that order dated 03.11.2017 was based on compromise and both the parties entered into agreement willfully. Applicant was agreed to give maintenance to his mother. The Court below was fully justified in awarding the maintenance in favour of Respondent No. 1. It is very unfortunate that despite having three earning children, a 71 year old lady has to knock the doors of Court for her maintenance.

9. In view of above, this Court is of the considered opinion that the order dated 03.11.2017 passed by the Court below being fully justified, do not call for any interference in revision petition.

10. Accordingly, this revision has no substance and it is hereby dismissed.

Sd/-
(Rajani Dubey)
JUDGE