

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
CRR No. 459 of 2016

- Taresh Shrivastava, 45 years, S/o T.P. Shrivastava, Chandra Kunj, behind Radha Krishna Temple, Danganiya, Teh. & Distt. Raipur.

---- Applicant

Versus

- Mamta Shrivastava, D/o U.N. Shrivastava, Mira bhavan, Kobia, Teh. & Distt. Bemetara

---- Respondent

For Applicant	:	Mr. Raja Sharma, Advocate
For Respondent	:	Ms. Meenu Banerjee, Advocate

Hon'ble Smt. Justice Rajani Dubey

Order On Board

16.07.2019

1. Being aggrieved by the order dated 27.02.2016, passed by the Third Additional Principal Judge, Family Court, Durg/ Camp Court, Bemetara (C.G.) in Miscellaneous Criminal Case No. 57/2013 dismissing the application filed by the applicant/husband under Section 127 of the Code of Criminal Procedure, applicant/husband preferred this revision.

2. Brief facts of the case are that respondent was applicant's wife. The couple got divorced by virtue of Family Court's decree dated 10.05.2007. Later on, 13.05.2011, this Court in revision proceedings, arising out of Section 125 Cr.P.C. of the Family Court, granted maintenance of Rs. 3,000/- per month to the respondent. The fixation of amount was mainly based on consideration that the respondent was not able to maintain herself and that the applicant was earning Rs. 17,000/- per month. The applicant/husband filed an application under Section 127 of Cr.P.C. before the Family Court, alleging the change of circumstances, in particular his loss of job and gainful employment as a

lawyer of the respondent at New Delhi, but the Court below dismissed the application on the ground that applicant was an able bodied person, capable of earning Rs. 10,000/- per month and that the fact of his becoming jobless is a deliberate attempt to avoid payment of maintenance. Hence, this revision.

3. Learned counsel for the applicant submits that the Court below has committed grave illegality and jurisdictional error in rejecting application filed under Section 127 Cr.P.C. of the applicant herein that the Court below failed to appreciate the material brought on record from which change of circumstances was born particularly, applicant's loss of job and respondent's gainful employment as lawyer at New Delhi. Since the Court below erred in dismissing plea of the applicant, herein on the ground that he is an able bodied person and capable of earning Rs. 10,000/- per month because the theory of being able bodied person is more germane for deciding Section 125 plea and not for deciding Section 127 plea. He also submits that the Court below erred in dismissing the plea of the applicant on the ground that his becoming jobless, is a deliberate attempt to avoid payment of maintenance, because no prudent person will give up earning of Rs. 17,000/- just to avoid liability of Rs. 3,000/-. He further submits that learned Court below did not deal with the issue of gainful employment of respondent as a lawyer at New Delhi despite there being sufficient material on record to sustain the issue in favour of the applicant. He further submitted that even if the theory that applicant is an able bodied person capable of earning Rs. 10,000/- per month is accepted, then also, as per order dated 13.05.2011 passed by this Court in CRR No. 595/2009, decided between same parties, the liability of the applicant herein would be to pay Rs. 1,000/- per month as maintenance. The order impugned of the Court below suffers from jurisdictional vice causing miscarriage of justice and it would be expedient in the interest of justice to allow the instant revision and set-aside the order impugned and allow the application of applicant under Section 127 Cr.P.C.

4. On the other hand, supporting the impugned judgment, learned counsel for the respondent submits that as the applicant had

performed marriage with respondent, it is his duty to give her maintenance.

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

6. Be that as it may, there is no dispute that the applicant and respondent are legally married as husband and wife, and as such it is the duty of the husband to take care of his spouse by paying the optimum amount of maintenance so that she is not required to live a helpless hellish life. In CRR No. 595/2009, this Court ordered that husband to pay Rs. 3,000/- per month to the wife as maintenance.

7. In *Shamima Farooqui v. Sahid Khan* [(2015) 5 SCC 705] Hon'ble Supreme Court held that wife has absolute right of maintenance. Husband cannot absolve from his obligation to provide maintenance, mainly plea of financial constraints, so long as he is healthy, able-bodied and capable of earning for his own. The learned Court below discussed this aspect in para 12 of its order in detailed and on that basis, not erred in rejecting applicant's application.

8. Accordingly, there is no substance in the revision and, therefore, it is dismissed with affirmation of the order passed by the trial Court.

Sd/-
(Rajani Dubey)
JUDGE