

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 1248 of 2018

- Narayan Soni S/o Rampyare Soni, Aged About 37 Years, Departmental Address- Post RMO, Through Dr. Narendra Singh Community Health Centre Pratapur, District- Surajpur, Chhattisgarh., District : Surajpur, Chhattisgarh

---- Revisioner/Applicant

Versus

- Smt. Anjali Soni W/o Narayan Soni, Aged About 32 Years, R/o- D.D. Nagar Sector-4, MIG-109, P.S. D.D. Nagar, Raipur, Tahsil and District- Raipur, Chhattisgarh., District : Raipur, Chhattisgarh

----Respondent/Non-applicant

For Applicant – Shri S.V. Purohit, Advocate.

For Respondent – Shri Rekhraj Baghel, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

06-12-2019

1. This revision petition has been brought challenging the order dated 08-08-2018 passed by learned Family Court Raipur in MJC No. 143/2018.
2. The applicant herein is husband of the respondent. The application filed by respondent under Section 125 of the Cr.P.C. which was registered as MJC No.209/2013 an order was passed on 19-07-2017 granting maintenance to the respondent Rs.6000/- per month. The applicant filed an application under Section 127 of the Cr.P.C. praying for modification in the order passed, which was registered as MJC No.143/2018 that has been though allowed, but the reduction in monthly maintenance has been made of Rs.1000/-per month only. Hence, this revision petition.
3. It is submitted that the applicant and the respondent are now separated by a decree of divorce. There is already order of the Family Court in civil suit No.03-A/2015 decided on 07-02-2018 by granting decree of divorce, that the applicant shall pay monthly maintenance of Rs.3000/- per month to the respondent and further the applicant has also proved by evidence that he has

no source of income. Therefore, reduction of maintenance amount from Rs.6000/- to Rs.5000/-was insufficient., the proposition given by the applicant should have been accepted by the trial Court for reducing the maintenance amount from Rs.6000/- to Rs.3000/-. Therefore, it is prayed that the application may be allowed.

4. Learned counsel for the respondent opposes the petition and submission made and submits that the impugned order is erroneous on this ground, that the amount of maintenance has been reduced from Rs.6000/- to Rs.5000/- whereas the applicant has all the capability for paying maintenance. The applicant is a Government servant, therefore, his submission that he has no source of income is itself false and misleading. Therefore, the petition may be rejected.

5. Heard learned counsel for the parties and perused the documents.

6. There is no dispute regarding entitlement of the respondent for grant of monthly maintenance from the applicant side. There is already an order for monthly maintenance of Rs.3000/- in favour of the respondent by the judgment and decree of the Family Court in divorce petition. This fact was taken into consideration by the Family Court while deciding the application under Section 127 of the Cr.P.C. It was held by the learned Family Court that there is no change in circumstances even then the order was passed for reducing the amount of maintenance from Rs.6000/- to Rs.5000/- per month.

7. In Section 127 of the Cr.P.C. the only ground on which order of maintenance can be modified is ground of change in circumstances. The applicant's capability of paying maintenance was already examined in the earlier order granting maintenance, therefore, the same ground could not have been examined in application under Section 127 of the Cr.P.C. Apart from that, there is no mention from the applicant side regarding any change in circumstances. The applicant still appears to be continuing as Government

servant, therefore, his capacity to earn and capacity to pay maintenance appears to be as it is. Therefore, after due consideration, I am of this opinion that this revision petition is without any substance which is dismissed at the motion stage.

Sd/-

(Rajendra Chandra Singh Samant)
Judge