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HIGH COURT OF CHHATTISGARH, BILASPUR

CR.R. No. 1196 of 2019

Joy Sharma, S/o. Shri Debashis Sharma, Aged About 29 Years, R/o. Quarter No.26/111, Moti Nagar, Shillong (Meghalaya).

---- Petitioner

Versus

1. Smt. Vinisha Mukherjee Sharma, W/o. Shri Joy Sharma, Aged About 27 Years, R/o. Quarter No. 6-D, Road No.74 Sector-6 Bhilai, Near M.G.M. School, Bhilai Nagar, District Durg, Chhattisgarh.
2. Prathmesh Sharma, S/o. Shri Joy Sharma, Aged About 01 Year 07 Months, Minor, Represented by his Mother Smt. Vinisha Mukherjee Sharma, W/o. Shri Joy Sharma, aged about 27 years, R/o. Quarter No.6-D, Road No.74 Sector-6 Bhilai, Near M.G.M. School, Bhilai Nagar, District Durg, Chhattisgarh.

-----Respondents

With

CR.R. No. 175 of 2020

1. Smt. Vinisha Mukherjee Sharma, W/o. Shri Joy Sharma, aged about 27 years, R/o. Quarter No. 6-D, Road No. 74, Sector-6 Bhilai, Near M.G.M. School, Bhilai Nagar, District Durg, Chhattisgarh.
2. Prathmesh Sharma, S/o. Shri Joy Sharma, aged about 01 years 07 Months, Minor, Represented by his Mother Smt. Vinisha Mukherjee Sharma, W/o. Shri Joy Sharma, aged about 27 years, R/o. Quarter No. 6-D, Road No. 74, Sector-6 Bhilai, Near M.G.M. School, Bhilai Nagar, District Durg, Chhattisgarh.

---- Applicants

Versus

Joy Sharma, S/o. Shri Debashis Sharma, aged about 29 years, R/o. Quarter No.26/111, Moti Nagar, Shillong, Meghalaya.

-----Respondent

For Applicant (in Cr.R. No.1196 of 2019)	: Mrs. Meena Shastri, Advocate
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For Respondents (in Cr.R. No.1196 of 2019)	: Mr. Vijay Kumar Sahu, Advocate
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For Applicants (in Cr.R. No.175 of 2020)	: Mr. Vijay Kumar Sahu, Advocate
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For Respondent (in Cr.R. No.175 of 2020)	: Mrs. Meena Shastri, Advocate
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Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

27/02/2020

1. As both the criminal revision arises out of the same order, passed in Miscellaneous Case No.1321/2018 dated 05.09.2019, therefore, both the revision petitions are heard and decided by this common order.
2. Applicant in Cr.R. No.1196 of 2019 shall be hereinafter referred to as the applicant and the applicants in Cr.R. No.175 of 2020 shall be hereinafter referred to as the respondents in this order.
3. Cr.R. No.1196 of 2019 has been filed by the applicant praying to set-aside the order dated 05.09.2019 by which the applicant has been ordered to pay interim maintenance of Rs.2,000/- to the respondent No. 1 and Rs.1000/- to the respondent No.2.
4. Cr.R. No.175 of 2020 has been filed against the same order praying for enhancement of the maintenance award from Rs.3,000/- to Rs.40,000/-.
5. There is no dispute that the applicant and the respondent No.1 are married and respondent No.2 is their child.
6. It is submitted by counsel for the applicant that the applicant was employed in Vadodara and respondent No.1 was having a job in Bangalore. The respondent No.1 has left the matrimonial home on pretext that she was being treated with cruelty by the applicant. The grounds raised by the applicant side is that respondent No.1

has willingly left the company of the applicant without any sufficient cause. The respondent No.1 is a qualified woman and engaged in a job having sufficient earnings to maintain herself whereas at present the applicant is unemployed and therefore, he has no means to pay the maintenance amount.

7. It is submitted by the learned counsel for the applicant that the facts were present before the learned Family Court that respondent No.1 deserted the applicant, she has capable to maintain herself and that the applicant is unemployed at present. Since the applicant has no means to pay the amount of order of maintenance, therefore, it is prayed that the impugned order be interfered and set-aside. Reliance has been placed on the judgment of Punjab & Haryana High Court in ***Monu Songra Vs. Pinki***, passed in ***Cr.R. No.2625 of 2014*** decided on ***29.09.2016*** and the judgment of Delhi High Court in case of ***Sanjay Bhardwaj & Ors. Vs. The State & Anr.***, passed in ***Cr.M.C. No.491 of 2009*** decided on ***27th August, 2010***.
8. Counsel for the respondents opposes the petition and the submission made in this respect. In Cr.R. No.175 of 2020 counsel for the respondents has argued that the learned Family Court has not appreciated this fact that the applicant is well established and having earning of Rs.1.00 lakh per month and therefore, grant of maintenance of Rs.3,000/- per month is minimum amount, which needs to be enhanced to Rs.40,000/- per month.

9. Counsel for the applicant rebuts the argument advanced in Cr.R. No.175 of 2020.
10. I have heard the learned counsel for the parties and perused the documents placed on record.
11. The only grounds raised in both the revision petition is the capacity of the applicant to make payment of maintenance order and capacity to pay the enhanced maintenance. Respondent side has mentioned in the application that the applicant is employed in a company in Bangalore, where he is getting salary of Rs.1.00 lakh per month, to which the applicant had rebutted that he had left the job in Bangalore and at present he is unemployed. He has also contested the claim of the respondent she is unable to maintain herself and submits that she is a qualified as engineer and she had an earning of Rs.2,31,460/- per annum from the job in Bangalore and at present she is engaged in private job and having an earning of Rs.25,000/- to Rs.30,000/- per month.
12. Learned Court below has not appreciated at all, the earning capacity of the respondent No.1, however, the Court has ordered payment of maintenance in her favour also.
13. On plain appreciation of the rival statements made by both the parties, this is found established that respondent No.1 is qualified person and has capability to earn for herself. However, the

respondent No.2 is child and he has all the entitlement for grant of maintenance. Looking to the qualifications of the applicant, it is found that there is every possibility, that if he seeks employment, he will definitely get a job or that he has capability to make living out of his own expertise in any manner. Therefore, the liability of the applicant to pay the maintenance to his minor child is present and similarly capability is also present which he himself does not deny. The qualifications and earning capacity of respondent No.1 needs appreciation in the trial. Therefore, for the present I am of this view that respondent No.1 should not have been granted any maintenance from respondent No.2 for maintenance.

14. Resultantly on the basis of the discussion made hereinabove, Cr.R. No.1196 of 2019 is allowed in part. The interim maintenance in favour fo the respondent No.1 is set-aside. Cr.R. No.175 of 2020 is also partly allowed. The order of the maintenance in favour of respondent No.2 is enhanced from Rs.1,000/- to Rs.5,000/- per month, which shall be payable from the date of filing of the application.
15. Accordingly, both the petitions are disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge