

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CR.R. No. 240 of 2020

Pushpraj Ogre, S/o. S.C. Ogre, aged about 32 years, R/o. Quarter No. 185/4, Balco Nagar, Tahsil and District Korba, Chhattisgarh.

---- Applicant

Versus

Smt. Renuka Ogre, W/o. Pushpraj Ogre, aged about 26 years, D/o. Jaynarayan Gadhewal, R/o. Village Khisora (Levai) Via Baloda, Tahsil and District Janjgir Champa, Present Address- Through Mohan Lal Patle, Bhadpara Balco Nagar Korba, Tahsil and District Korba, Chhattisgarh.

-----Respondent

For Applicant	: Mr. Anumeh Shrivastava, Advocate
For Respondent	: Mr. Mirza Kaiser Beg, Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

01/12/2020

1. This revision petition is directed against the order dated 13.01.2020, passed in Miscellaneous Criminal Case No.66 of 2019 by the Family Court of, Korba.
2. The respondent/wife filed an application under Section 125 of Cr.P.C., which was registered as M.J.C. No.154/08, by the Family Court, Korba. After completion of the proceeding, the order was passed on 03.03.2009, by which the application of the respondent was allowed and she was granted monthly maintenance of Rs.1,500/- per month to be paid from the date of order.
3. The respondent then filed an application under Section 127 of Cr.P.C, which was registered as M.J.C. No.66/2019, in which the

learned Family Court again allowed the application filed by respondent and enhanced the maintenance amount from Rs.1,500/- to Rs.3,000/- per month to be paid from January, 2020.

4. It is submitted by the learned counsel for the applicant that the impugned order is erroneous and not passed with justifiable reasons. The respondent has simply deserted the petitioner, therefore, she has no entitlement for maintenance. There is no proof brought on record to show that since passing of order under Section 125 of Cr.P.c., the income of the applicant has enhanced. This fact was not taken into consideration that the applicant himself has burden of maintaining his family and children for which he has to make considerable expenses. The impugned order has been passed by making assumption that the price index of the commodities has gone up, which is a change in circumstances for enhancement. Hence, the order passed suffers from infirmity, which is unsustainable. Interference is prayed for by this revision.
5. Counsel for the respondent submits that earlier the order of maintenance of Rs.1,500/- per month against the applicant was passed on 03.03.2009. It is after passing of almost 10 years, the respondent has filed an application for enhancement of maintenance amount, therefore, her application can not be said to be frivolous and baseless. The rise in price index can be taken notice of by the Court, for which, there is no requirement of

bringing any specific evidence. Further the applicant has the capacity to make payment of monthly maintenance. The respondent had specifically pleaded that she is suffering from physical ailments and therefore, she needs enhancement in the maintenance amount. Whereas, the applicant has monthly income between Rs.18,000/- to Rs.20,000/-, who is capable to pay the maintenance, which has been taken into consideration by the learned Family Court and the order has been passed correctly, which needs no interference. Hence, this revision petition be dismissed.

6. I have heard the learned counsel for the parties and perused the records of the proceeding of application under Section 127 of Cr.P.C.
7. Evidence has been led by the respondent side stating that respondent is suffering from physical ailments because of which there is additional requirement of money for her treatment. Although the respondent is residing with her father but she is not receiving any financial aid from him.
8. The evidence has been led by the applicant side in which he has stated that he has performed second marriage after divorce and has one daughter from this marriage. His son from previous marriage is also with him, who is being maintained by him. Documents have been produced regarding the expenses made on the medical treatment of his children and regarding the expenses for their education. It has been stated that he is

working as labour under the contractor and receives salary of Rs.8,000/- per month only, therefore, he is unable to pay enhanced maintenance amount. Further he has admitted in the cross-examination that in passing of 10 years, his salary has increased although he has not produced any documents regarding his salary income.

9. On perusal of the order dated 03.03.2009, passed in M.J.C. No.154/2008, it is found that the learned Family Court has held that the applicant works as labour under contractor and receives a monthly salary between Rs.3,000/- to Rs.5,000/- per month, which was the basis for order of grant of maintenance of Rs.1,500/- per month to the respondent. At present, the respondent has stated in her application and also in the evidence that the applicant has earning of about Rs.20,000/- per month, but there is no document filed in support of the same. Applicant side also made only oral statement that he has monthly income of Rs.8,000/- only and in that he has to maintain his children and himself. Hence, it appears that there is no exact proof regarding the present income of the applicant. But on the basis of the statement made by the applicant himself, it can be made out that he may be getting salary of Rs.8,000/- to Rs.10,000/-.
10. Looking to the responsibility of other dependents on the applicant it can be assumed that the order of enhancement that has been made, is on higher side and that too is without giving specific finding regarding the income of the applicant. Therefore, I am of

this opinion that the respondent though had entitlement for enhanced maintenance amount, but the same should have been ordered in accordance with capacity of the applicant to pay the same. Hence, the maintenance amount enhanced by the learned Family Court requires to be modified.

11. On the basis of discussion made herein-above and the other circumstances present, the revision petition is partly allowed. The enhanced monthly maintenance granted in favour of the respondent is reduced to Rs.2,300/- per month. This amount shall be payable as monthly maintenance to the respondent by the applicant from the date of passing of the impugned order.
12. Accordingly, this revision petition is disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge