

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 239 of 2019

Priyank Shukla S/o Shri A. K. Shukla Aged About 36 Years R/o Behind Ganga Nursing Home, Jagatpur, Raigarh, Tehsil Raigarh, District Raigarh Chhattisgarh.

---- Applicant

Versus

1. Smt. Yugal Kishori W/o Priyank Shukla Aged About 31 Years R/o C/o Dr. Jaynarayan Tripathi, Behind Siddheshwar Mandir Road Primary School, Kota, Tehsil Raipur District Raigarh Chhattisgarh.
2. Aashi Shukla D/o Priyank Shukla Aged About 6 Years R/o C/o Dr. Jaynarayan Tripathi, Behind Siddheshwar Mandir Road Primary School, Kota, Tehsil Raipur District Raigarh Chhattisgarh.

---- Respondents

AND

CRR No. 249 of 2019

1. Smt. Yugal Kishori W/o Priyank Shukla Aged About 28 Years, District : Raipur, Chhattisgarh
2. Ku. Aashi Shukla D/o Priyank Shukla Aged About 3 Years Through Natural Guardian Smt. Yugal Kishori, R/o C/o Dr. Jaynarayan Bheind Primary School Kota, Tahsil And District Raipur Chhattisgarh.

---- Applicants

Versus

Priyank Shukla S/o A K Shukla Aged About 33 Years R/o Behind Ganga Nursing Home Jagatpur Raigarh, Tahsil And District Raigarh Chhattisgarh.

---- Respondent

For Applicant/s	: Shri Dhiraj Kumar Wankhede, Advocate in Cr.R. No.239 of 2019 and Shri Rahim Ubwani, Advocate in Cr.R. No.249 of 2019.
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Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

30-01-2020

1. Criminal Revision No.239 of 2019 has been brought by the applicant - husband challenging the order dated 4.2.2019 passed by the learned

Family Court, Raipur granting monthly maintenance of Rs.5,000/- to respondent No.1/ wife – Smt. Yugal Kishori and Rs.3,000/- to respondent No.2/ daughter – Aashi Shukla.

Criminal Revision No. 249 of 2019 has been brought by the wife and child of the applicant praying for enhancement of the maintenance amount. For the sake of clarity, the applicant in Criminal Revision No.239 of 2019 shall be referred to as applicant for all purposes and the applicants in Criminal Revision No. 249 of 2019 shall be referred to as respondents for all purposes.

2. It is submitted by learned counsel for the applicant in Cr.R. No. 239 of 2019 that the learned Family Court has not appreciated the evidence brought by the applicant regarding his income and passed an order for maintenance which is beyond his capacity. The applicant had submitted the salary certificate Ex. D/1, in which his employer – Devatram had certified that the applicant is employed as Supervisor and having a monthly payment of Rs.5,000/- only. The applicant has also produced the income certificate obtained from Tehsildar, Raigarh, in which it was shown that the annual income of the applicant was only Rs.60,000/-. There is no other evidence brought by the respondents' side to show that the applicant has any further income or there are any other resources of the applicant in that regard. Therefore, looking to the monthly income of the applicant which is only Rs.5,000/-, the order of payment of maintenance of Rs.8,000/- per month is excessive and beyond the capacity of the applicant. Therefore, a prayer has been made for interference in the impugned order.
3. Learned counsel appearing for respondent/ applicants in Cr.R. No. 249 of 2019 submits that the learned Family Court has properly appreciated the evidence brought by the applicant and disbelieved that his monthly

earning had been only to the extent of Rs.5,000/- per month. On the basis of the admissions made by the applicant himself in the evidence regarding his business which he had undertaken in the year 2009, regarding his position and lifestyle, learned Family Court has estimated correctly and granted maintenance to the respondents, however, the maintenance granted to respondent No.2 is very much on the lower side specifically for the reason that respondent No.2 is suffering from kidney infection for which she needs treatment and on the other hand, the maintenance which is granted is not sufficient to meet all the requirements of all the respondents. Prayer has been made to enhance the maintenance at least Rs.15,000/- per month. Rebutting the submissions in Cr.R. No. 239 of 2019, the respondents have further relied in Cr.R. No. 249 of 2019 that the evidence which is present by way of admission of the applicant's side is clear, therefore, there was no further requirement for bringing any other evidence.

4. In reply, learned counsel for the applicant rebuts the grounds raised in Cr.R. No. 249 of 2019 and submits that respondent No.1 is not entitled for maintenance as she is living separately without sufficient cause and further, the respondents' side has failed to produce evidence with documents to show the living status of the applicant. Therefore, Cr.R. No. 239 of 2019 has merit and Cr.R. No. 249 of 2019 has no merit; and orders may be passed accordingly.
5. Heard both counsel for the parties and perused the material available on record.
6. There is no dispute that the applicant and respondent No.1 have a marital status and respondent No.2 is their daughter. The applicant had contested the application under Section 125 of the Cr.P.C. on the ground that respondent No.1 has deserted him and she is living separately

without sufficient cause. This ground has been considered in the impugned order and it was held that respondent No.1 is living separately having sufficient cause for doing so. Perusing the evidence in that regard present in the record of the Family Court, I am of this view that no error has been committed in arriving to that conclusion. There is no specific challenge in this revision petition regarding the point of inability of the respondents to maintain themselves. Therefore, the only issue remaining to be considered is the factum of earning of the applicant.

7. Yugal Kishori Shukla (AW-1) has stated in her examination-in-chief that the applicant is engaged in business of coal trading and other contracts work. Yearly turn over of his business is Rs. 1 crore per month. Apart from that, the applicant was also doing business of property dealing in which he is getting Rs.1,00,000/- per month. She has further stated that when she tried to obtain the copy of income-tax returns from the income-tax department, because of the objection by the applicant himself before the Income-tax Officer, the information was refused to her. In cross-examination, she has stated that the applicant himself told her that his yearly turn over is Rs.1 crore and he is also engaged in property dealing. There is no other statement in her cross-examination to contradict her statement regarding the income of the applicant. Gopinath Tripathi (PW-2) is brother of respondent No.1 who has stated similarly in his examination-in-chief before the Court that the applicant has yearly turn over of Rs.1,00,000/- whereas, he is getting monthly income of Rs.1,00,000/- in his property dealing. His statement has some variation and he has clarified in cross-examination that the yearly turn over of Rs.1,00,000/- in coal business mentioned in the affidavit of examination-in-chief is incorrect which should have been one crore. There is no other statement in his cross-examination to contradict this

statement.

8. Applicant – Priyank Shukla (DW-1) has stated before the Family Court that he has monthly income of Rs.5,000/- which he receives as monthly payment from M/s. Uchania Minerals and Transport, Raigarh. In cross-examination, he has stated that he owns a Ritz Car. He has admitted that from the year 2009, he used to do coal trading. He has a passport and on one occasion he had been to Thailand. Some photographs of his standing before some cars were confronted in which he has denied that the cars shown in the photographs belonging to him. He has further admitted that respondent No.1 had filed an application in income-tax department for getting information about the income of the applicant to which he had objected, therefore, the department refused to give information to respondent No.1. He has further stated that he has not filed any income-tax returns since 2014.
9. Devatram Uchania (DW-2) has stated that the applicant was employed with him in the year 2014 and he is payment an amount of Rs.5,000/- per month to him regarding which he has given salary certificate Ex-D/2. In cross-examination, he has admitted that he has not given any appointment letter to the applicant and he has not produced any accounts on payment of salary to the applicant.
10. Learned Family Court has inferred on the basis of the admissions made by the applicant that he has more income than what he is trying to make believe the Court. His admission regarding possession of a car, passport and also regarding the foreign tour clearly indicates that such a life style cannot be sustained at a meager income of Rs.5,000/- per month. Apart from that, the certificate, which has been produced is of the year 2015. Further, the objection made by the applicant before the income-tax department for giving information to the respondents

regarding income, shows the conduct which gives confirmation to the conclusion drawn by the learned Family Court, that the applicant is a man of means and that is why, he has objected for the information to be given to respondent No.1 and he has though made a statement that he is not filing any return of income-tax, but had not made any effort or intend to file the earlier returns or any documentary proof in that respect to show that he is not an income-tax payee at present. Therefore, other than the admissions made by the applicant, he has not very clearly denied that he is a person exempted from paying income-tax. The standard of proof in such cases as in the proceedings under Section 125 of the Cr.P.C is not so high, when there are circumstances to draw inference, such inference can be drawn by the Family Court and orders were passed accordingly. Therefore, after appreciation of the whole evidence present in the record of the proceedings, I am of this view that the Learned Family Court has not committed any error in holding that the applicant is a man of means, and, I find no reason to interfere with the impugned order on the basis of the prayer made in Cr.R. No. 239 of 2019.

11. After considering the evidence present in the record of the proceedings, it is found that there is no mention regarding the kidney problem of respondent No.2 – Ku. Aashi Shukla in the evidence, therefore, it is a new ground which cannot be taken into consideration at the stage of revision. On the basis of the inference that has been drawn by the Family Court regarding the income of the applicant and without there being any further evidence regarding the specific amount of income which the applicant may be getting monthly or yearly, passing order for any enhancement in the maintenance granted by the Family Court does not appear to be appropriate. Therefore, for this reason, I again do not

find any reason to interfere with the impugned order on the basis of the prayer made in Cr.R. No. 249 of 2019. As a result, this Court is not inclined to interfere with the impugned order on either of the revision petitions. Hence, both the petitions are dismissed.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Nimmi