

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 1438 of 2019

- Smt. Kavita Singh @ Ranjita Singh, W/o Sanjay Singh Chandel, Aged About 37 Years, R/o Sukli, Presently Residing At Darang, Tahsil and Police Station Champa, District - Janjgir Champa, Chhattisgarh., District : Janjgir-Champa, Chhattisgarh

---- Applicant

Versus

- Sanjay Singh Chandel S/o Shri Shyam Sunder Singh, Aged About 38 Years, R/o Sukli, Presently Residing at Tripathi Patholab Behind Hospital Colony, Sitapur, Tahsil Sitapur, District - Ambikapur, Chhattisgarh., District : Surguja (Ambikapur), Chhattisgarh

-----Respondent

For Applicant : Shri Anil Gulati, Advocate.

For Respondent: Shri Ravindra Sharma, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

20/01/2020

1. Heard.
2. This revision has been brought challenging the legality, propriety and correctness of the order dated 30-09-2019 passed by the learned Family Court Janjgir, District Janjgir-Champa by allowing the application filed by the respondent under Section 127 of the Cr.P.C. and setting aside the order dated 13-02-2018 in MJC No.352/2016.
3. It is submitted by learned counsel for the applicant that the applicant had earlier filed an application under Section 125 of the Cr.P.C. before the Family Court at Janjgir-Champa, on which an order of maintenance was passed on 16-08-2010 granting monthly maintenance of Rs.2000/- per month. The maintenance was enhanced by order dated 20-06-2014 on the basis of the application filed by the applicant under Section 127 of the Cr.P.C. to Rs.2,500/- per month.

Subsequent to that, the applicant again filed application under Section 127 of the Cr.P.C. which was registered as Misc. Cr. Case/ MJC No.352/2016, an order was passed on 13-02-2018 enhancing the maintenance to the applicant from Rs.2,500/- to Rs.5,000/- per month. This order was affirmed by this Court in CRR No.484/2018 by order dated 14-01-2019.

It is further submitted that in a later stage the respondent filed an application under Section 127 of the Cr.P.C. before the learned Family Court and the case was fixed for counseling on 30-09-2019. It is submitted that at the time of counseling the learned Family Court has made observation regarding conduct and statement made by the applicant and thereafter only on the basis of the oral statement made by her that she is working in Jila Baal Sanrakshan Ekai, Mungeli has without making any enquiry into the application under Section 127 of the Cr.P.C. allowed the same and has set aside the order dated 13-02-2018 passed in MJC No.352/2016, therefore, this order is arbitrary and without following the procedure of law, which is liable to be set aside.

4. Learned counsel for the respondent submits that no error has been committed by the learned Family Court in passing the impugned order. The admission made by the applicant herself before learned Family Court was sufficient ground for allowing the application of the respondent and setting aside the order granting enhanced maintenance. Therefore, the petition be dismissed.
5. Heard learned counsel for the parties and perused the documents.
6. On perusal of the documents filed along with the petition and considering on the submissions made by learned counsel for both sides, it is found that the date 30-09-2019 was fixed for counseling between the parties and it was not a date for hearing and also on

perusal of the impugned order it appears that no enquiry was made on the application filed under Section 127 of the Cr.P.C. which was a necessary procedure to be followed by the Court below to ascertain the claims made by the respondent and the dispute raised by the applicant. It was only on the basis of the oral statement made by the applicant that she is working in Jila Baal Sanrakshan Ekai, Mungeli the impugned order has been passed, which is not an order in accordance with procedure as laid down in the Cr.P.C. Therefore, the order suffers from grave infirmity, which is not sustainable.

7. Hence, the petition is allowed at the motion stage and the impugned order dated 30-09-2019 is set aside. The application under Section 127 of the Cr.P.C. filed by the respondent is however restored and the learned Court below is directed to make appropriate enquiry as envisaged in the Code of Criminal Procedure and pass appropriate order.
8. Both the parties are directed to give appearance before the learned Family Court on 4th of February, 2020 and the parties are also directed to cooperate in the proceedings before the Court.
9. The petition stands disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge