

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CR.M.P. No. 750 of 2021

Shilpi Shrivastava, W/o. Varun Gopal, aged about 34 years, R/o. Om Niwas, Jora Talab, Behind Manorama Dairy, Jora Para, Sarkanda, Bilaspur, Chhattisgarh.

---- Petitioner

Versus

Varun Gopal, S/o. Sh. Manmohan Gopal, aged about 33 years, R/o. 108, Louis Road, Forest Field Western, Australia - 6058 Indian Address - WZ-294/9, G-Block Hari Nagar, Jail Road, New Delhi - 110058

---- Respondent

For Petitioner : Mr. Shreyankar Nandy, Advocate along with petitioner in person.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

20/10/2021

1. This petition under Section 482 of Cr.P.C. has been filed praying to recall and modify the order dated 07.04.2021, passed by this Court in Criminal Revision No.1102 of 2019 and Cr.R. No. 90 of 2017.
2. The applicant was granted maintenance of Rs.1.00 lakh per month in M.J.C. No.14 of 2016 by the Additional Principal Judge, Family Court, Bilaspur under Section 125 of Cr.P.C. The Criminal revision preferred bearing No. 1102 of 2019 was allowed by the impugned order, by which, the amount of maintenance has been enhanced to Rs.1,27,500/- per month.
3. It is submitted by the learned counsel for the petitioner that the present petition has been brought on the ground of quantum of maintenance

regarding which proper appreciation has not been made in the earlier order and also the guidelines laid down by the Supreme Court in the case of **Rajnish Vs. Neha**, reported in **AIR 2021 SC 569** has not been followed. Another prayer made in the present petition is regarding grant of maintenance from the date of filing of the application, whereas, this Court and the Family Court both have ordered granting maintenance from the date of order passed by the Family Court.

4. Considered on the submissions.
5. The proceeding under Section 125 of Cr.P.C. is clearly a criminal proceeding as the same is contemplated under provisions of the Code of Criminal Procedure. Section 362 of the Code provides that save as otherwise provided by this Code or by any other law for the time being in force, no Court, when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error. Therefore, the prayer made in the present petition with respect to the re-appreciating the evidence present for the purposes of drawing fresh conclusion with regard to quantum of maintenance and with regard to decision taken by this Court directing the grant of maintenance from a particular date is not entertainable. Prayer in the petition is not as simple for the purpose of correction of clerical or arithmetical error. There is no other provision under the Code of Criminal Procedure, under which the prayer made by the petitioner can be entertained. Section 482 of Cr.P.C. although grants an inherent powers to the High Court but such inherent powers can not be exercised, when there is express bar present under Section 362 of Cr.P.C..
6. In the case of **Mostt. Simrikhia vs Smt. Dolley Mukherjee**, reported in **AIR 1990 SC 1605**, it has been held by the Supreme Court that inherent jurisdiction of the Court can not be invoked, to override the provision

under Section 362 of the Code of 1973. Hence, in view of the above legal pronouncement and the law settled no order can be passed in this petition as prayed.

7. Hence, this petition is dismissed and disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Balram