

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 578 of 2021**

Jagdish Singh, S/o. Late Mahesh Singh, Aged about 50 years, R/o -Excise Constable, Excise Department Chirmiri, P.S. - Chirmiri, District Koriya, Chhattisgarh.

---- Applicant

Versus

Smt. Moharmania, W/o-Jagdish, Aged about 45 years, R/o – Kanchanpur, P.S. & Tahsil – Premnagar, District Surajpur, Chhattisgarh

----Respondent

For Applicant	: Mr. Pushkar Sinha, Advocate.
For Non-applicant	: None present.

Hon'ble Shri Justice N.K. Chandravanshi**Order On Board**

09.09.2021

Heard on admission.

(1) This criminal revision has been brought against the order dated 05.03.2021 passed by Family Court, Surajpur, District Surajpur in Misc. Criminal Case No. 541 / 2019 whereby an application under Section 127 of the Code of Criminal Procedure, 1973 (henceforth "the Code") filed by respondent/wife was allowed and amount of maintenance granted to her, has been enhanced from Rs.1,000/- to Rs.3,500/- per month.

(2) Learned counsel for the applicant would submit that the case was fixed for respondent's evidence on 2.3.2021, but due to some unavoidable circumstances, respondent's counsel could not appear on that day before the Family Court, and due to Covid-19 pandemic situation, petitioner also could not appear on that date before the said Court, therefore, on the same day, learned Family Court proceeded

ex parte against the applicant/husband and on 05.03.2021, *ex parte* impugned order was passed without affording proper/due opportunity of hearing to the applicant/husband, therefore, impugned order is erroneous, arbitrary and unsustainable in law. He further submits that impugned order passed by the Family Court is not maintainable also because the same has been passed contrary to the material available on record and also ignoring the fact that applicant is having two daughters, who are being maintained by the applicant/husband and both the daughters are getting education from Kalinga University; and also the fact that respondent/wife is very much competent to maintain herself.

(3) I have heard learned counsel appearing for the Applicant and perused the impugned order with utmost circumspection.

(4) Perusal of the material available on record would show that by allowing application under Section 125 of the Code, vide order dated 23.8.2006, respondent/wife had been granted maintenance of Rs.1,000/- per month against the applicant/husband. Thereafter on 16.12.2019, the respondent/wife preferred an application under Section 127 of the Code seeking enhancement of the amount of maintenance awarded by the Court. After recording evidence of the respondent/wife, the Family Court vide its impugned order dated 05.03.2021 has enhanced the amount of maintenance from Rs.1,000/- per month to Rs.3,500/- per month, that too, after about 15 year from the first order i.e. 23.08.2006.

(5) As per impugned order, applicant/husband is working as Constable in the Excise Department and he himself has admitted in his reply that he is getting Rs.25,000 – Rs. 30,000/- per month as salary. On 23.08.2006, when maintenance of Rs. 1,000/- was granted to non-applicant/wife, applicant/husband's monthly salary was Rs.4,500/-. The aforesaid fact shows that by the afflux of time, not only income of applicant/husband has been increased but cost of living, health and other basic amenities have also been increased, therefore, looking to aforesaid facts, it cannot be said that enhancement of amount from Rs.1,000/- to Rs.3,500/- is inappropriate or on higher side, though applicant/husband is said to be maintained her two daughters and also providing them education.

(6) In the matter of **Rajnish v. Neha & another**¹, their Lordships of the Supreme Court held that the maintenance amount awarded must be reasonable and realistic, and avoid either of the two extremes i.e. maintenance awarded to the wife should neither be so extravagant which becomes oppressive and unbearable for the respondent, nor should it be so meagre that it drives the wife of penury.

(7) Applying the ratio of law laid down by the Supreme Court in the matter of **Rajnish** (Supra) to the facts of the present case, it is apparent that applicant/husband is having liability of his two daughters; at the same time he is also liable to grant reasonable and realistic amount of maintenance to his wife, respondent herein.

(8) So far as the question of non-providing due / proper opportunity of hearing to the applicant/husband and passing *ex parte* impugned order against him is concerned, on account of absence of applicant/husband on 02.03.2021, learned Family Court proceeded *ex parte* against him, thereafter, the case was posted on 03.03.2021 for final arguments, but on 03.03.2021, applicant/husband himself or his counsel did not appear before the Family Court, therefore, ultimately *ex parte* impugned order has been passed on 05.03.2021. Looking to aforesaid facts & circumstances of the case, particularly the fact that enhancement of amount of maintenance from Rs.1,000/- to Rs.3,500/-, that too, after about 15 year from the date of first order dated 23.08.2006, submission made by counsel for the applicant/husband in that behalf has no substance.

(9) As a fallout and consequence of the aforesaid discussion, the criminal revision, being devoid of merit, is liable to be and is hereby dismissed at the admission stage itself.

Sd/-
(N.K.Chandravanshi)
Judge

D/-

¹ (2021) 2 SCC 324

