

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 1254 of 2018**

1. Smt. Nisha Yadav, Aged 30 years, W/o Mukesh Yadav ,

2. Minor Kum. Ruchika Yadav, Legal Guardian Mother Smt. Nisha Yadav,

Both are resident of – Kashinagar, Near Gouri Shankar Temple, Korba,
Teh. & Distt. - Korba (C.G.)

---- Applicants

Versus

Mukesh Yadav, Aged 35 years, S/o Ramkumar Yadav, R/o: Vill – Bhadesar,
Teh. & Distt – Janjgir-Champa (C.G.)

----Respondent

For Applicant	: Mr. S.V. Purohit, Advocate.
For Non-applicant	: Mrs. Indira Tripathi, Advocate.

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

07.09.2021

(1) This Criminal Revision has been brought against the order dated 24.12.2016 passed by Family Court, Korba in Misc. Judicial Case No. 84/2015 whereby maintenance of Rs.3,500/- per month has been granted to applicant No. 1/wife against prayer of Rs. 5,000/- per month *whereas* maintenance of Rs.500/- per month has been granted to applicant No. 2/daughter against prayer of Rs.3,000/- per months.

(2) In this case, it is not in dispute that applicant No. 1 and non-applicant are legally wedded wife & husband and applicant No. 2 is their daughter. This revision has been preferred with a limited prayer that amount of maintenance granted to the applicants are on lower side, therefore, it is required to be enhanced from Rs. 3,500/- to Rs. 10,000/- *and* Rs. 500/- to Rs. 5,000/-, respectively in favour of

applicant No. 1 & applicant No. 2, respectively, and also non-applicant/husband be directed to pay balance amount of maintenance.

(3) Learned counsel for the applicants submits that non-applicant /husband is working as Home Guard and was earning Rs. 13,108/- per month as honorarium in the month of November, 2017, as per information received by filing an application under Right to Information Act, 2005. He further submits that non-applicant/husband is also having agricultural land at his village, from where he is earning Rs.5 lakhs per month. Despite that, learned Family Court has granted a meager sum of Rs. 3,500/- to applicant No. 1/wife and Rs.500/- to applicant No. 2/daughter, which are shockingly on lower side looking to the present cost of living, price index, need for food and clothes etc, therefore, he prays that aforesaid amount granted to the applicants be enhanced to the extent indicated as above. He also submits that non-applicant/husband has not paid maintenance amount till date, therefore, he may also be directed to pay the balance final maintenance amount to the applicants.

(4) Per contra, learned counsel for non-applicant/wife would submit that applicants have already been granted maintenance of Rs.3,500/- per month in the domestic violence case filed against the non-applicant/husband and as per judgment of the Supreme Court in the matter of **Rajesh v. Neha and another** reported in **(2021) 2 SCC 324**, learned Family Court has specifically ordered that if non-applicant will stop payment of Rs. 3,500/- per month granted to the applicant No. 1 in the matter of Domestic Violence, then within a period of one month from the date when he stopped paying of aforesaid amount, the applicant No. 1 would be entitled to get maintenance of Rs.3,500/- per month granted in this case. She would further submit that non-applicant/husband is continuously paying Rs. 3,500/- per month as per order passed in domestic violence case and if non-applicant/husband is not paying any amount in both the cases, then, applicant No.1/wife may file execution application before the trial Court. She also submits that non-applicant/husband is low paid employee, therefore, he is unable to make payment of amount of maintenance, which is apparent from his particulars of his honorarium for the month of November, 2017, which has been filed by the applicants before this Court. She also submits that non-applicant/husband has no other property,

therefore, looking to his income, amount of maintenance granted in this case by the learned Family Court cannot be said to be on lower side, therefore, the order impugned does not call for any interference of this Court.

(5) I have heard learned counsel for the parties and perused the material available on record with utmost circumspection.

(6) In the matter of **Rajnesh** (Supra), their Lordships of the Supreme Court held that wife can simultaneously claim maintenance under the different enactments, it would be inequitable to direct husband to pay the maintenance awarded in each of the said proceedings, independent of the relief granted in a previous proceeding. In such a situation, adjustment is permissible and the adjustment can be allowed of the lower amount against the higher amount and also that a court would take into consideration the maintenance already awarded in the previous proceeding, and grant an adjustment or set-off of the said amount.

(7) Perusal of the record of Family Court and order impugned and also copy of memo dated 06.01.2018 issued by office of District Commandant, Home Guard, District Janjgir-Champa, which has been received by the applicant by filing an application under to Right to Information Act and the same has been filed before this Court shows that applicant is working as Home Guard and his monthly honorarium of November, 2017 was of Rs.13,108/- only.

(8) Although during the course of argument, learned counsel for the applicant submits that non-applicant/husband is having agricultural land in his village. Applicant – Smt. Nisha Yadav (AW-1) has also stated in her examination-in-chief that non-applicant/husband is also earning Rs.40-50 thousands but she has denied her this statement in her own cross-examination.

(9) Smt. Ganga Bai (AW-2) & Shyamdatt Yadav (AW-3), who are mother & father of applicant – Smt. Nisha Yadav, have stated in their examination-in-chief that non-applicant/husband is having General Store and also having cow & ox and also having 15-16 acres of agricultural land, but no such document have been filed/proved by the applicants except aforesaid income of non-applicant/husband, which he obtained by working as Home Guard, therefore, from the record, it is not

proved that except monthly income of Rs.13,108/-, which non-applicant/husband earns as honorarium by working as Home Guard, he do not have any other income.

(10) Looking to the aforesaid monthly income of non-applicant/husband and except that he is not having any other source of income, it cannot be said that amount of maintenance of Rs.3,500/- granted to applicant No. 1/wife is on lower side. It is hereby maintained. Furthermore, in view of the decision rendered by the Apex Court in **Rajnesh** (supra), condition imposed by learned Family Court that stopping of payment of maintenance amount to the applicant/wife in domestic violence case will give rise to receive maintenance amount granted in this case, could not be held illegal or improper.

(11) So far as applicant No. 2 – Ku. Ruchika Yadav is concerned, she is aged about 3 ½ years, as mentioned in the impugned order, and in near future she has to go to school, therefore, looking to her age and future prospects, amount of Rs.500/- granted to her as maintenance is inappropriate and it needs enhancement. Thus, looking to the age and need of applicant No. 2 – Ku. Ruchika Yadav, amount of maintenance granted to her is enhanced from Rs. 500/- per month to Rs.1,500/- per month, till she attains the age of majority, which shall be payable from the date of passing of the order passed by Family Court i.e. 24.12.2016.

(12) Consequently, the criminal revision is allowed to the extent indicated hereinabove.

Sd/-

(N.K.Chandravanshi)

Judge

D/-

