

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CR.R. No. 1570 of 2019**

1. Smt. Ranu @ Gauri W/o Shri Tej Bahadur Chauhan aged about 32 Years
2. Pranav Singh Thakur S/o Shri Tej Bahadur Chauhan aged about 14 Years (Represented Through His Mother Smt. Ranu @ Gauri Who Is Natural Guardian)

Both R/o through Mukund Barwad, Shankar Ward Bhatapara, Tahsil Bhatapara, District Balodabazar, CG

----Applicants**Versus**

Tej Bahadur Chauhan S/o Late Shri Bhola Singh Chauhan aged about 37 Years R/o C/o- Madhiyamik Siksha Mandal, Office of District Education Officer, Pension Bada, Raipur, District Raipur, CG

----Non-applicant

 For Applicants : Shri Vinay Pandey, Adv.
 For non-applicant : None appears, though served and represented earlier.

Hon'ble Shri Justice N.K. Chandravanshi
Order on Board

23-9-2021

1. This criminal revision has been preferred by the applicants against the order dated 31-10-2019 passed by the Judge, Family Court, Baloda Bazar, in Misc. Judicial Case No. 187/2019 whereby application filed by the applicants under Section 127(1) of the Criminal Procedure Code, 1973 (in short, 'Cr.P.C.') has been dismissed.

2. Vide order dated 19-3-2007 passed in Misc. Judicial Case No. 82/2006, monthly maintenance amount of Rs. 600/- to each applicant was granted. On 11-1-2018, applicants filed an application under Section 127(1) of the Cr.P.C. for modification and enhancement of maintenance amount which was dismissed by learned Court below mentioning that the applicants have not proved change of circumstance. Hence, this revision.

3. Learned counsel for the applicants submits that original order had been passed on 19-3-2007, 10 years thereafter, the applicants filed the application for enhancement of maintenance amount. At the time of passing of earlier order, age of applicant No. 2 Pranav

Singh Thakur was 5 years, now his age is 15 years. At that time, salary of non-applicant was about Rs. 7 – 8 thousands, but now he is getting monthly salary Rs. 31,133/-. Applicant Smt. Ranu Chouhan has clearly stated in her statement that their son - applicant No. 2 Pranav Singh Thakur is studying in Class 8th in Sai Aryavart Public School and in his education, maintenance etc, about Rs. 70,000/- per year is spent. Looking to these facts, Rs. 1,200/- per month maintenance amount is not sufficient for maintaining both the applicants, because in last 15 years, inflation has risen to an extreme heights. In these circumstances, grant of only Rs. 1,200/- per month as maintenance, that too, for two persons is on very lower side. Therefore, learned trial Court ought to have enhanced maintenance amount upto Rs. 5,000/- for each applicants which has not been done. Therefore, the revision may be allowed and relief, as prayed, may be granted by this Court.

4. Earlier, non-applicant/husband was represented by a counsel in this case, later on, neither non-applicant appeared in person nor represented by any counsel.

5. In reply filed by the non-applicant/husband before Court below, he has stated that the applicant/wife is well educated lady and also does job, therefore, she is able to maintain herself and her son also. His 65 years old mother, who is suffering from various diseases also, is dependent upon the non-applicant and huge amount is spent for her treatment. He has also stated in his reply that the applicant/wife has remarried in the year 2008 with one Harish Kesharwani, R/o. Bhatapara, and even she has changed name of applicant No. 2 from Pranav Singh to Sameer Kesharwani in his school record. Therefore, she is not entitled to get any maintenance from the non-applicant.

6. I have heard learned counsel for the applicants and perused the record of Court below as well as original file of Misc. Judicial Case no. 82/2006, and other documents available with the file.

7. A perusal of record of Court below shows that original order was passed in MJC No. 82/2006 on 19-3-2007, at that time, age of applicant No. 2 Pranav Singh was 5 years. At that time, non-

applicant was working as peon in Govt. Middle School, Bhatapara and as per statement of Accountant Rupesh Raypurkar, in November, 2006, gross salary of non-applicant was Rs. 4,973/- per month and net salary was Rs. 4,533/-. Now as per deposition of Smt. Ranu Chouhan recorded on 26-9-2019, age of the applicant No. 2 Pranav Singh Thakur is 14 years and he is studying in Class 8th, non-applicant is working as Clerk and he is getting monthly salary of Rs. 35,000/- per month. By efflux of time of 10 years, cost of living and cost of other items of livelihood has also increased remarkably. These facts itself show change of circumstances of both the parties. In spite of that, learned Court below without considering the facts of the case properly, has held arbitrarily that the applicant has failed to prove change of circumstance as required in Section 127(1) of the Cr.P.C. In catena of judgments and even recently in the matter of **Rajnesh -v Neha and another** [(2021) 2 SCC 324], Hon'ble Supreme Court has held that remedy of maintenance is a measure of social justice as envisaged under the Constitution to prevent wives and children from falling into destitution and vagrancy. Preamble and Articles 39 and 15(3) of the Constitution envisage social justice and positive State action for the empowerment of women and children.

8. In the present case, applicant Smt. Ranu Chouhan has stated that amount which they are receiving for their maintenance is not sufficient for their livelihood, which can be seen from the aforementioned facts of the case also.

9. The Supreme Court in the case of **Shamima Farooqui v. Shahid Khan** [(2015) 5 SCC 705] in para 14 has held as under:--

"14. ...As per law, she is entitled to lead a life in the similar manner as she would have lived in the house of her husband. And that is where the status and strata of the husband becomes a prominent one. As long as the wife is held entitled to grant of maintenance within the parameters of Section 125 Cr.P.C., it has to be adequate so that she can live with dignity as she would have lived in her matrimonial home...."

10. Similarly the Supreme Court in the matter of **Smt. Jasbir Kaur Sehgal v. District Judge, Dehradun and Others** [(1997) 7 SCC 7] in para 8 has held as under:-

"8. The wife has no fixed abode of residence. She says she is living in a Gurudwara with her eldest daughter for safety. On the other hand husband has sufficient income and a house to himself. The wife has not claimed any litigation expenses in this appeal. She is aggrieved only because of the paltry amount of maintenance fixed by the courts. No set formula can be laid for fixing the amount of maintenance. It has, in the very nature of things, to depend on the facts and circumstances of each case. Some scope for leverage can, however, be always there. The court has to consider the status of the parties, their respective needs, capacity of the husband to pay having regard to his reasonable expenses for his own maintenance and those he is obliged under the law and statutory but involuntary payments or deductions. The amount of maintenance fixed for the wife should be such as she can live in reasonable comfort considering her status and the mode of life she was used to when she lived with her husband and also that she does not feel handicapped in the prosecution of her case. At the same time, the amount so fixed cannot be excessive or extortionate. In the circumstances of the present case we fix maintenance pendente lite at the rate of Rs. 5,000/- per month payable by respondent-husband to the appellant-wife."

11. Although, the applicant Smt. Ranu Chouhan has not filed salary slip and she has only filed photocopy of salary slip of non-applicant, which she has not proved, but she has clearly stated that non-applicant is working as clerk in education department, his salary slip of month of August 2017 shows that in that month, he had received gross salary Rs.22,728/- and net salary Rs. 20,578/-, which the Court below has also mentioned in the impugned order. Counsel for the applicants has filed photocopy of non-applicant's salary slip of October, 2019 which shows that he is working as

Asstt. Grade III in Govt. Higher Secondary School, Pt. R.S.S.U. Parishar, Raipur and has received gross salary Rs. 31,133/- and net salary Rs. 26,833/- in the month of October, 2019. Non-applicant has simply denied aforesaid facts in his reply filed before the Court below, but he has not specifically denied it, therefore, statement made by applicant Smt. Ranu Chouhan in this regard cannot be disbelieved only on the ground that she has not exhibited salary slip of non-applicant or there is some difference regarding his monthly salary. More so, to rebut/ disprove aforesaid facts, and other facts that applicant/wife has remarried and she has changed name of applicant No. 2 in his school record, as has been stated by him in his reply, non-applicant ought to have appeared and led evidence in this regard, but he remained *ex parte* before the Court below and in this Court also. Non-rebuttal by applicant/wife Smt. Ranu Chouhan in her Court statement regarding alleged second marriage or change of name of non-applicant No. 2 in his school record, does not come in the way to allow the application because burden to prove aforesaid fact was on the non-applicant, which he has not done.

12. Considering the totality of the facts, I find that non-enhancement of maintenance amount granted to the applicants resulting into still getting Rs. 1,200/- per month for their maintenance will amount to force them to live in vagrancy and starving condition, therefore, I feel inclined to modify and enhance the maintenance amount from Rs. 600/- for each applicant, to Rs. 4,000/- for applicant No. 1/wife and Rs. 3,000/- for applicant No. 2/son. This enhanced maintenance amount shall be payable from the date of filing of the application under Section 127(1) of the Cr.P.C. i.e. 11.1.2018. Ordered accordingly.

13. Revision partly allowed.

Sd/-

N.K. Chandravanshi
Judge