

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 412 of 2016**

Shri Shashi Patel S/o Shri Bhogilal Patel, aged 36 years (not mentioned in order impugned) R/o D-4, Vinayak Vihar, Dindayal Upadhyay Nagar, Raipur, Tehsil and Distt. Raipur (CG).

---- **Applicant**

Versus

Smt. Rubi Patel W/o Shri Shashi Patel, aged 31 years, R/o Devendra Nagar, Raipur, Tehsil and Distt. Raipur (CG).

---- **Respondent**

For applicant	:	Shri V.C. Ottalwar, Advocate.
For Respondent	:	Shri Prakash Tiwari, Advocate.

SB:Hon'ble Shri Justice P.Sam Koshy

Order On Board

31/01/2017

1. The present revision has been preferred assailing the order dated 14.03.2016 passed by the IInd Additional Principal Judge, Family Court, Raipur, in MJC Case No.263/2013. Vide the said impugned order, the court below in a proceeding under Section 127 CrPC has enhanced the maintenance amount payable to the respondent-wife from Rs.1200/- to Rs.8000/- per month.
2. Learned counsel appearing for the applicant submits that this enhancement of maintenance amount is bad in law, illegal and contrary to the settled legal position. According to him, once when in the earlier round of litigation under Section 125 CrPC i.e. MJC case No.216/2006 has been compromised on 31.07.2006 and it was agreed between the parties that the applicant-husband shall pay an amount of Rs.1200/- to the respondent

as maintenance, it could not have been enhanced in a proceeding under Section 127 CrPC. The respondent-wife ought to have filed a fresh application under Section 125 CrPC instead of application under Section 127 CrPC.

3. According to counsel for the applicant, the respondent was also not entitled for the enhancement of the amount as she was suffering from some disease which only occurs to a person who lives in adultery.
4. Counsel for the respondent-wife however opposes the revision and submits that the application for enhancement was filed by the respondent after more than 7 years from the original order being passed and that due to periodical rise in price it was not possible for the respondent to maintain herself and therefore enhancement of maintenance amount was justified and as such the order impugned does not warrant any interference as it has been passed taking into consideration the salary of the applicant. Thus, prayed for rejection of the revision.
5. Undisputed facts of the instant case on perusal of the record is that 125 proceeding were initiated by the respondent before the family court which was registered as MJC Case No.216 of 2006. The said 125 proceeding was disposed of after compromise were entered into between the parties on 31.07.2006. It was agreed by the applicant-husband to pay an amount of Rs.1200/- per month as maintenance to the respondent-wife. It is pertinent to mention at this juncture that this order of granting maintenance has not been subjected to challenge by the applicant any further. The applicant has been paying maintenance amount right from July, 2006 onwards. On query being put to the counsel for the applicant,

he submits that he has no objection in case if the applicant has to pay maintenance of Rs.1200/- per month in future also.

6. Having considered the submissions put forth by the counsel for the parties what is to be seen is the fact that the Husband has not questioned the responsibilities saddled upon him for providing maintenance amount of Rs.1200/-per month to the respondent. The amount of maintenance which was fixed by way of compromise on 31.07.2006 was Rs.1200/- per month. Down the line the cost of living has been increased in all spheres. Further, from the records it also reflects that subsequently the applicant also has got an employment with the Chhattisgarh State Electricity Board where he is getting monthly salary of more than Rs.80,000/- and that in the year, 2015 he was getting salary around Rs.61,000/-. If we take into consideration the rise in the salary of the applicant-husband, it cannot be said that the enhancement application which has been entertained by the court below to be bad in law or contrary to the evidence which has come on record.
7. The Supreme Court has categorically held that maintenance amount under Section 125 CrPC always should be commensurate to the status of the Husband. In the instant case once when the payment of maintenance part is not disputed or challenged by the applicant-husband, all that has to be seen is what is paying capacity of the husband in the instant case.
8. Indisputably, the applicant-husband is working in the Chhattisgarh State Electricity Board and draws a monthly salary of more than Rs. 80,000/-. in the given facts of the case, if the award amount has been enhanced from Rs.1200/- to Rs.8000/- that too after a period of more than 10 years, by

no stretch of imagination it can be said to be either exorbitant or on the higher side. Thus, in the opinion of this court, the impugned order does not warrant any interference.

9. Accordingly, the revision being devoid of merit is liable to be and is hereby dismissed.

SD/-

(P.Sam Koshy)

Judge

inder