
(2016) 08 CHH CK 0022

In the Chhattisgarh High Court

Case No : Criminal Misc. Petition No. 1026 of 2015

Hemlata Chandrakar

APPELLANT

Vs

Lalji Chandrakar

RESPONDENT

Date of Decision : 16-08-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125, Section 127

Citation : (2017) 1 CGLJ 151

Hon'ble Judges : Shri P. Sam Koshy, J.

Bench : Single Bench

Advocate : Mr. S.C. Verma, Advocate, for the Applicant; Mr. D.K. Gwarlre, Advocate, for the Non-applicant

Final Decision : Disposed Off

Judgement

Shri P. Sam Koshy, J.—The present Cr.M.P. has been preferred challenging the order dated 27.07.2015 passed by the Additional Sessions Judge Mungeli in Criminal Revision No. H 01/2015 and the order dated 11.12.2014 passed by Judicial Magistrate, First Class (J.M.F.C.), Mungeli in Misc. Criminal Case No. 37/2013.

2. The relevant facts for the adjudication of the present Cr.M.P. is that the present Applicant-Petitioner admittedly is the wife of the Non-applicant Non-applicant (For the sake of convenience the Applicant and Non-applicant shall hereinafter be referred as wife and Husband respectively). The marriage between the parties took place somewhere in the year 1989. However, barely after about 4 years of married life the relationship between the two got strained and the two disputing parties started staying separately.

3. In the year 1999 proceeding under Section 125 of CrPC was initiated by the wife for grant of maintenance against the husband. Vide order dated 21.01.1999 the said proceeding under Section 125 of the CrPC culminated by an order in favour of the wife wherein the Court below i.e. the J.M.F.C. allowed the

application and ordered for payment of Rs. 1000/- p.m. as maintenance to the wife and Rs. 500/- p.m. to the son born from the wife and the husband who was being brought up by the wife.

4. In due course of time since the son attained age of majority the grant of maintenance to the son has stopped. That in the year 2004 the wife has filed an application under Section 127 of the Cr.P.C. for enhancement of the maintenance amount but vide order dated 20.06.2005 the said proceeding for enhancement got dismissed. That on 14.06.2013 another application under Section 127 of the Cr.P.C. was filed before the J.M.F.C., Mungeli seeking for enhancement of the maintenance amount. The Court below after hearing the parties vide order dated 11.12.2014 allowed the application under Section 127 of the Cr.P.C. and enhanced the maintenance amount from Rs. 1000/- to Rs. 2000/- to be paid by the husband monthly to the wife.

5. The main contention of the wife before the Court herein is that the claim for enhancement was filed in due course of time after the salary of the husband has been increased manifold, therefore the maintenance payable to the wife also should have enhanced proportionately. She should be given sufficient amount of money with which she could easily sustain herself and maintain a decent standard of living commensurate with the status of the husband who is working as Chief Executive Officer at Janpad Panchayat, Kabirdham.

6. The said order dated 11.04.2014 passed by the J.M.F.C. Mungeli enhancing the maintenance amount from Rs. 1000/- to Rs. 2000/- was put to challenge before the Sessions Court at Mungeli on the ground that the amount enhanced was insufficient taking into consideration the salary of the husband, which was registered as Criminal Revision No. H 01/2015. The Revisional Court also vide the impugned order dated 27.07.2015 rejected the Revision Petition leading to the filing of the present Cr.M.P.

7. Learned Counsel for the Applicant submits that the proceedings under Section 125 of the CrPC is a beneficial legislation enacted by the law makers with a clear intention and object of protecting wives from being harassed and tortured and also with an intention that in a given circumstance under compulsion if the wife has to stay separately from her husband then she should be provided sufficient money with which she could maintain herself. It was also submitted that while the issue of maintenance is decided it is of prime importance for the Magistrate/ Court deciding the application under Section 125 of the CrPC to consider the status and position of the husband. While quantifying the maintenance amount the status and position of the husband should also be given due weightage. In other words the amount of maintenance to be provided to the wife should be commensurate to the status of the husband and the amount should be such with which the wife could easily maintain a decent standard of living befitting the status, position and dignity of the husband. According to the Applicant the Court below failed to appreciate the fact that the husband in the instant case is a civil servant. It is a known fact to every person that the salary of a civil servant or for

that matter a Government employee increases with periodical revision and that during the course of proceeding under Section 127 of the CrPC the salary slip of the husband was produced before the Court below and which was also admitted by the husband wherein the basic pay of the husband reflected to be was that of Rs. 15610/- and Court below ought to have simply taken into consideration, that if the basic salary of a person itself is more than Rs. 15000/- then if the rate of dearness allowances applicable to a Government servant is added to the said basic pay then gross salary of the husband would be more than Rs. 30000/- and the enhancement of the maintenance ought to have been done keeping this in view and Court below having not done so the order dated 11.12.2014 deserves to be modified suitably. According to the Applicant the Revisional Court also failed to take note of this fact and therefore said order also deserves to be quashed. According to the Applicant both the Courts below have refused to accept the contention of the wife that the salary of the husband being more than Rs. 30000/- in spite of admitting the fact that the basic pay of the husband being more than Rs. 15,000/-, only on the ground that the salary slip not been able to be proved is too hyper technical.

8. Learned Counsel for the Applicant submits that the Court below committed an error of fact in not appreciating the fact that the husband is working on the post of Chief Executive Officer at Janpad Panchayat and that he enjoys a great amount of respect in the society and also commands good social status and position and therefore the Applicant-wife also shall be entitled for sufficient amount as maintenance with which she could maintain herself sufficiently as wife of a Chief Executive Officer. According to the Applicant the amount enhanced by the Magistrate Court is too meager an amount if the salary of the husband is taken into consideration which he was drawing in the year 1999 and that he was drawing in the year 2014 and therefore prayed for enhancement of the maintenance amount suitably.

9. Per contra, learned Counsel for the Non-applicant husband opposing the petition submitted that no strong case has been made by the Applicant - wife calling for interference with the orders passed by the J.M.F.C. at the first stance on 11.12.2014 and the Revisional Court subsequently vide its order dated 27.07.2015. The Counsel for the Non-applicant husband submitted that the Magistrate while considering the application for enhancement had taken into consideration all the facts and figures brought before the Court on either side and after due consideration of the submissions, contentions and evidences reached to the conclusion enhancing maintenance amount from Rs. 1000/- to Rs. 2000/-. He further submitted that it is a case where the maintenance amount has been enhanced by 100% and therefore there was no scope of any further interference.

10. The counsel for the Non-applicant further challenged the present Cr.M.P. on the ground that the second Revision Petition by the Applicant - wife is not maintainable against the Non-applicant husband. The Applicant had already

subjected the order dated 11.12.2014 passed by the JMFC, Mungeli in revision and which has been rejected. Thus, the second revision before the High Court by the same party would not be maintainable. It was also the contention of the Counsel for the Non-applicant husband that it is a case where the Court below had already in the year 2006 rejected the application for enhancement of maintenance and that there was no further scope of enhancement. Yet the J.M.F.C. vide its order dated 11.12.2014 has entertained and allowed the application for enhancement which too is acceptable to the Non-applicant husband and prayed for rejection of the present Cr.M.P. It was also contended by the Counsel for the Non-applicant that it is a case where the Applicant wife already has an agricultural land measuring about 1.78 acres and which is the land which was purchased by the husband in the name of the wife. It is the wife who is cultivating the land and she can sufficiently maintain herself from the income that is derived from the said agricultural land and for this reason the order passed by the two Courts below does not warrant any interference.

11. According to the Counsel for the Non-applicant husband the Court below initially at the time of allowing application under Section 125 of the CrPC and also subsequently while allowing application under Section 127 had ordered for the said amount of maintenance payable to the wife keeping in view the agricultural income to the Applicant wife.

12. Taking into consideration the rival contention put forth on either side, if we take into consideration the admitted facts and position in the instance case is that :-

i. That there is no quarrel on the either side so far as relationship of wife and husband is concerned.

ii. That the wife and husband are staying separately

iii. In 1999 when the application under Section 125 of the CrPC was preferred by the wife, which was allowed and was granted Rs. 1000/- as maintenance to the wife by the husband.

iv. In the year 1999, the salary of the husband was stated to be Rs. 5000/- and the maintenance amount of Rs. 1000/- was allowed.

v. The present application under Section 127 of the CrPC has been filed after about 15 years of time.

vi. The Non-applicant husband has admitted his basic salary to be more than Rs. 15000/-

vii. Enhanced amount awarded by the JMFC of Rs. 2000/- p.m. vide order dated 11.12.2014 has not been challenged or questioned by the husband before any court of law.

13. Keeping in view the aforesaid admitted facts of the case, if we take into consideration the order dated 11.12.2014, the order passed by the JMFC in the

proceeding under Section 127 of the CrPC, what strikes the mind of this Court is that the Court below failed to appreciate the fact that in the year 1999 when the salary of the husband was Rs. 5000/-, the maintenance amount granted was Rs. 1000/- i.e. almost 20th of the salary that the husband was drawing and after 15 years when the salary of the Non-applicant husband has increased substantially by way of periodical revision of pay, the maintenance amount payable to the wife also should have been suitably enhanced. So far as the agricultural income and agricultural field which is in possession of the Applicant is concerned, the fact which cannot be ignored is that the said field was also in the possession of the Applicant wife even at the time of awarding of maintenance for the first time in the year 1999 and therefore it could not have been a ground for not suitably enhancing the amount of maintenance.

14. Another admitted position in the present case is that the Non-applicant husband is working as a Chief Executive Officer of Janpad Panchayat, Pandatarai in District Kabirdham. The post of a chief executive officer is a class-I gazetted post.

15. On perusal of the two orders below it reflected that the two Courts below have taken into consideration only basic pay of the Non-applicant which was around 15000 rupees and the claim application itself was decided on that. During the course of hearing this Court had asked the Non-applicant to inform the Court about his actual salary and the Counsel for the Non-applicant emphatically submitted before this Court that in fact his salary is around 15000 rupees and the two Courts below have rightly taken that into consideration, however the Non-applicant was reluctant in furnishing his salary slip to support his contention that his salary was around 15000 rupees. At this juncture this Court had asked the Collector District Kabirdham to furnish details of the salary which the Non-applicant husband had drawn in the previous months and at the instance of this Court the Collector submitted his report wherein it clearly reflected that the 15000 rupees was in fact the basic salary of the Non-applicant and that his actual gross salary was more than 30000-35000 rupees and the Collector has furnished the details of the salary drawn by the Non-applicant from January, 2016 to March, 2016 wherein it clearly reflects in all these 5 months the gross salary of Non-applicant was more than Rs. 35000/- and at present he is drawing salary of more than Rs. 37000/-. It is surprising that the two Courts below considering the case of the Applicant under Section 127 of the Cr.P.C. have taken into consideration only the basic salary of the Non-applicant husband where as it is known fact to one and all that in the Government employment in addition to the basic salary an employee also draws dearness allowance. As on date the dearness allowance payable to a Government employee is 125% and in the year 2014 when the application under Section 127 of the Cr.P.C. was filed the dearness allowance was somewhere around 100% and even then at that point of time gross salary of the Non-applicant would have been easily more than Rs. 30000/- per month. This fact however has not been taken note of by the two Courts below in spite of the fact that they are also well aware of the salary

pattern in the State Government.

16. At this juncture Counsel for the Non-applicant objected to taking note of the report of the Collector showing the salary details of the Non-applicant husband for about 5 months period. According to him this Court can not take into consideration the documents and record which were never been produced before the Court below to which the Non-applicant could effectively rebut and even cross examine the witnesses.

17. He further relied upon the judgment of the Bombay High Court to support his contention so far as new documents on record whether can be taken note of by the superior Court for the first time when the same being not brought on record before the Trial Court on which the parties could have cross examined and could have rebutted to said documents. The said contention and objection of the Counsel for the Non-applicant is not sustainable for the reason that it is not anything new which has been brought on record by the Court. The document produced is only a salary certificate issued by the Collector giving details of the salary drawn by the Non-applicant husband in the preceding months. It could have been easily rebutted by the Non-applicant husband before this Court by either filing an affidavit that the report of the Collector was not proper or could have himself produced the actual pay slip that he has received in the preceding months by which salary could be ascertained. The Non-applicant husband not doing so and can not try to take advantage of the judgment that he has cited.

18. 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 CrPC, it has to be adequate so that she can live with dignity as she would have lived in her matrimonial home....."

19. Similarly the Supreme Court on an earlier occasion in the case 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."

20. Thus taking into consideration the report of the Collector and also the facts which have come before the two Courts below that the basic salary of the Non-applicant was more than 15000 rupees. This Court has no hesitation in reaching to the conclusion that the gross salary of the Non-applicant husband was more than 30000 rupees per month. Since the grant of the maintenance is not under challenge by the Non-applicant husband neither has the order of the enhancement questioned by the Non-applicant husband, the only point for consideration before this Court is whether the amount enhanced by the Court below from Rupees 1000 to Rupees 2000 is proper and justified. If we take into consideration the actual salary of the Non-applicant husband which as per the report of the Collector is more than 30000 rupees even otherwise adding dearness allowance to the basic salary of the Non-applicant husband which he has admitted also takes it to more than 30000/-.

21. Under the said factual matrix of the case, this Court is of the opinion that the enhancement of maintenance amount payable to the Applicant - wife by only 1000 was on the lower side and is insufficient. One should not forget the fact that the Non-applicant husband is Chief Executive Officer of a Janpad Panchayat and as such he enjoys high level of status and position in the society and the Applicant being his wife is also entitled to maintain a reasonable standard of living commensurate to the status of being wife of the Chief Executive Officer and for which 2000 rupees a month is too meager an amount for maintaining a decent standard of living. Under given facts and circumstances of the case this Court is of the opinion that the amount of maintenance enhanced by the Court below vide the impugned order dated 11.12.2014 deserves to be modified and enhanced. The same is accordingly modified and enhanced to Rs. 7500/- per month. Applicant wife shall be entitled for an amount of Rs. 7500/- per month in place of Rs. 1000/- which was directed as per the order passed in the year 1999. The enhanced payment of the maintenance shall be applicable from the date of the order passed by the J.M.F.C. Mungeli in Criminal Case 37/2013 on 11.12.2014 onward.

22. With the aforesaid modifications to the order dated 11.12.2014 the instant Cr.M.P. is allowed and disposed of.