

HIGH COURT AT CALCUTTA**Bench: Hon'ble Mr. Justice Subhendu Samanta****Date of Decision: 20 November 2023**

Criminal Revisional Jurisdiction

C.R.R. No. –1661 of 2017

Anjana Saha**Revisionist****Vs.****Subrata Sil & Anr.****Respondents****Legislation:**

Section 125, 127, 401, 482 Code of Criminal Procedure (Cr.P.C.)

Section 406, 498A, Indian Penal Code (IPC)

Subject: Enhancement of maintenance allowance under Section 127 of the Cr.P.C. in the context of increased living costs and the husband's income.**Headnotes:**

Enhancement of Maintenance Allowance – Section 127 Cr.P.C. – Petitioner sought enhancement of maintenance allowance previously set at Rs. 5,000 per month. Citing increased living costs and husband's income, petitioner argued for an increase to Rs 12,500 per month. Learned Magistrate enhanced maintenance to Rs 6,500 per month, which was challenged as insufficient. High Court observed the inadequacy of Rs 6,500 for living expenses, considering the husband's income and lack of substantial evidence against petitioner's claim. Maintenance enhanced to Rs 10,000 per month.

Income of Parties – Lack of Evidence – No conclusive evidence presented regarding the husband's income or liabilities. Absence of income or expenditure affidavit from parties, contrary to Supreme Court guidelines in *Rajnish Vs. Neha* (2021) 2 SCC 324. High Court emphasized the need for maintenance amount to be commensurate with the husband's income.

Effect of Criminal Proceedings on Maintenance – Previous criminal cases (Sections 498A and 406 IPC) against husband, resulting in acquittal, do not disentitle wife from receiving or enhancing maintenance under Section 127 Cr.P.C. Observations in criminal cases not to affect maintenance decisions.

Final Decision – Enhancement of maintenance from Rs 6,500 to Rs 10,000 per month. Remaining portions of the lower court's order unchanged. Connected applications and any stay orders during the pendency of the revision vacated.

Referred Cases :

- Rajnish Vs. Neha (2021) 2 SCC 324

Representing Advocates

For the Petitioner: Mr. Subrata Saha, Mr. Abhik Biswas

For O.P. No. 2: Mr. Anirban Majumder, Mr. Somnath De

For the State: Mr. Narayan Prasad Agarwala, Mr. Pratick Bose

Subhendu Samanta, J.

This is an application u/s 401 read with Section 482 of the Code of Criminal Procedure against an order dated 2nd February 2017 in connection with MISC Case No. 4 (A)/ 2012 u/s 127 Cr.P.C. passed by the Learned Judicial Magistrate Kalyani, Nadia. The brief fact of the case is that the present petitioner being the wife of the OP filed an application before the Learned Magistrate u/s 127 Cr.P.C. for enhancement of the maintenance amount earlier awarded in her favour u/s 125 Cr.P.C. by virtue of MISC Case No. 108 of 2003 amounting to Rs. 5,000/- per month. It is the ground before the Learned Magistrate that the order has been passed in the year 2009 thereafter prices index of essential commodities has been considerably increased. The opposite party i.e. the husband of the petitioner is an employee of Indian Railway and earns Rs. 35,000/-per month. The amount of maintenance of Rs. 5,000/- is not sufficient to carry out her living. So he prayed for enhancement of the maintenance allowance to the tune of Rs 12,500/- per month. The Learned Magistrate after hearing the petitioner as

well as the opposite party has allowed the application u/s 127 Cr.P.C. and ordered the opposite party husband to pay the maintenance to the tune of Rs 6,500/- per month from the date of the order. Hence this revision.

Learned Advocate for the petitioner submits that the present petitioner is a destitute lady and she had no independent source of income to maintain herself. The maintenance amount of Rs 5,000/- per month is not sufficient to cope up with the daily expenses with the increase of prices index of the Essential Commodities. The impugned order passed by the Learned Magistrate is erroneous Rs 6,500/- is also not sufficient to carry out the living of a person in the present days. She further argued the Learned Magistrate has committed error in not considering the fact that the monthly income of the opposite party has been regularly increased year to year. Considering the income of the opposite party the maintenance amount of Rs 6,500/- is very meagre one. So he prayed for necessary enhancement of the maintenance allowance.

Learned Advocate for the opposite party submits that there is no illegality in the order passed by the Learned Magistrate. The Learned Magistrate has recording the contention of both the parties. It is the specific observation of the Learned Magistrate that there was no document before him to substantiate the fact that the opposite party used to earn Rs. 35,000/- per month. He further argued that the present petitioner cannot claim enhancement on the basis of the market value of the present days. The value has to be assessed on the basis of the impugned order passed by the Learned Magistrate i.e. in the year 2017. If the petitioner is so aggrieved he may prefer another application u/s 127 Cr.P.C. for the enhancement of the maintenance allowance. There is no illegality in the impugned order so the instant criminal revision is liable to be dismissed.

Learned Advocate for the opposite party further submits that the wife/petitioner had initiated two criminal cases u/s 498A and 406 of IPC against the present OP/husband. Both the criminal cases were disposed of by acquitting the present opposite party. It has been observed specifically by the Learned Court that the wife has wilfully deserted the house of the husband. On the above observation the present petitioner is not entitled to get enhanced amount of compensation.

Heard the Learned Advocate.

Perused the materials on record and also perused the impugned order passed by the Learned Magistrate u/s 127 Cr.P.C.. It appears to me that the maintenance amount was enhanced by the Learned Magistrate to Rs. 6,500/- per month. The order was passed in the year 2017 it has been ordered that the enhanced amount has to be paid by the OP from the date of the order. It is true that a person cannot carry her livelihood in the year 2017 for a monthly maintenance amount of Rs 6,500/-. It further appears that the Learned Magistrate has categorically observed that the opposite party is a Railway employee. Nothing has been proved before the Learned Magistrate regarding the liability of the opposite party.

Furthermore no affidavit of income or expenditure by the parties are exchanged before the Learned Magistrate according to the decision of the Hon'ble Supreme Court passed in Rajnish Vs. Neha (2021) 2 SCC 324.

The observation of Criminal court in a criminal case initiated u/s 498A or 406 IPC between the husband and wife shall not disentitle the wife to get the compensation or enhanced compensation u/s 127 Cr.P.C.

Considering the same it appears to me that the enhancement of the maintenance amount passed by the Learned Magistrate of Rs 6,500/- is meagre one and it need be further enhanced.

In my opinion the maintenance amount of destitute wife shall be commensurate with the income of the husband. In this case I think it necessary that Rs. 10,000/- would be sufficient for the maintenance of the petitioner in this case.

Accordingly the instant criminal revision is hereby disposed of with the direction that the enhancement of the maintenance amount passed by the Learned Magistrate of Rs. 6,500/- is hereby modified to Rs 10,000/- . The other portion of the impugned order of the Learned Magistrate would be remain as same.

Accordingly, the instant criminal revision is disposed of.

Connected CRAN applications if pending are also disposed of.

Any order of stay passed by this court during the pendency of the instant criminal revision is also vacated.

Parties to act upon the server copy and urgent certified copy of the judgment be received from the concerned Dept. on usual terms and conditions.

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