

IN THE COURT OF THE JUDICIAL MAGISTRATE FIRST CLASS, Hatsingimari, Dhubri.

**Misc. Case NO: 525/2013
U/S. 127 Cr.P.C**

**Anna Khatun
VS
Abdul Hamid**

**PRESENT: PRASENJIT DAS,
JUDICIAL MAGISTRATE FIRST CLASS,
Hatsingimari, Dhubri**

APPEARANCES:

**Adv for the Petitioner: S. Ali, N. R. Mondol
Adv. for the Opposite Party: S.Banerjee**

DATE OF EVIDENCE: 12.5.14, 29.10.15

DATE OF ARGUMENT: 11.1.17

DATE OF JUDGMENT: 27.1.17

Ex-Parte Final Order

1. This is a petition under section 127 Cr.P.C. The case of the petitioner is that due to price rise and increased cost of living and expenses of child education the monthly maintenance amount be increased to Rs 2,000/-each for herself and for her three children.
2. The opposite party received notice, contested the case and in his written statement stated that he is the sole bread earner of his

family and is a labour by profession. He further states that he earns Rs 150/- per day if he gets work and he has ten family members to support who are his aged 60 yr old widowed mother, his previous wife and seven number of children. It is also his case that it is impossible to pay maintenance for him as he and his aged mother are having major health ailments and his minor children are in school. It is also his case that the opposite party is a domestic help and is into money lending business and earns about Rs 6000/- to Rs 7000/- per month and as such the petitioner of the petitioner be rejected. Both sides appeared as witnesses for their case. Heard argument from Ld Counsel for the Petitioner and the opposite party.

3. FOLLOWING POINT HAS BEEN SET UP FOR DETERMINATION:

(a) Whether the enhanced maintenance allowance petition of the petitioner u/s 127 Cr.P.C of the petitioner/Anna Khatun and her three minor children be cancelled or varied?

4. DISCUSSION ON THE POINT FOR DETERMINATION AND DECISION ARRIVED THEREON WITH REASONS:

7.1. Evidence of PW1, reveal that in Misc Case No 655/10 she was awarded Rs 600/- per month and her three minor children were awarded Rs 300/- each per month. It is her statement that the opposite party is earning Rs 30,000/- to Rs 40,000/- per month.

And in rest of her examination-in-chief she has stated the same facts as stated in her petition so it is not repeated herein for the sake of brevity. In her cross examination it is revealed that the opposite party has a wife and seven children living with him. She denied the suggestion that she is into tuition, maid job or money lending business. Opposite party in his evidence as DW1 has stated the same facts as stated in the written statement so it is not repeated herein for the sake of brevity. He however denied the suggestion that he is earning Rs 20,000/-per month by selling rice. Exhibit-G is the medicine prescription of the mother of opposite party. It is the duty of every son to maintain his parents and this cannot be a ground for denial of a petition u/s 127 Cr.P.C. In his evidence he has stated that he is a heart patient and to support the same he has exhibited Ext-H and Ext-I but the said exhibits does convey clearly only about tablets and cough syrup. The opposite party's heart disease condition is not clear to me by the cryptic mentioning of tablets and other medicines in the prescription. At the time of opposite party's evidence he did not state as to which tablet is for what purpose and more specifically what are the tablets used for his heart's treatment. I cannot accept a statement such as the opposite party's of being a heart patient because he has a wife living with him and seven children were born out of conjugal life with that wife and three children were born out of the conjugal life with the petitioner. In my opinion he is a strong and healthy man capable of earning by hard work.

7.2 Section 127(1) Cr.P.C provides that 'on proof of a change in the circumstances of any person, receiving, under section 125 a

monthly allowance of maintenance...the Magistrate may make such alteration, as he thinks fit, in the allowance for the maintenance...'. From the materials on record and for the reasons stated above I have nothing to disbelieve the petitioner. Prima facie the case is in her favour. Now cost of living is high and the three children also have to be maintained so the prayer of the petitioner/Anna Khatun, is accepted and the issue goes in favour of her. The opposite party will pay Rs 2000/- each to the petitioner and the three minor children from the date of this order. The opposite party failed to prove by leading cogent evidence as to why the petition under section 127 Cr.P.C deserves dismissal.

ORDER

The petitioner and her three minor child is allowed enhanced maintenance u/s 127 Cr.P.C. The opposite party will pay Rs 2000/- each to the petitioner and the three minor children from the date of this order. The opposite party failed to prove by leading cogent evidence as to why the petition under section 127 Cr.P.C deserves dismissal.

Given under my hand and seal of this Court on this the 27th day of January 2017.

Prasenjit Das, A.J.S

APPENDIX

A. Prosecution Exhibit: Nil.

B. Defence Exhibit:

- **Ext A: Labour Identity Card.**
- **Ext B: Old labour Identity Card.**
- **Ext C: Sahida Khatun's transfer certificate.**
- **Ext D: Mominur Islam's transfer certificate.**
- **Ext E: Mohima Khatun's school certificate of character.**
- **Ext F: Moslema Khatun's school certificate of character.**
- **Ext G : Medical Prescription of Asia Khatun.**
- **Ext H and Ext I : Medical prescription of Abdul Hamed.**

C. Exhibit produced by witness:

D. Prosecution Witnesses:

P. W. 1: Anna Khatun/Petitioner.

E. Defence Witnesses: .

F. Court Witness: Nil.

Prasenjit Das.A.J.S