

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

**Misc. Case NO: 343/2015  
U/S. 127 Cr.P.C**

**Fulbanu Khatun  
VS  
Md Ayub Ali**

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

**APPEARANCES:**

**Adv for the Petitioner: A. Hussain**

**Adv. for the Opposite Party: S. Islam**

**DATE OF EVIDENCE: 19.11.15**

**DATE OF ARGUMENT: 4.1.17**

**DATE OF JUDGMENT: 05.1.17**

**Final Order**

1. This is a petition under section 127 Cr.P.C. The case of the petitioner is that due to current cost of living her maintenance u/s 125 be increased. She is receiving Rs 1000/- per month for herself and Rs 700/- per month for her minor child. It is also the case of the petitioner that her daughter is admitted in school and her annual fee is Rs 1920 /-. It is her case that the opposite party is

drawing salary of Rs 10,000/- as teacher in Madrassa and in addition earning Rs 4000/- by tuition. She claims that her monthly maintenance be enhance to Rs 5000/- and Rs 3000/- for her minor child.

2. The opposite party received notice, did appear and filed written statement. In his written statement the opposite party stated that he is earning Rs 5000/- per month from Dakergaon Madrassa and as Emam earns Rs 1000/- per month. It is his case that he has to maintain his second wife and two minor child, parents and unmarried sister and that the petition of enhancement be dismissed. Petitioner closed its evidence after adducing the evidence of petitioner. The evidence of opposite party was closed by order dated 11.5.16 for the absence of opposite party for many dates and the case was fixed for final order/judgment. A petition no 776/16 dated 14.6.16 was however filed by opposite party for adducing evidence and the court generously allowed the said petition for the ends of justice. But the opposite party did not adduce evidence, instead vide another petition no 1593/16 dated 31.10.16 again prayed for adducing evidence which was rejected. Heard Ld Counsel for petitioner.

**3. FOLLOWING POINT HAS BEEN SET UP FOR DETERMINATION:**

- (a) Whether the maintenance allowance of the opposite party/Fulbanu Khatun be cancelled or varied?**
- (b) Whether the maintenance allowance of the minor child be cancelled or varied?**

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

7.1. Evidence of PW1, reveal that her daughter is studying in KG and Ext-1 has been placed on record to substantiate that monthly Rs 110/- and yearly Rs 1920/- is the educational expence. She stated that the cost of living is high and the opposite party is earning Rs 10,000/- per month form Madrassa and Rs 5000/- from tution. In her cross examination it is revealed that earlier on about one and half year her maintenance was increased by Rs 600/-.

7.2 Now what is revealed is that the petitioner is getting Rs 1600 per month as maintenance. For a woman to live in dignity and to maintain her minor child, a women is getting Rs 1600/- per month and Rs 700/- for her minor child which I find to be meagre. The opposite party has a duty to maintain his aged parents, his unmarried sister and his second wife and children. But he cannot absolve himself from his duty to maintain his first wife and the minor born out of the first wedlock. He has admitted that he is a Madrassa teacher and does tution. He cannot shy away from his responsibility. Considering all I find that the maintenance amount of the petitioner be increased from Rs 1600/- to Rs 4000/- per month from the date of this order. In other words from now on the monthly maintenance amount of the petitioner is Rs 4000/-. It is also directed that the maintenance amount of the minor child be increased to Rs 3000/- per month from the date of this order. In

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other words from now on the monthly maintenance amount of the petitioner's minor child is Rs 3000/-. The issues are decided in favour of the petitioner. The opposite party cannot shy away or absolve from his responsibility towards his first wife.

ORDER

The order of maintenance in favour of the petitioner is now Rs 4000/- per month from the date of this order and the minor is also entitled to Rs 3000/- per month from the date of this order.

Given under my hand and seal of this Court on this the 9th day of January 2017.

**Prasenjit Das, A.J.S**

**APPENDIX**

**A. Prosecution Exhibit: Nil.**

**B. Defence Exhibit: Nil.**

**C. Exhibit produced by witness:**

- Ext-1: Certificate by Principal, Srimanta Jatio Bidyalaya, Thakuranbari.

**D. Prosecution Witnesses:**

**P. W. 1: Fulbanu Khatun /Petitioner.**

**E. Defence Witnesses: Nil.**

**F. Court Witness: Nil.**

**Prasenjit Das.A.J.S**