

**IN THE COURT OF THE SESSIONS JUDGE :::::::::::::: DHUBRI**

**Criminal Revision No. 64/2015**

Revisionist : Abdul Matleb @ Matleb Ali  
S/o. Md. Sayed Ali  
Vill- Sonapur  
P.S.- Mankachar  
Dist. Dhubri (Assam)

- Vs -

Opp. Party : Musstt. Jelekha Khatun  
D/o.Lt. Rezzak Khandakar,  
Village- Bowalia,  
P.S.- Mankachar  
Dist. Dhubri (Assam)

Present : Sri Rajib Goswami, AJS  
Sessions Judge, Dhubri

Sri Gias Uddin Ahmed, Advocate for Revisionist  
Sri Shaiyeb Ali, Advocate for the respondent.

Date of Hearing : 21-12-2015  
Date of Judgment/Order : 18-01-2016

**J U D G M E N T / O R D E R**

The propriety, legality, correctness and regularity are questioned in this revision preferred in respect of an order dated 16-05-2015 passed in Misc. Case No.46/2014 u/s.127 of Cr P.C. by Learned Judicial Magistrate, 1<sup>st</sup> Class, Dhubri, Sri B. Khetri.

2. The revision was admitted for hearing. The LCR was called for and the Notice was issued to the respondent.

3. I have gone through the order in Misc. Case No. No.46<sup>m</sup> /2014 u/s.127 of Cr.PC that had been passed by learned Judicial Magistrate, 1<sup>st</sup> Class, Dhubri on 16-05-2015. The earlier maintenance allowance of Rs.600/- per month was enhanced to Rs.2,600/- per month in the said order. The beneficiary is present respondent, Jelekha Khatun.

4. I have heard learned advocates for both sides. Learned counsel for the revision petitioner had contended that the present respondent had been living separately for several years willingly and as such u/s.125 (4) and 125 (5) of the Cr.PC she is not entitled to any

maintenance allowance since the present respondent has been living separately from her husband without sufficient reason. Thus according to learned counsel the order for maintenance allowance itself is liable to be cancelled. Further, It was contended the prayer for enhancement of earlier maintenance allowance allowed in u/s.125 Cr.PC proceedings to the beneficiary, Jelekha Khatun, present respondent had been allowed from 03-07-2013 whereas the order u/s.127 of Cr.PC for enhancement had been made in the year 2015, which ought to have been made from the date of order. In support of his contention, learned counsel for the present revision petitioner had put reliance on the decision of Hon'ble Supreme Court in Deb Narayan Halder v. Anushree Halder as reported in 2004 SCC (Cri) 164 wherein it was held by the Apex Court in para 20 of the said decision as such ***"It appears to us that the parties lived happily for many years after the marriage till about the year 1996, whereafter there was some misunderstanding which ultimately resulted in their separation. Why this happened, it is difficult to fathom, but the evidence on record does not convince us that the respondent was subjected to torture and harassment by the appellant, and certainly not for the reasons alleged by her. The Court is not permitted to conjecture and surmise. It must base its findings on the evidence produced before it by the parties. The enquiry by the court is restricted to the evidence on record and the case pleaded by the parties. It is not permissible to the court to conjecture and surmise and make out a third case not pleaded by the parties only to answer the query such as the one posed to us"***.

5. However, the position of law laid down in the above decision of Hon'ble Apex Court is not applicable in the present case, considering differences in circumstances that had been dealt in passing the order in 125 of Cr.PC. in both these cases. It is clear from the evidence as well as pleading of the 1<sup>st</sup> party, present respondent in the proceedings under Section 125 of Cr.PC that the present respondent as the petitioner in the said proceedings had been driven out by her husband, present revision petitioner for her inability to meet constant

demand for cash by her husband from her despite the petitioner meeting the demand initially by giving Rs.10,000/- to the present revision petitioner, then O.P. in the said proceedings u/s.125 of Cr.PC. It was also evident that the petitioner in the proceedings u/s.125 of Cr.PC, present respondent had been subjected to both mental and physical cruelty in the process. Further, it was also evident that subsequently the O.P, the present revision petitioner had married one Omela Khatun in the year 1995. The learned J.M. 1<sup>st</sup> Class, She Debasish Saikia vide his order dated 25-02-2009 in proceeding u/s.125 of Cr.PC had allowed Rs.1,200/- per month to mother, Jelekha Khatun and her minor daughter Morjina Khatun on basis of a prima facie case that the petitioner was able to establish in her favour.

6. Subsequently vide order dated 03-08-2013 the maintenance allowance allowed to Morjina Khatun, the daughter of the present respondent, petitioner in the 125 Cr.PC proceedings had been cancelled as Morjina Khatun had attained the age of majority and got married. Since then the petitioner in the 125 of Cr.PC proceedings, the present respondent has been drawing only Rs.600/- per month.

7. Now coming to the merit of the order of learned JM 1<sup>st</sup> Class, Dhubri in Misc. Case No.46<sup>m</sup>/2014 u/s.127 of Cr.PC, I find that while discussing the change in circumstances for alteration of earlier maintenance allowance allowed to the present respondent, the petitioner in the proceedings u/s.125 of Cr.PC, the ld J.M. had taken into account the increase in the salary of the present revision petitioner, the O.P. in the said proceedings u/s.127 of Cr.PC, which admittedly is Rs.16,500/-. Thus there had been almost increase of Rs.4,054/- from his earlier salary of Rs.12,446/-. Further, he had also taken into account escalating cost of living. These factors having been considered by learned JM 1<sup>st</sup> Class while deciding the petition for enhancement u/s.127 of Cr.PC need not be established since Rs.600/- per month is not sufficient for a woman to sustain herself in these days of escalating cost of living and is also not sufficient to enjoy her life that she would have enjoyed had she been living with her husband.

8. Now both these factors the increase in the salary of the revision petitioner and the escalating cost of living definitely justify the order of enhancement of maintenance allowance from Rs.600/- to Rs.2,600/- per month in the year 2015. Thus I hold that the order of enhancement of maintenance allowance from Rs.600/- allowed in the year 2009 to Rs.2,600/- in the year 2015 definitely requires no interference. I am also not inclined to agree with the submission of learned counsel for revision petitioner with regard to the order of enhancement being allowed from 03-07-2013, the date of filing of petition u/s 127 of Cr.P.C. being not tenable in law since the Id counsel had failed to cite any law in support of his submission in this regard.

9. Thus in view of above discussion the revision fails. Send back the L.C.R. along with the copy of the order to the learned lower Court below.

Given under my hand and seal of this Court on this 18<sup>th</sup> day of January, 2016.

Dictated & Corrected by me

Sessions Judge, Dhubri

Sessions Judge, Dhubri