

(2019) 02 CAL CK 0038

In the Calcutta High Court

Case No : Criminal Revision (Crr) No. 81 Of 2018

Sumitra Mondal @ Sumita Mondal

APPELLANT

Vs

Nanda Kumar Mondal & Anr.

RESPONDENT

Date of Decision : 14-02-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 125, 127

Citation : (2019) 02 CAL CK 0038

Hon'ble Judges : Jay Sengupta, J

Bench : Single Bench

Advocate : Somnath Banerjee, Pronojit Roy

Judgement

Jay Sengupta, J

1. This is an application challenging the insufficiency of an enhanced sum of monthly maintenance of Rs. 7500/- awarded under Section 127 of the Code of Criminal Procedure on 08.11.2017 by the Learned Judicial Magistrate, 1st Court, Rampurhat, Birbhum in Miscellaneous Case No. 11 of 2016.

2. The Learned Advocate appearing on behalf of the petitioner/wife filed an affidavit of service, showing service of notice upon the State as also upon the opposite party no. 1/husband. The same was kept on record. Despite service, no one appeared on behalf of the opposite no. 1. Therefore, the matter was taken up for ex parte hearing.

3. The Learned Advocate for the petitioner submitted that the couple got married in 1993, but some time later the opposite party no. 1 developed an illicit relationship with another lady. When the petitioner protested, she was tortured mentally and physically by the husband. In 1995 after the wife came to her maternal home on a visit, the husband refused to take her back. He submitted that being unable to maintain herself, the petitioner filed an application for maintenance under Section 125 against her husband being Miscellaneous Case No. 372/96. On 10.05.2000, the Learned Judicial Magistrate, 1st Court,

Rampurhat, Birbhum granted a monthly maintenance allowance Rs. 1500/- in favour of the petitioner. Subsequently, upon the petitioner's prayer for enhancement under Section 127 of the Code, on 27.03.2012, the Learned Judicial Magistrate, 1st Court, Rampurhat, Birbhum was pleased to enhance the sum to Rs. 5000/- per month, with effect from the date of order, in Miscellaneous Case No. 18/10. The Learned Advocate submitted that subsequently, because of the increase in the cost of living, the petitioner again filed an application for enhancement of monthly maintenance under Section 127 of the Code, which led to the passing of the impugned order.

4. The Learned Advocate for the petitioner submitted that at the time of grant of Rs. 5000/- as enhanced maintenance in 2012, the gross monthly from salary of the husband was Rs. 32000/- odd. He submitted that as would be evident from the deposition of PW 2, the Chief Manager, Bank of Baroda, Sodepur Branch, subsequently the monthly gross salary of the petitioner as an officer of the said Bank, was increased to Rs. 67000/- odd. He submitted that as such, the petitioner was entitled to receive maintenance allowance at a much higher rate than Rs. 7500/- per month.

5. I heard the submissions of the Learned Advocate appearing on behalf of the petitioner and carefully perused the revision petition along with the copies of the original order of maintenance, orders under Section 127 by the Code and other documents annexed.

6. That the petitioner/wife is entitled to monthly maintenance allowance for the opposite party no. 2/husband is a closed chapter and need not be deliberated upon.

7. The prime contentions of the husband in his show cause filed in the proceeding under Section 127 of Code are that Rs. 5000/- was sufficient for the petitioner's maintenance, there was no change in the status of the husband, the price index of essential commodities equally affected both the parties, the petitioner had given a wrong figure about his salary and he suffered from ailments that required medical expenses to be incurred.

8. The husband's contentions about Rs. 5000/- being sufficient for the petitioner's maintenance per month, there being no change in his status and his ailments warranting expenditure appear to be bald statements made without any factual basis. His excuse that since price index affected both, he need not pay maintenance at an enhanced rate belies any logic. First, it is an admission that price index had risen. Secondly, given that the husband's income had also increased, whether due to the rise in price index or otherwise and given that it is the husband who is supposed to pay maintenance to the wife and not the other way round, it is imperative that the husband paid maintenance at a higher rate in 2017 than in 2012 or in 2000. As regards, the exact salary of the husband, he failed to produce any document supporting his contention despite getting an opportunity to do so. On the other hand, PW 2's evidence on the income of the

opposite party no. 1/husband has not been categorically denied by him.

9. Whether the opposite party no. 1 agreed or not, price index of essential commodities have indeed gone up significantly. A maintenance allowance under Section 125 of the Code is to be awarded to a wife commensurate with the life she would have enjoyed if she had lived in the husband's household. Considering these factors and the present income of the husband as evinced by PW 2, it will be fair if the husband is directed to pay to the wife a monthly maintenance allowance of Rs. 10,000/-, to be paid with effect from the date of the impugned order.

10. In view of the above discussions, I set aside the impugned order so far as the fixing of the amount of maintenance allowance is concerned and direct the opposite party no. 1/husband to pay maintenance allowance under Section 125 of the Code to the present petitioner /wife at the rate of Rs. 10,000/- per month with effect from the date of impugned order i.e., 08.11.2017. The arrears of such enhanced sum of maintenance shall be paid in six equal monthly instalments starting from the first week of April, 2019.

11. A copy of the judgment along with the Lower Court records shall be sent down to the learned Trial Court forthwith by Special Messenger for information and necessary action.

12. Urgent photostat certified copies of this judgment may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.