(2002) 03 GAU CK 0006

Gauhati High Court (Itanagar Bench)

Case No: Criminal Revision No. 3 (AP) of 2001

Jombo Ratan		APPELLANT
	Vs	
Kameng Ratan		RESPONDENT

Date of Decision: March 1, 2002

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) â€" Section 125

Citation: (2002) 03 GAU CK 0006

Hon'ble Judges: N. Surjamani Singh, J

Bench: Single Bench

Advocate: J.K. Panggeng, for the Appellant; None, for the Respondent

Judgement

N.S. Singh, J.
The Judgment dated 4.7.2001 passed by the learned Judicial Magistrate 1st Class, Roing, Dibang Valley District,

Arunachal Pradesh in Case No. Maint-1/2001 is the subject-matter under challenge in this Criminal Revision Petition,

2. The facts of the case in a short compass are as follows :-

The present petitioner is the husband of the respondent No. 1 and father of respondent Nos. 2, 3, 4 & 5 and at present, the petitioner is serving as

District Horticulture Officer (DHO), Yupia, Papum Pare District, Arunachal Pradesh and residing at D Sector, Naharlagun, Papum Pare District,

Arunachal Pradesh. As the petitioner failed to afford maintenance allowances to his wife and children mentioned above, the respondent No. 1-wife

claimed maintenance allowances of Rs. 1,500 each, a total amount of Rs. 7,500 per month from the petitioner-husband for maintaining herself and

other 4 (four) children and, the learned Court below by his judgment dated 4.7.2001 directed the petitioner-husband to pay maintenance

allowance of Rs. 1,200 per month to the respondent No. 1-wife ; Rs. 1,000 per month to his daughter-respondent No. 2 Miss Bul Ratan; Rs.

1,000 per month to the respondent No. 3-son Sri Umda Ratan ; Rs, 1,000 per month to his daughter Miss Hopi Ratan and. Rs. 800 per month to

his daughter Miss. Koyem Ratan. Being aggrieved by the impugned, judgment dated 4.7.2001, the petitioner-husband filed this revision petition.

3. Mr. J.K. Panggeng, learned counsel appearing for the petitioner submitted that the learned Trial Court had misappreciated the provisions of law

laid down u/s 125 Cr.P.C. while passing the impugned judgment inasmuch as, the learned Magistrate has no power and jurisdiction to direct the

petitioner to pay the monthly maintenance allowance at the rate exceeding Rs. 5,00 each in the whole to the respondents. None appears for the

respondents.

4. For better appreciation in the matter, the related provisions of law laid down u/s 125 Cr.P.C. is relevant and important and accordingly, the

relevant portion of it is quoted below:

125. Order for maintenance of wives, children and parents.-(1) If any person having sufficient means neglects or refuses to maintain -

(a) his wife, unable to maintain herself, or

(b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or

(c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or

mental abnormality or injury unable to maintain itself, or

(d) his father or mother, unable to maintain himself or herself,

A Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of

his wife or such child, father or mother, at such monthly rate not exceeding five hundred rupees in the whole, as such magistrate thinks fit, and to

pay the same to such person as the Magistrate may from time to time direct:

Provided that the Magistrate may order the father of a minor female child referred to in Clause (b) to make such allowance, until she attains her

majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means,

5. It is an admitted position of law that a Magistrate of 1st Class or a Magistrate having competent jurisdiction in the matter may pass-made an

order or direction to the person who neglects or refuse to maintain his wife or child (son/daughter), unable to maintain themselves to make payment

of monthly allowance at the rate not exceeding Rs. 500 in the whole. In the instant case, the learned Court below had granted monthly allowance

exceeding Rs. 500.

6. In view of the above position, the impugned judgment dated 4.7.2001 is modified to the extent that the petitioner-husband is to make payment

of monthly maintenance allowance of Rs. 500 each to the respondents, in the whole Rs. 2,500 per month to the respondent No. 1-wife for

maintenance of respondent No. 1-wife and children for the period from 20.3.2001 and, such maintenance allowance shall be paid to the

respondent No. 1-wife regularly. However, it is made clear that as the petitioner-husband has capacity to afford monthly maintenance allowance to

the tune of Rs. 1,500 each to the respondents, the respondents are at liberty to approach the competent court having jurisdiction in the matter for

such high rate of maintenance allowance of Rs. 1,500 each (Rs. 7,500 in the whole) for maintenance of herself and children if so advised. It is also

made clear that the arrear monthly maintenance allowance @ Rs, 500 per month for the period from 20.3.2001 shall be deposited by the

petitioner-husband in the Court of Judicial Magistrate 1st Class, Roing, Dibang Valley District, Arunachal Pradesh within a period of 2 (two)

weeks from today and, regular monthly allowance entitled to the respondents shall also to be deposited by the petitioners-Husband in the Court

below on or before the 10th of every month and after such deposit, the respondent No. 1-wife is at liberty to receive the same. With the above

observations and direction, this Criminal Revision Petition is finally disposed of.

7. Despite the disposal of the Criminal Revision Petition, I am constrained to make the following observations in the interest of justice and also for

the welfare of the public at large.

8. The State Government has the power and jurisdiction to make State amendments pertaining to the quantum of maintenance allowance as

enshrined u/s 125 Cr.P.C. It may be mentioned that under West Bengal Act, 25 of 1992 (w.e.f. 2.8.1993) the words ""five hundred rupees

appearing in Sub-section (1) of Section 125 have been substituted by the words ""one thousand and five hundred rupees"". According to me, this

was done due to the changed circumstances and standard of living. This Court require the State Government to examine the matter for causing

State Amendments of the said provisions at par with the State of West Bengal. This Court hope and trust that certainly, the State of Arunachal

Pradesh shall make necessary State Amendments in the interest of the public at large.

Registry is directed to send a copy of this Judgment and Order to the Chief Secretary, Govt. of Arunachal Pradesh as well as the Law Secretary,

Govt. of Arunachal Pradesh for their information and necessary action in the matter.