

(2011) 02 CAL CK 0013**Calcutta High Court****Case No:** C.R.R. No. 2577 of 2008

Sri. Gangaram Rana

APPELLANT

Vs

Smt. Kalpana Rana

RESPONDENT

Date of Decision: Feb. 1, 2011**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 125, 127, 397, 401

Citation: (2011) 3 Crimes 597**Hon'ble Judges:** Mrinal Kanti Sinha, J**Bench:** Single Bench**Advocate:** Goutam Banerjee, for the Appellant; Tapas Kumar Ghosh, Advocate for the Opposite Party, for the Respondent**Final Decision:** Dismissed**Judgement**

Mrinal Kanti Sinha, J.

Heard the learned Advocates appearing for the parties.

2. This revisional application u/s 401 read with Section 397 of the Code of Criminal Procedure has been directed against the Order No. 225 dated 24.3.2008 passed by Sri. M. Karmakar, learned judicial Magistrate, Additional Court, Arambagh in Miscellaneous Case No. 17 of 86 whereby the learned judicial Magistrate, Additional Court, Arambagh allowed the petition of the petitioner for enhancement of maintenance allowance u/s 127 of the Criminal Procedure "Code with direction to the opposite party to pay monthly maintenance allowance of Rs. 500/- per month to the applicant and Rs. 300/- per month to her child (son) with effect from the date of filing of the petition on 2.3.92,

3. It is the case of the present petitioner that the marriage was solemnized between the petitioner and the opposite party No. 1 in the year 1391 B.S. and out of their wedlock the opposite party No. 2 was born. The opposite party No. 1 filed an application u/s 125 of the Criminal Procedure Code before the learned judicial

Magistrate Additional Court, Arambagh praying for maintenance allowance, and after hearing the said application the court concerned directed the present petitioner to pay to Rs. 200/- per month to the opposite party No. 1 and Rs. 100/- per month for her minor son, the opposite Party No. 2 till attaining his majority. The petitioner challenged the said order before the Hon'ble High Court by filing a criminal revisional application and after hearing the said application Hon'ble High Court modified the said order and directed the petitioner to pay Rs. 150/-per month to the opposite party No. 1 and Rs. 100/- per month to the opposite party No. 2. The opposite party No. 1 filed another application praying for enhancement of the said maintenance allowance in which date was fixed by the present petitioner for exempting him from payment of maintenance to the child Debrata Rana on ground of his attaining majority. The said application was moved on 30.8.2005 and hearing the said application. On learned Magistrate concerned rejected the said application 25.2.2008 argument of both sides were heard and on 24.3.2008 the impugned order was passed directing the present petitioner to pay Rs. 500/- per month to the opposite party No. 1 and Rs. 300/- per month to the opposite party No. 2 from 2.3.92 till attaining his majority.

4. it is also the case of the petitioner that the petitioner is a day labourer having earning on daily basis and he is also suffering from various ailments, and he has to look after his mother, who is also suffering from various ailments, and so he is not in a position to pay the said maintenance to his wife and son. The opposite party No. 2 is major now and he is engaged in a jewellery shop and earning money in his own capacity. The petitioner's monthly income is only Rs. 1,800/- and he maintains his family with his mother by the said amount. Being aggrieved by and dissatisfied with the impugned order dated 24.3.2008 passed by the learned judicial Magistrate, Additional Court, Arambagh, in Miscellaneous Case No. 17/86 the present petitioner has filed this revisional application on the ground that the learned Magistrate concerned acted illegally and with material irregularity in allowing the maintenance allowance of the opposite party No. 2 without any application of mind and the order passed by the learned Magistrate is palpably illegal and the learned Magistrate did not consider the income of the petitioner and passed order of giving maintenance allowance to the opposite parties, which is wholly unjust, improper and unjustified, and that is a gross abuse of process of law.

5. It appears that the opposite party No. 1 as petitioner initiated a proceeding u/s 125 of the Criminal Procedure Code against the present petitioner alleging therein that her marriage with the present petitioner was solemnized on 27th Agrahayan 1391 B.S. as per Hindu Rites and Customs. and since marriage she was living in the house of opposite party as husband and wife, and out of their wedlock present opposite party No. 2 named Debrata Rana was born. In view of the said application of the petitioner Smt. Kalpana Rana, opposite party No. 1 in this matter, she was allowed maintenance allowance Rs. 200/- per month for herself and Rs. 100/- per month for her son by an order passed on 17.11.1989 in Misc. Case No. 17 of 1986.

Thereafter, in view of a criminal revisional application filed before the Hon'ble High Court, the Hon'ble High Court modified the said order and directed the present petitioner to pay Rs. 150/- per month to the opposite party No. 1 and Rs. 100/- per month to the opposite party (sic) and thereafter on the basis of a petition of the opposite party No. 1 for enhancement of maintenance allowance u/s 127 of the Criminal Procedure Code, the present petitioner was directed to pay monthly maintenance allowance of Rs. 500/- to the opposite party No. 1 and Rs. 300/- to her child (son) with effect from the date of the filing of the petition on 2.3.1992 till attaining his majority by the impugned order dated 24.3.2008 passed by the learned Judicial Magistrate, Additional Court Arambagh, in Misc. Case No. 17/86.

6. Being aggrieved by and dissatisfied with the aforesaid order of the learned Judicial Magistrate, Additional Court. Arambagh, the present petitioner has filed the present revisional application.

7. It is to be considered as to whether the learned, Judicial Magistrate, Additional Court, Arambagh was legal, correct and justified in passing the impugned order or not.

8. Mr. Goutam Banerjee, learned counsel appearing for the petitioner has submitted that it is not disputed, rather admitted that the opposite party No. 1 is the married wife of the petitioner and out of their wedlock a son, opposite party No. 2 was born to them, and in pursuance of an application of the opposite party No. 1 u/s 125 of the Criminal Procedure Code she was allowed maintenance allowance of Rs. 200/- per month for herself and-Rs. 100/ - per month for her minor son, which was sub-sequently modified to Rs. 150/- per month for herself and Rs. 100/- per month for her minor son in view of an order in a criminal revision, and thereafter in view of an application of the opposite party No. 1 u/s 127 of the Criminal Procedure Code the said amount of monthly maintenance allowance was enhanced to Rs. /- per month for the opposite party No. 1 herself and Rs. 300/- per month for her son till his attaining majority, with effect from the date of filing of the said application on 2.3.1992, and the said order of maintenance allowance has been challenged in the present revisional application, but it is the case of the present petitioner that it is not possible for the petitioner to pay the said maintenance allowance to the opposite party No. 1 due to poor income of the present petitioner amounting to Rs. 1,800/- per month and as he has to maintain his old ailing mother also, and besides that the son of the petitioner has already become major as he was born on 12th Aswin 1392 B.S., which date has been mentioned in the impugned order also, and besides being major he is working in a jewellery shop and is earning money in his own capacity, and as such the impugned order passed by the learned Judicial Magistrate, Additional Court, Arambagh in Misc. Case No. 17/86 on 24.3.2008 should be set aside.

9. On the other hand, Mr. Tapas Kumar Ghosh, learned Counsel for the opposite parties has contended that as admitted wife of the present petitioner the opposite

party No. 1 is entitled to be maintained by him inasmuch as there is such case a that the present petitioner is unable to maintain herself on her own, but there is no such case that without any sufficient reason she is not living with the husband or she has sufficient income of her own to maintain herself.

10. It is not disputed rather admitted that the opposite party No. 1 is the legally married wife of the present petitioner and out of their wedlock a son was born to them. It is not also disputed that on the basis of a petition u/s 125 of the Criminal Procedure Code of the opposite party No. 1 the present petitioner was directed to pay a monthly allowance of Rs. 200 to the opposite party No. 1 and Rs. 100/- to her minor son till attaining his majority as maintenance, which was subsequently modified to the extent of Rs. 150/- per month and Rs. 100/- per month respectively in view of an order passed on a revisional application, which was thereafter enhanced to Rs. 500/- per month to the opposite party No. 1 and Rs. 300/- per month to the opposite party No. 2, son till his attaining majority. No such case has been pleaded in this matter that the opposite party No. 1 has any income of her own and she is able to maintain herself, but the present petitioner has stated in his revisional application that his monthly income is admittedly Rs. 1,800/. Though the opposite party No. 1 has stated that he is maintaining his family with his mother by the said amount, yet it is not clear there from that he is maintaining the opposite parties also with the said amount. Even as per the contention of the present petitioner he is maintaining his ailing mother with the said amount, then also he cannot deny to maintain the present opposite party No. 1 as his legally married wife according to his status, standard of living and his income, and in that case the present petitioner is bound to pay at least Rs. 600/- per month in one third of his monthly income of Rs. 1,800/- to the opposite party No. 1, but by the impugned order the learned Magistrate concerned has directed the present petitioner to pay a monthly maintenance allowance of Rs. 500/- only to the opposite party No. 1. Considering the rising price of daily necessities day by day and consequent change in the circumstances and considering the status, standard of living and income of the present petitioner that amount cannot be stated to be excessive or disproportionate with the income of the present petitioner.

11. It has also been stated by the petitioner in his revisional application that his son, opposite party No. 2 is now major and is engaged in a jewellery shop and earning money in his own capacity, and according to the petitioner he was born on 12th Aswin, 1392 B.S.

12. It appears from the order of the learned Judicial Magistrate. Additional Court, Arambagh, dated 24.3.2008 passed in Misc. Case No. 17/86 that 12th Aswin, 1392 B.S. should be treated as the date of birth of the son of the petitioner or the opposite party No. 2. If that be so, in that case it appears that the son of the petitioner or the opposite party No. 2 has become a major of about 25 years by this time, or in other words he has attained majority long before 12th Aswin, 1417 B.S.,

or he is no more a minor child of the petitioner, and as such he is not entitled to get any maintenance allowance from the present petitioner, and the present petitioner has also no necessity of payment of any monthly allowance for the maintenance of the opposite party No. 2., nor he is bound to pay any maintenance allowance to the opposite party No. 2 any more.

13. But apparently the present petitioner being an able bodied person is liable to maintain his married wife, and in view of the changed socio-economic conditions of the parties as well as the present market price of daily necessaries the quantum of maintenance allowance should also be fixed learned Magistrate concerned has rightly noted these points by observing that "in a case for maintenance allowance every able bodied person is liable to maintain his wife and minor child if they are not otherwise disqualified as per law. There is no doubt on that point. The Hon"ble High Court Calcutta has confirmed the liability of the husband to maintain his wife and child by ordering Rs. 250/- per month. Present question before the court is what should be the quantum of maintenance allowance in the changed socio-economic condition of both the party."

14. Having regard to the submissions of the learned Counsels for the parties materials-on-record and other circumstances, it appears that the learned Judicial Magistrate. Additional Court, Arambagh has not done anything wrong, illegal or irregular by enhancing the monthly maintenance allowance of the opposite party No. 1 to Rs. 500/- per month from Rs. 150/- per month in view of her application u/s 127 of the Criminal Procedure Code, in view of the changed socio-economic circumstances, status of the parties and their income and living standard, rather he was legal, correct and justified in passing the impugned order of enhancement u/s 127 of the Criminal Procedure Code as regards the maintenance allowance of opposite party No. 1 but when it appears that the opposite party No. 2 has already become a major, then without coming to the question as to whether he is earning anything for his maintenance or he is able or unable to maintain himself or not it can be said that he is not entitled to get any maintenance from the present petitioner after attaining majority nor the present petitioner is liable to maintain him as per the provisions of Section 125 or 127 of the Code of Criminal Procedure, 1973. In view of the discussion noted above it appears that the learned Judicial Magistrate, Additional Court, Arambagh was not illegal, incorrect and unjustified in passing the impugned order dated 24.3 2008 in Misc. Case No. 17/86 with regard to the enhancement of monthly maintenance allowance of opposite party No. 1 and the opposite party No. 2 is no more entitled to get any maintenance allowance from the present petitioner after attaining majority. As such there is no reason to interfere with the impugned order which appears to be legal, correct and justified, but the same requires a bit of modification to the effect that the opposite party No. 2 is no more entitled to get any maintenance allowance from the present petitioner after attaining majority, and no such case has been pleaded that he is unable to maintain himself, and the present petitioner is not also liable to pay any maintenance

allowance to his son, opposite party No. 2, any more as per the provisions of Sections 125 and 127 of the Criminal Procedure Code.

15. As a result the revisional application fails. Accordingly, C.R.R. No. 2577 of 2008 stands dismissed.

Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties.