

(2005) 12 CAL CK 0039

Calcutta High Court

Case No: C.R.R. No"s. 618 and 1034 of 2002

Narayan Chandra Das APPELLANT
Vs
Gita Rani Das
 Gita Rani Das RESPONDENT
Vs Narayan Chandra Das

Date of Decision: Dec. 15, 2005

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 125, 127
- Majority Act, 1875 - Section 3

Citation: (2006) 2 CALLT 85 : (2006) 2 DMC 629

Hon'ble Judges: Arun Kumar Bhattacharya, J.

Bench: Single Bench

Advocate: Tanusri Chanda, in C.R.R. No. 618 of 2002 and P.S. Bhattacharya, in C.R.R. No. 1034 of 2002, for the Appellant; P.S. Bhattacharya in C.R.R. No. 618 of 2002 and Tanusri Chanda in C.R.R. No. 1034 of 2003, for the Respondent

Judgement

Arun Kumar Bhattacharya, J.

The twin revisional applications, one being C.R.R. 618 of 2002 filed by the husband, hereinafter referred to as the petitioner, and the other being C.R.R. 1034 of 2002 filed by wife, henceforth referred to as the O.P.. are directed against the order dated 24.01.2002 passed by the learned Judicial Magistrate, 4th Court. Burdwan in Misc. Case No. 7/97 u/s 127 Cr. PC granting enhancement of maintenance allowance. Since same question of law and fact are involved, both the applications were heard analogously.

2. The O.P. obtained an order of maintenance @ Rs. 300/- p.m. for self and her son in Misc. Case 739 of 1981 u/s 125 Cr. PC from the Court of learned Judicial Magistrate, 4th Court, Burdwan on 08.04.84. She filed an application u/s 127 Cr. PC being registered as Misc. Case 7 of 1997 on 05.05.97 for enhancement of maintenance to the tune of Rs. 1200/- p.m. and 1000/- p.m. for self and her son

respectively contending that the earning of the O.P. who has since been absorbed in a permanent post in the Eastern Railway has increased to Rs. 4000/5000/- p.m. and the amount of Rs. 300/- p.m. so awarded in 1984 is not sufficient to maintain themselves. The petitioner opposed to the enhancement contending that the O.P. has inherited the property of her father, and her son having already attained majority is not entitled to claim any maintenance.

3. Two witnesses each on both sides were examined, and after considering the facts, circumstances and materials on record, the learned Court below allowed the prayer of the O.P. in part by the impugned order enhancing the maintenance allowance to Rs. 1000/- p.m. to the petitioner from the date of application and Rs. 700/- p.m. for the son payable till December, 2000.

4. Being aggrieved by and dissatisfied with the said order, both the parties have preferred the present revision.

5. All that now requires to be considered is whether the learned Court below was justified in passing the said order.

6. Ms. Tanusri Chanda, learned Counsel for the petitioner, assailed the impugned order mainly on two-fold grounds viz. (1) since the son attained majority in or about March, 1997 he is not entitled to any maintenance after that period, and (2) the learned Court below erred in law in passing the order of maintenance in favour of the wife from the date of application instead of date of passing of the order. Mr. P.S. Bhattacharya, learned Counsel for the O.P., on the other hand, on referring the case of Bimbadhar Behera Vs. Smt. Pratimamani Behera and Another, contended that there was nothing wrong in enhancing the maintenance from the date of application and that the amount of Rs. 1000/- p.m. so granted in favour of the wife as against her claim for Rs. 1200/- p.m. is too meager now-a-days to support oneself.

7. The word "maintenance" which should not be narrowly interpreted, means the most reasonable requirement for the existence of a person to live separate, and accordingly the expenditure, broadly speaking, not only includes on food, clothing and residence but also medical expenses. The concept of providing a wife merely with food, clothing and lodging as if he is only a chattel and has to depend on the sweet-will and mercy of the husband has now become completely outdated and absolutely archaic, as was observed in the case of Sirajmohamed Khan v. H. Yasinkhan reported in 1981 Cri. LJ 1430 (SC). "Change in the circumstances" is the sine qua non for application of the provision of Section 127 Cr. PC. Rise in the cost of living, increase of earning of the husband etc. fall under the purview of change in the circumstances. While determining the amount of maintenance, not only the earning but also paying capacity of the husband should be considered.

8. Here, O.P.W. 2 who has since been absorbed as a permanent employee in the Eastern Railway in 1991 contended that he has to maintain his mother and brothers

which is an uncorroborated testimony. The evidence of his friend O.P.W. 1 reveals that all his brothers and two sisters are major and two brothers are also railway employees, one being posted as Ticket Collector. He denied the suggestion that his youngest brother Narayan has a sweetmeat shop. Nevertheless, none of his brothers or sisters has come to support the above evidence of O.P.W. 2. That apart, it is his specific evidence that he is the lone member in his family. It is his (O.P.W. 2) further evidence that his gross salary is Rs. 4000/- p.m. He failed to produce his salary certificate which is the best available evidence and as such it would lead the Court to draw an adverse inference. However, maintenance to the tune of 1 /3rd, of the income excluding the statutory deductions e.g. Provident Fund, income tax may be considered to be just and equitable, and from this perspective considering the increase of the earning of the petitioner and rising prices of every essential material . day by day the claim of O.P./wife for a sum of Rs. 1200/- p.m. was not at all unjust and unreasonable. Accordingly, the impugned order deserves to be modified granting her maintenance @ Rs. 1200/- p.m.

9. Increase or decrease of allowance can be made effective from the date of order or from the date of application which is a matter within the discretion of the learned Magistrate. In this connection, reference may be made to the case of S.S.N. Niphade v. N.S. Niphade reported in 1996 SCC 53 and [Dasyam Elizabeth Rani and Others Vs. Dasyam Pradeep Kumar and Others](#) . So, when the order of enhancement has been made effective from the date of application and there is nothing to suggest that the learned Court below exercised discretion arbitrarily or capriciously, that part of the order does not call for any inference by this Court.

10. So far the claim for the son is concerned, a father is liable to maintain his child, legitimate or illegitimate, who is unable to maintain itself. Section 3 of the Indian Majority Act, 1875 speaks of attainment of majority on completion of the age of 18. In the case on hand, P.W. 1 (deposed on 12.03.99) contended that her son Shyamal Kumar Das who is a student of class-IX in Mohanpur High School, is now aged about 17 years which is contradicted by her brother P.W.2 who deposed that in 1981 the age of his nephew was about two years and he arranged for his admission in Mohanpur School. The O.P. could produce the school certificate, but she failed to do so. Therefore, if the son was aged about two years supposing in the first part of 1981 he attained majority in the first part of 1997. That being so, the son is not entitled to any maintenance on account of his attainment of majority in the first part of 1997 which is prior to the date of filing of the application u/s 127 on 05.05.97. As such, that part of the impugned order allowing maintenance to the son deserves to be set aside.

11. In the light of the above discussion, both the revisional applications be allowed in part.

12. The petitioner/husband is directed to pay maintenance @ Rs. 1200/- p.m. to the O.P./wife from the date of application. The order granting enhancement of

maintenance to the son from the date of application to December 2000 be set aside.

13. The petitioner/husband is allowed fifteen equal, consecutive monthly instalments to pay the arrear maintenance at the enhanced rate, payable by 15th of each month, the first of such instalments to fall due on January 15, 2006. In default of payment as aforesaid, the entire amount shall fall due at once and the O.P./wife will be at liberty to recover the same in due course of law.

The impugned order stands modified accordingly to that extent.

Let a copy of this order be sent down once to the learned Court, below.