

**(2011) 08 CAL CK 0152**

**Calcutta High Court**

**Case No:** C.R.R.2436 of 2009 and C.R.A.N.1393 of 2011

In Re: Ranjit Dutta @ Babu

APPELLANT

Vs

RESPONDENT

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**Date of Decision:** Aug. 16, 2011

**Acts Referred:**

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

**Hon'ble Judges:** Kanchan Chakraborty, J

**Bench:** Single Bench

**Advocate:** Arindam Jana and Sanat Kr. Das, for the Appellant; Ramdulal Manna, Milan Kr. Maity, Shambhu Mahato and Sabyasachi Mondal, for the Respondent

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### **Judgement**

Kanchan Chakraborty, J.

Since the revisional application itself is taken up for hearing, the C.R.A.N. application is not required to be disposed of separately.

2. The Petitioner herein is the husband of the opposite party No. 2, Smt. Soma Dutta. Soma Dutta initiated a proceeding u/s 125 of the Code of Criminal Procedure being Misc. Case No. 330 of 2003 in the Court of the learned Chief Judicial Magistrate, Purba Medinipur. On 5.5.2004, the learned Chief Judicial Magistrate, Purba Medinipur directed the Petitioner/husband to pay Rs. 1,000/- to the wife and Rs. 750/- to the minor child in every month towards their interim maintenance. The order was challenged in the revisional application being No. 409 of 2004 which was disposed of on 9.6.2004 and the learned Sessions Judge directed the Petitioner/husband to pay Rs. 800/- and Rs. 500/- to the wife and the minor, respectively per month till disposal of the main application. A Misc. Execution Case No. 5 of 2006 was filed by the wife for arrear maintenance. An order was passed by the learned Magistrate directing the Petitioner/husband to pay that amount. That order dated 6.4.2006 was challenged in the revisional application being C.R.R.1844 of 2006 in this Court and this Court directed the Petitioner/husband to deposit an amount of Rs. 2,000/- within a period of four weeks and stayed the execution

proceeding during the pendency of the said application with a direction to the learned Magistrate to hear out the application u/s 125 of the Cr. P.C. finally. The learned Chief Judicial Magistrate after giving both the parties opportunities of being heard, disposed of the application u/s 125 of the Cr. P.C. directing the opposite party/Petitioner to pay Rs. 1,000/- and Rs. 500/- to the wife and the children, respectively in every month. That order was challenged again in a revision being C.R. Rule 172 of 2007. The learned District and Sessions Judge, Fast Track, 3rd Court, Tamluk allowed the revisional application being C.R.R.172 of 2007 increasing the quantum of maintenance suo moto to the tune of Rs. 1200/- and Rs. 750/-, for the wife and the minor, respectively from Rs. 1,000/- and Rs. 500/-. The Petitioner/husband has come up with this application challenging the legality, validity and propriety of the said order.

3. Mr. Arindam Jana, learned Counsel appearing on behalf of the Petitioner/husband takes me to the paragraph 13 at page 8 of the C.R.A.N. application taken out by the wife/opposite party and draws attention of this Court to the pay slip of the opposite party/husband annexed thereto as annexure-"A". He contends that the gross income of the opposite party/husband is Rs. 15,600/- per month and total deduction therefrom is Rs. 3325/-. He receives a sum of Rs. 8975/- per month as his take away home amount. Therefore, the amount of maintenance awarded by the learned First Revisional Court in revisional application No. 172 of 2007 is unreasonable, exorbitant and not in consonance with the income of the opposite party/husband. He submits further that the order increasing the amount of maintenance was passed suo moto by the revisional Court which is not permissible.

4. Mr. Ramdulal Manna, learned Counsel appearing on behalf of the opposite party/wife submits that the order under challenge suffers from No. infirmity and illegality. As such, this Court should not interfere with the order in exercising its revisional jurisdiction.

5. I have carefully gone through the different orders passed by the Courts and this Court also. In a proceeding u/s 125 of the Cr. P.C., gross income of the husband is to be taken into consideration. The pay slip which is made as Annexure "A" to the C.R.A.N. application shows that the opposite party/Petitioner is repaying provident fund loan in instalments. It is not clear from any document whatsoever that why he had taken loan from provident fund account. No. other deduction on any account has been shown in the pay slip. The Annexure-"A" also indicates that the husband/Petitioner has taken bank loan and for that purpose Rs. 3300/- was deducted from his salary for the month of March, 2011. That was deducted on one occasion only. Therefore, his take away home salary cannot be said to be Rs. 8975/- only.

6. Be that as it may, while the revisional Court enhanced the order, assigned sufficient reason to do so. The learned Court in its judgment at page 4 had discussed the reasons for enhancement. The order passed by the revisional Court is

not suffering any patent and manifest illegality and infirmity necessitating interference by this Court. The revisional application being C.R.r.172 of 2007 was initiated by the opposite party/wife for enhancement of the maintenance amount. Naturally, it was in the revisional Court to judge whether the amount awarded as maintenance by the learned Chief Judicial Magistrate was to be enhanced or not. The learned revisional Court found it expedient and reasonable to enhance the amount and in doing so, the learned Court has taken everything taken into consideration. Therefore, this Court does not like to upset the order.

7. As regards the prayer of the wife/opposite party for vacating the order dated 23.8.2008 passed by this Court in C.R.R.1844 of 2006 and for passing an order of enhancement of the maintenance amount is concerned, I think that the order dated 23.7.2008 is to be vacated otherwise, the entire matter would be stalled. The wife/opposite party is at liberty to take out an application u/s 127 of the Cr. P.C. in the learned Trial Court for the purpose of enhancement of maintenance amount. Upon such an application, the learned Trial Court should serve notice on the other side and give both the parties an adequate opportunity to be heard before passing any order. The order dated 23.7.2008 passed in C.R.R.1844 of 2006 stands vacated.

8. The revisional application is, thus, disposed of. As consequence, the C.R.A.N. application is also disposed of.

9. Urgent photostat certified copy of this order, if applied for, be given to the learned Advocate of the Petitioner upon compliance of necessary formalities.