

**:: IN THE COURT OF THE SESSIONS JUDGE, NALBARI ::**

Present: Smti S. Bhuyan.  
Sessions Judge,  
Nalbari.

**Criminal Revision Case No. 5/19**

**(Revision against the Judgment & order dated 02/01/2019  
passed by learned CJM, Nalbari in Misc Case No. 39<sup>M</sup>/17 u/s-  
127 CrPC.)**

**Sri Biren Das**

S/o- Late Ghanakanta Das

R/o- Hajo road, Ward No.2, Nalbari town

PS & Dist- Nalbari, Assam ..... Revisionist/ 2nd Party

-Versus-

**Smti. Dhanada Majumdar**

D/o- Atma Ram Majumdar

R/o- Village Nannatari

PS- Tihu, Dist- Nalbari, Assam.....Opp. Party/ 1<sup>st</sup> party.

**Advocates appeared:-**

For the Revisionist : Mr. Tulu Pathak, Advocate

For the Opp. Party : Mr. Pankaj Sarma, Advocate

Date of argument : 11-06-2020

Date of judgment : 25-06-2020

**JUDGMENT**

1. The instant revision has been preferred u/s-397/399 CrPC by Sri Biren Das being aggrieved with the impugned judgment and order dated 02/01/2019 passed by learned CJM, Nalbari in connection with Misc Case No. 39<sup>M</sup>/15 u/s- 127 CrPC.

2. Fact leading to the revision petition is that opposite party Smti. Dhanada Majumdar filed a petition u/s- 127 CrPC before the learned CJM, Nalbari praying for enhancement of monthly maintenance from Rs. 3,000/- to Rs. 10,000/- for herself. It is stated that learned court below granted monthly maintenance of Rs. 3,000/- in her favour on

05/02/2015 in Misc Case No. 17<sup>M</sup>/14 u/s- 127 CrPC and she has been receiving the same. She has been suffering from chronic anemia, she suffered from hardship to buy her medicines and sometimes she became severely unwell due to the said disease and she needs to deploy worker on payment to carry out her household works. It is further contended that monthly maintenance of Rs.3000/- was granted in her favour in the year 2015 and now the price and cost of every essential commodities has been raised. She does not have any earning source. Now, 2<sup>nd</sup> party's earning has increased, 2<sup>nd</sup> party got revised pay commission salary in 2017 and at present 2<sup>nd</sup> party's gross salary is 43,935/- and net salary is Rs. 40,527/-, 2<sup>nd</sup> party does not have to look after any other family members and prays for enhancement of monthly maintenance allowance.

3. On receipt of the petition, learned CJM, Nalbari registered a case vide Misc Case No. 39<sup>M</sup>/15 u/s- 127 CrPC and issued notice to the 2<sup>nd</sup> party. After receiving the notice 2<sup>nd</sup> party submitted W/S where he admitted that 1<sup>st</sup> party is his divorced wife. It is stated that he is paying the earlier monthly maintenance to the 1<sup>st</sup> party regularly, 1<sup>st</sup> party is running a shop of mobile recharge and photostate etc at Guwahati and she has earning source of her own, he got only a minimal increment in his salary after 2015, he has to look after his ailing elder brother and family of his elder brother, he has to look after his unmarried brother and sister, he is suffering from blood pressure, HTN, DM, CAB and neurological problem for which he has to bear a huge amount of money for his treatment and it is not possible on his part to pay more amount than earlier. It is further stated that 1<sup>st</sup> party has married another person after divorce with him and prays for dismissal of the petition filed by 1<sup>st</sup> party.

4. 1<sup>st</sup> party to establish her case adduced her evidence as PW-1 and exhibited one salary slip of the 2<sup>nd</sup> party as Ext-1. 2<sup>nd</sup> party adduced evidence of himself as DW-1 in support of his claim. Learned trial court after recording evidences of both the parties, hearing learned counsel for both the parties delivered judgment granting

enhanced maintenance allowance in favour of the 1<sup>st</sup> party @ Rs.5,000/- per month from the date of passing of the order by learned trial court.

5. None appeared for the opposite party. I have heard learned counsel for the revisionist in the virtual court and scrutinized the revision petition and trial court case record to arrive at a just decision.

**6. Points for determination**

i) Whether learned trial court rightly enhanced the monthly maintenance in favour of the 1<sup>st</sup> party of the proceeding u/s- 127 CrPC and whether the quantum of maintenance is excessive?

7. Learned revisionist counsel made submission that impugned order passed by the learned trial court is erroneous in both law and facts, learned trial court has not considered the present financial liability of the revisionist while passing the impugned order. Price hike of essential commodities is a routine fact of the society and it shall not be treated as change of circumstance. Revisionist himself is a ailing person, he has to bear cost of his treatment, he has to maintain family of his elder brother and his unmarried brother and sisters and prays for setting aside the impugned order passed by the learned trial court.

8. In support of the pleading 1<sup>st</sup> party adduced her evidence as PW-1. PW-1 in her evidence stated that she has been receiving monthly maintenance of Rs. 3,000/- since 2015 as granted in her favor in Misc Case No. 17<sup>M</sup>/14 u/s- 127 CrPC. She has no earning source since 2014, she is facing hardship to maintain living hood with the amount of Rs. 3,000/-. 2<sup>nd</sup> party is an able bodied person and his income has been raised and she exhibited salary slip of the 2<sup>nd</sup> party for the month of January, 2018 as Ext-1. In cross she stated that 2<sup>nd</sup> party has elder brother and two sons of his elder brother got married. She denied all the suggestion put by the 2<sup>nd</sup> party.

9. 2<sup>nd</sup> party in his evidence stated that 1<sup>st</sup> party is his wife and now they are divorced. He has been paying monthly maintenance of

Rs.3000/- regularly to the 1<sup>st</sup> party in Misc Case No. 2<sup>M</sup>/04. His family consists of 8 members and he has to look after his family and family of his deceased brother. 1<sup>st</sup> party has a stationary shop at Ganeshguri, Guwahati. He has not married after divorce. He is a diabetic and nerve disease patient and he has to bear Rs.3000- 4000/- per month for his own treatment. Parents of 1<sup>st</sup> party are pensioner and they have cultivable land. In cross he stated that order of monthly maintenance in favor of the 1<sup>st</sup> party has been granted by the learned trial court in the year 2015. His present net salary is Rs. 37,659/-. All the children of his deceased brothers are major. He did not marry again after divorce with 1<sup>st</sup> party and he has no liability of his own. He denied all the suggestion put by the 1<sup>st</sup> party.

10. From the statement of the petition filed by 1<sup>st</sup> party, W/S and evidence of both the parties it is seen that learned trial court has granted monthly maintenance of Rs. 3,000/- in Misc Case No. 17<sup>M</sup>/14 in the year 2015. On perusal of Ext-1 salary statement of 2<sup>nd</sup> party for the month of January, 2018 it transpires that 2<sup>nd</sup> party is receiving net salary of Rs. 37,659/- per month and the same has been admitted by the 2<sup>nd</sup> party. Though 2<sup>nd</sup> party claimed that 1<sup>st</sup> party has her own income source from a stationary shop, yet he failed to establish his claim. 2<sup>nd</sup> party also admitted that he is an able bodied person and he did not enter into second marriage after divorce with 1<sup>st</sup> party. 1<sup>st</sup> party being a government employee, his monthly salary also increased after the 7<sup>th</sup> pay commission and after 7<sup>th</sup> pay commission 2<sup>nd</sup> party is drawing higher salary than he drawn in the year 2015. These facts show change of situation and circumstances, increase of monthly income of the 2<sup>nd</sup> party after the 7<sup>th</sup> pay commission. Net salary of the 2<sup>nd</sup> party pointed that he is able to pay more than Rs. 3,000/- to the 1<sup>st</sup> party so that 1<sup>st</sup> party can maintain her standard of living with dignity and minimum comfort and therefore, enhancement of monthly maintenance allowance is quite justified and reasonable to ease out the living hood of the 1<sup>st</sup> party.

11. With regard to quantum of maintenance I find that learned trial court enhanced the monthly maintenance allowance to Rs. 5000/- from 3000/- from the date of passing the order. Considering the present net salary of the 2<sup>nd</sup> party, prices of the essential commodities and expenditure on day to day goods I do not find the enhanced amount granted by the learned trial court is too harsh on 2<sup>nd</sup> party. That being so, there appears nothing to interfere with the quantum of maintenance granted by the learned trial court in favour of the 1<sup>st</sup> party.

12. In the light of above discussion I do not find any illegality error in the judgment of the learned trial court of granting enhanced monthly maintenance in favour of the 1<sup>st</sup> party. Accordingly, judgment and order dated 02/01/2019 passed by learned CJM, Nalbari in connection with Misc Case No. 39<sup>M</sup>/15 u/s- 127 CrPC is hereby upheld.

13. Revision petition is dismissed being devoid of merit. However, no cost to the parties.

14. Send down the trial court record with a copy of this court judgment to the learned trial court immediately.

15. Judgment delivered under hand and seal of this court on this 25<sup>th</sup> day of June, 2020 at Nalbari, Dist-Nalbari.

(Smti S. Bhuyan)  
Sessions Judge, Nalbari.

Dictated & corrected by me

(Smti S. Bhuyan)  
Sessions Judge, Nalbari.

Typed by  
Jitumani Talukdar, Computer Typist