

**HIGH COURT OF TRIPURA
AGARTALA**

Crl. Rev. P. No.22 of 2023

1. Smt. Mousumi Saha (Das), D/o Sri Shakti Ranjan Saha, resident of Khudirampally, Amarpur, P.S. Birganj, District-Gomati, Tripura.
2. Miss Chandni Das, (D/o Sri Subal Das & Smt. Mousumi Saha (Das), being minor represented by her mother and natural guardian i.e. the petitioner No.1) C/o Smt. Mousumi Saha (Das), D/o Sri Shakti Ranjan Saham, resident of Khudirampally, Amarpur, P.S. Birganj, District-Gomati, Tripura.

..... Petitioner(s)

V E R S U S

Sri Subal Das, S/o Late Jahar Das, resident of Sachindra Nagar Colony, P.S. Jirania, District – West Tripura.

..... Respondent(s)

For Petitioner(s) : Mr. P. Roy Barman, Sr. Advocate,
Mr. D. Paul, Advocate.

For Respondent(s) : Mr. H.K. Bhowmik, Advocate.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

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26/07/2023

Heard learned counsel for the parties.

[2] Petitioner is aggrieved by the impugned order dated 09.03.2023 passed by the learned Judicial Magistrate, 1st Class, Amarpur, Gomati Tripura in Misc. No.16 of 2022 whereby the learned Judicial Magistrate has refused to enhance the maintenance qua the petitioner-wife though the maintenance with regard to the minor child has been enhanced from Rs.3000/- to Rs.4000/-. Earlier both the mother/wife and the child were getting Rs.3000/- each, now the total maintenance is Rs.7000/-. The learned Court of the Judicial Magistrate, 1st Class, Amarpur, Gomati Tripura is of the opinion that since the child has gone into

Class – III, the educational expenses and other day to day expenses would have increased.

[3] The wife has preferred the instant revision petition on the plea that the maintenance earlier enhanced in favour of the wife and child @Rs.3,000/- per month in the year 2018 should have been enhanced in the case of the petitioner-wife also, at least on the same yardstick as that has been the basis for enhancement of the monthly maintenance amount in favour of the minor girl child who is now studying in class-III, keeping into account the increase in cost of living index and also the increase in salary of the respondent/ex-husband.

[4] An objection has been filed thereto by the respondent, *inter alia*, supporting the impugned order and opposing the plea of enhancement of maintenance further at the behest of the petitioner-wife in particular and also on the grounds of the minor child.

[5] Mr. H.K. Bhowmik, learned senior counsel for the respondent has drawn the attention of this Court to the salary certificate for the month of April, 2021 where his gross salary was Rs.29,264/- and net salary was Rs.24,906/- and also the present gross salary of Rs. 35,617/- and the net salary of Rs.28,259/- received by the respondent-husband after statutory deductions (Annexure R/1). Apart from that the respondent has also referred to the mess cutting charges of Rs. Rs.4,496.83 for the month of March/April, 2023 at Annexure R/2 as he is serving in 12th Bn TSR (IR-VII). Respondent has taken a plea that he has got remarried on 22.02.2023, that is just before passing of the impugned order. Respondent has also taken a plea of his treatment for certain chronic illness like diabetes etc. which entails regular expenses.

[6] It is submitted that the learned Judicial Magistrate, 1st Class, Amarapur, Gomati Tripura took into consideration all these factors as well as

the status of both the parties and, therefore, thought it fit to enhance the monthly maintenance of the minor child to Rs.4,000/- per month from the current amount of Rs.3,000/- per month but did not find any grounds to enhance the maintenance for the petitioner No.1 who is a divorced ex-wife of the respondent. The impugned order, therefore, does not suffer from any irregularity, illegality or impropriety calling for interference in the revisional jurisdiction of this Court.

[7] I have considered the submissions of the learned counsel for the parties. Petitioner No.1 is the divorced wife of the respondent and petitioner No.2 is the minor child studying in class-III now must have been promoted to class-IV since passing of the order in 9th March, 2023. The reason which has prevailed upon the learned Court of Judicial Magistrate 1st Class, Amarapur, Gomati Tripura are extracted hereunder:

“On this point, the Court after carefully considering the submissions made by both the sides and going through the materials on record is satisfied on the claim made by the Petitioner that from the year 2018 when the order for the enhanced maintenance allowance was granted till the filing of the instant petition, the cost of living has gone up and the price of the commodities has increased. The Learned Counsel for the Petitioners submitted that during the passing of the previous order, the minor child was studying in Nursery school but in the present case, she was a Class III student who is also enrolled in dance school etc. and hence, the expenditure has increased. In his W/O, the OP has denied this claim of the Petitioner. Again, the Petitioner claimed that the salary of the OP has increased and the salary certificate of the OP was submitted by them for the month of April, 2021 payable on 1st April, 2021 whereby his gross salary was Rs.29,264 and after all the deductions, the net amount was Rs.24,906. Considering all these, it looks likely that the expenses of education of a class III student is more than a student who is in nursery and considering the passage of time from 2018 till the present day, the expenses and the cost of

everything has indeed increased. Hence, there is a change in the circumstances of this case and Petitioner 2 i.e. the minor daughter is entitled to maintenance at an enhanced rate.

Coming to the quantum of maintenance in the instant case, the earning capacity as well as the status of both the parties have been taken into consideration and the Court, after taking into account the well-being of the minor daughter, finds it fit to enhance the monthly maintenance for Petitioner 2 to Rs. 4,000/- per month from the current amount of Rs.3,000/- per month. But this Court doesn't find any ground to enhance the maintenance for the petitioner No.1. Hence, this part of the prayer is rejected.

As a result, it shall be obligatory on the part of the OP to pay maintenance of Rs.4000/- per month towards the petitioner No.2 i.e. the minor daughter Miss Chadni Das from the month of April, 2023 onward and shall also pay Rs.3,000/- per month towards Petitioner No.1, i.e. a total of Rs.7,000/- per month towards both the Petitioners is to be paid by the OP on every 07th day of the English calendar month. The OP is directed to deposit the sum of Rs.7,000/- (Seven thousand) only to the Bank A/c No. 33477985296 of the Petitioner No.1 maintained at State Bank of India, Amarpur Branch, Gomati Tripura.”

[8] It is apparent that from the last enhancement of the maintenance amount in favour of the petitioner and the minor child in 2018, not only the cost of living index has gone up but the gross and net salary of the respondent has also admittedly gone up as per the salary certificate for the month of April, 2023 at Annexure R/1 enclosed by him. If on consideration of the rising cost of living index and the growth of the minor child from 2018 till 2023 is studying in class III at the time of passing of the impugned order, the increased maintenance amount to the minor child from Rs.3,000/- to Rs.4,000/- is justifiable in the eyes of the learned Trial Court, by the same reasoning a parallel increase in the maintenance amount to petitioner No.1 cannot be refuted. Petitioner No.1 being a divorcee and a grown-up woman, would perhaps require, if not more, equal sources of sustenance to maintain herself as

are considered fit for the minor child which she is bearing. Respondent has taken a plea of second marriage, deductions towards mess cutting charges every month and also his treatment. Respondent has also enclosed a document of bank statement which perhaps reflects repayment of some loans taken by the respondent payable @ Rs.8,781/- per month. However, taking of personal loan by the respondent would not amount to salvaging the position of the petitioner No.1 (ex-wife) to resist the claim of enhancement of maintenance, which are to be considered on objective factors such as rising cost of living index and the increase in salary/remuneration of the ex-husband. The ex-husband may in his discretion incur loans but that could not be a rational justification to resist the claim for enhancement of maintenance by the ex-wife who does not have any independent source of sustenance. No such material has been pointed out by the husband during course of the Trial Court proceedings or before this Court. As such, this Court, by the same parity of reasoning applied by the learned Trial Court, proposes to enhance the maintenance amount payable to the wife i.e. the petitioner No.1, on the same scale of Rs.4,000/- per month, payable from the due date as directed by the learned Trial Court.

Accordingly, the instant revision petition is disposed of with the aforesaid modifications in the impugned order.

Pending application(s), if any, also stands disposed of.

(APARESH KUMAR SINGH), CJ