

IN THE HIGH COURT OF TRIPURA
AGARTALA

CRL. PETN. 62 of 2012

Sri Arup Ratan Dutta,
care of Dulal Ranjan Dutta,
resident of Pradhan Nagar,
Nibedita Road by lane,
Near Janaki Medical Hall,
Darjeeling, PIN - 734403

.....Petitioner

- Vs -

- (i) **Smt. Sumita Deb,**
daughter of Shri Bimal Chandra Deb,
- (ii) **Abhirup Dutta (minor),**
minor son of Sri Arup Ratan Dutta and Smt. Sumita Deb,
- both are presently residing at
Shri Bimal Chandra Deb's residence at North Badharghat,
near Unnayan Sangha, P.O. Arundhati Nagar,
P.S. West Agartala, West Tripura

..... Respondents

B E F O R E
THE HON'BLE MR. JUSTICE S. TALAPATRA

For the appellant : Mr. R. Saha, Advocate
For the respondents : Mr. T.D. Majumder, Advocate
Date of hearing & order : 04.08.2015

Whether fit for reporting :	Yes	No
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JUDGMENT & ORDER (ORAL)

Heard Mr. R. Saha, learned counsel, appearing for the petitioner, the husband and Mr. T.D. Majumder, learned counsel, appearing for the respondents, former wife and son.

2. By this petition filed under Section 19(4) of the Family Courts Act, the petitioner has challenged the order dated 01.06.2012 delivered in Civil Misc.66 of 2010 by the Judge, Family Court, Agartala, West Tripura.

3. The respondents herein, on the change in the circumstances, viz. substantial increase in the salary of the petitioner, filed a petition under Section 25(2) of the Hindu Marriage Act, 1955 for modification of the order passed earlier under Section 25(1) of the Hindu Marriage Act, 1955 by enhancing the maintenance as was directed by the order dated 26.07.2005 granting monthly maintenance of Rs.3,500/- in favour of the respondents in Title Suit (Divorce) F.C. 67/2004.

4. It is not in dispute that the petitioner is a Development Officer in the Oriental Insurance Company Limited and he is at present posted at Siliguri. The respondent No.1, by filing that petition has asserted that the petitioner herein has been earning Rs.45,000/- per month from the Oriental Insurance Co. Limited.

5. It is not in dispute that the petitioner, by filing an objection to such prayer for modification, has contended by furnishing his salary certificate that his gross salary is Rs.32,692.55/- and his net salary at the relevant point of time was Rs.17,740/-. Based thereon, by the impugned order dated 01.06.2012, the Judge, Family Court, Agartala, West Tripura has

decided to enhance the monthly maintenance to Rs.10,000/- per month to be paid from 01.06.2012 to the respondent No.1.

6. Mr. R. Saha, learned counsel appearing for the petitioner has submitted that the impugned order dated 01.06.2012 has been passed by the Judge, Family Court, Agartala, West Tripura by invoking the jurisdiction which was not vested with, inasmuch as the petition for modification was filed under Section 25(2) of the Hindu Marriage Act, 1955, whereas the impugned order dated 01.06.2012 has apparently been passed under Section 127 of the Cr.P.C. Mr. Saha, learned counsel has also submitted that there is no applicability of Section 127 of the Cr.P.C. if the order for maintenance is not passed under Section 125 of the Cr.P.C. Thus, he has submitted that ex facie the impugned order is not sustainable in law. Mr. Saha, learned counsel, in the last lap of his submission, has submitted that the respondent No.1 is also working and it would be apparent from the Certificate dated 25.07.2012, Annexure P/4 to this petition, that she has been working as the Computer Operator in Tripura Printers and Publishers Private Limited from 20.02.2012. It is also not in dispute that by filing an objection against the petition under Section 19(4) of the Family Courts Act, 1984, the respondent No.1 has categorically admitted as under :

"That the respondent No.1 is unable to maintain herself with her meagre income of Rupees 2,000/- per month from the

Office of The Daily Desher Katha where she was employed as an Computer Operator. By her meagre income she is unable to maintain herself as well as her word i.e. respondent No.2. Respondent No.2 being a developing child requiring more fund for his well-being. The petitioner herein having sufficient fund is not providing best care and education to his word as such the present application for enhancement and award has been filed before the Family Judge, Agartala."

But, while passing the impugned order, that income of the respondent No.1 was not inquired into by the Judge, Family Court, Agartala, West Tripura.

7. Mr. T. D. Majumder, learned counsel appearing for the respondents has succinctly submitted that in these hard days, it is very difficult to maintain a modest livelihood with the amount of Rs.3,500/-. Therefore, the basis for approaching the Family Court in the change of circumstances was persuasive. Mr. Majumder, learned counsel has also submitted that Rs.10,000/- for survival of the two human beings and for defraying educational expenses is not at all adequate. However, Mr. Majumder, learned counsel though initially had raised certain objection regarding admissibility of the statement made by the respondent No.1 for purpose of determining the maintenance in the change of the circumstances, but later on he has fairly admitted that this court may consider the legal income of the respondent No.1 for purpose of determining the proper maintenance.

8. Having regard to the contrasting contentions as projected by the learned counsel appearing for the parties, this court is of the view that even though the fact of the respondent No.1's earning was not brought before the family court, this court can take judicial notice of that earning from the pleading for purpose of arriving at a proper assessment of the maintenance allowances in the change of circumstances under Section 25(2) of the Hindu Marriage Act, 1955.

9. Having regard to all the aspects, this court is of the view that the petitioner shall pay a sum of Rs.9,000/- (Rupees Nine thousand) per month to the respondent No.1 for maintenance of the respondent Nos.1 and 2 with effect from 01.06.2012. It is further directed that the arrears of the maintenance from 01.06.2012 shall be paid within 4(four) months from today by 4(four) equal instalments without fail. It is again directed that the petitioner shall, in addition to payment of the arrear maintenance in instalments, regularly pay the enhanced maintenance allowance of Rs.9,000/- to the respondent No.1 within 10th day of every English calendar month. If any Money Order commission is to be borne that has to be entirely borne by the petitioner. However, if the respondent No.1 furnishes her bank account details, the petitioner shall be allowed to remit the maintenance amount through the bank transfer.

10. With this observation and direction, this petition stands partly allowed to the extent as indicated above.

Send down the LCRs forthwith.

JUDGE

Moumita