

**IN THE HIGH COURT OF PUNJAB & HARYANA  
AT CHANDIGARH**

**CRM No.M-6455 of 2011 (O&M)  
Date of decision : 10.08.2015**

**Amarjit Singh**

**..... Petitioner**

**versus**

**Pushpa Devi**

**... Respondents**

**CORAM:- HON'BLE MRS. JUSTICE ANITA CHAUDHRY**

Present: Mr. Sandeep Arora, Advocate  
for the petitioner.

Mr. Sukhdeep Singh Brar, Advocate  
for the respondent.

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**ANITA CHAUDHRY, J.**

This petition has been filed by the husband challenging the order passed by the Revisional Court which enhanced the maintenance and awarded maintenance amount more than what was claimed. It was averred that the Revisional Authority could not have awarded an amount which was more than what was claimed and if she was seeking enhancement, she could have claimed the same in a separate petition under Section 127 Cr.P.C. which allows alteration and enhancement.

The short facts that appear from the record are that the parties were married in March, 1990. No child was born from the wedlock. They stayed together for 8 – 9 months. The wife had alleged that demands of dowry were made. In November, 1994 the husband is said to have left the petitioner at Chandigarh and had demanded Rs.50,000/- and had issued a threat. The wife got a FIR registered in February, 1995 at Police Station Adampur under Sections 498-A, 406, 506 IPC. The matter was got settled by the Panchayat but the wife was thrown out of the house and the case was reopened. The petitioner had pleaded that she was unable to maintain herself. The husband was working as Lance Naik in the Army and was earning Rs.5,000/- per month and had movable and immovable property. The petitioner claimed Rs.1,000/- per month as maintenance.

The husband resisted the petition and pleaded that the petitioner had treated him with cruelty at the instance of his brother who was posted in Chandigarh and in the office of DGP, Punjab and was influential. It was pleaded that petitioner started living with her parents since December, 1992 and he had filed a petition under Section 9 and Section 13 of the Hindu Marriage Act and the petitioner failed to appear and she was proceeded ex parte and thereafter, the matter was compromised and the case was withdrawn. It was

averred that the family members and the petitioner started torturing him and he had filed a petition seeking divorce which was pending. It was also pleaded that the petitioner was earning more than Rs.2,000/- per month from tailoring work. He admitted that he was working in the Army but pleaded that his income was Rs.2,000/- per month.

The trial Magistrate considered the evidence and noted that the respondent had retired and he was getting pension of Rs.1665/- per month but it gave a finding that there was an admission of respondent that he was actually getting family pension of Rs.3865/- and allowed Rs.1,000/- per month to the petitioner as maintenance from the date of the application.

Dis-satisfied, the wife preferred a revision and Additional Sessions Judge, vide order dated 13.01.2011 enhanced the maintenance from Rs.1,000/- to Rs.2,000/-. The concluding paragraph reads as under:-

*"The profession of Amarjit Singh respondent is also not disputed. It is an admitted fact that he was serving in the Indian Army. Tarsem Lal RW1 produced the record and confirmed that Amarjit Singh retired from the Army on 1.7.2003. his pension book is Ex.RW1/A and I/card is Ex.RW1/B. His basic pension is admittedly Rs.1665/-. It has come in the cross examination of this witness that*

*the respondent commuted his pension for a period of 15 years and received Rs.1,46,595/-. He received gratuity, G.P. Fund and other retiral benefits. After his retirement he is working as an agriculturist. On the other hand, Pushpa Devi has no source of income to maintain herself. She is dependent on her parents since 10.10.1996. It has come in the cross-examination of Amarjit Singh RW6 that he is not ready to reconcile with his wife. He has not sent money to his wife for her maintenance. Rather, he filed a divorce case which is dismissed vide judgment dated 6.5.2005. No doubt appeal is pending before the Hon'ble High Court but till date the divorce case filed by the respondent has been dismissed. The respondent is legally bound to provide maintenance to his wife but the maintenance granted by the lower court @ Rs.1,000/- per month is towards lower side. The respondent has retired from the Army. He is hale and hearty and can earn by doing agricultural work or by doing some other job. The wife is entitled to get maintenance as per status of her husband. It is difficult to maintain oneself in a meager amount of Rs.1000/-. Taking into consideration the above said facts, the order of maintenance passed by the lower court is modified and the maintenance is enhanced from Rs.1000/- per month to Rs.2000/- per month. The revision is accordingly accepted and the order passed by the lower court is modified. The lower court file be returned back with copy of judgment and criminal revision file be consigned to the record room."*

The husband has assailed the order passed by the revisional Court on the ground that the prayer of maintenance was limited to Rs.1000/- per month and the revisional Court could not have enhanced the amount and the petitioner was not put to the notice that demand of maintenance would be enhanced and the higher amount could not be granted than what was prayed in the application.

Notice was given to the respondent. The matter was also sent for mediation. The petitioner had been directed to deposit Rs.10,000/- as litigation expenses which were deposited in December, 2011. The petitioner was again asked to deposit Rs.15,000/- in the account of the respondent and the matter was referred for mediation. The co-ordinate Bench had directed the petitioner to get a draft of Rs.1 lac which was handed over to the respondent in October, 2014.

The counsel for the petitioner contends that the Court has power to award higher amount than it was demanded by the applicant only in petition under Section 127 Cr.P.C. and if the Court on its own increases the amount then an opportunity should be given. It was urged that while exercising revisional jurisdiction, the Court was only required to see whether the orders suffered from any infirmity.

As against it, the submission on behalf of the respondent was that the Court was competent to award

maintenance more than the amount claimed by the petitioner in the maintenance application and there is no restriction under Section 125 Cr.P.C. and an amendment had been made in the Criminal Procedure Code in 2001 and the limit had been removed and the provisions have to be liberally construed. Reliance was placed upon ***Kamaldeep Kaur and another Vs. Balwinder Singh 2005(3) RCR (Crl.) 258.***

Now the question which requires determination is whether the Magistrate is competent to award maintenance more than the amount claimed by the petitioner in the application, [Section 125](#) Cr. P.C. provides that a Court may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate, as such Court thinks fit, and to pay the same to such person as the Court may from time to time direct. Under this provision, it is the duty of the Court to provide just maintenance to the deserted wife or destitute child. The amount of maintenance should be such that a wife is able to maintain herself decently and with dignity. If after considering the material placed before the Court, the Court thinks that a particular amount is a reasonable amount, he is required to award the said amount as maintenance, and in my opinion, he cannot refuse to grant the said amount merely because the claimant has not claimed

such an amount in her application. Once the legislation has cast duty on the Court to award just and reasonable amount of maintenance in the facts and circumstances of a case, the same cannot be denied on mere technicalities i.e. the claimants had not claimed the said amount in their application. Once discretion has been given to the Court to award an amount of maintenance, it will always be just and reasonable, in the facts and circumstances of a case. There is no specific restriction under [Section 125](#) Cr. P.C. that the Court cannot award more than the amount claimed in the petition. Rather a duty has been imposed on the Court to award compensation which he thinks fit. In such situation, the Court is not debarred from awarding compensation exceeding the claimed amount.

Thus in my opinion, no illegality was committed by the Additional Sessions Judge while raising the compensation. Perhaps the Court was persuaded as long time had elapsed. The application was filed in 1997 and the revision before Additional District Judge came up for hearing in 2011. The prices had gone up considerably. The wife is entitled to live in a dignified manner and was entitled to the same status as the husband was living in.

The petition was filed in 1997 and the case was decided in 2007. The maintenance of Rs.1000/- per month was awarded from date of the application. The revisional Court

had enhanced it to Rs.2,000/- per month which means that the amount payable @ Rs.2000/- per month would be from 1997, which would be too harsh. The order passed by the revisional Court has to be modified. It is ordered that the enhanced amount allowed by the revisional Court would be paid from July, 2008 i.e. the date of institution of the revision.

With the above modification, the petition is disposed of on the above terms.

**(ANITA CHAUDHRY)**  
**JUDGE**

**10.08.2015**

'Sunil'