

Kumar Gaurav, Son of Umesh Kumar Singh, permanent Resident of Village – Kamarthu, Police Station – Gayghat, District – Muzaffarpur, at present C/o- Echo Motors & Automobiles Pvt. Ltd., in front of Lachit Park, North Jalukbari, Guwahati, District – Kamrup (M), Assam, Pin 781014.

Versus

- Opposite Party/s

For the Opposite Party/s : Mr. Indra Kumar Singh, APP

Heard Mrs. Archana Sinha, learned counsel
and Mr. Rakesh Ranjan, learned counsel for

The present application has been filed for modification of the order dated 04.01.2016 passed by a Bench of this Court (Smt. Anjana Prasad since retired) in Criminal Revision No. 452 of 2013 (Guriya Kumar Vs State of Bihar & Another) to the extent of modification of quantum of maintenance amount as



by the order under modification the learned Judge has enhanced the maintenance amount from Rs.10,000/- to 25,000/-.

The factual matrix of the case gets unveiled from the pleadings and submissions of the parties that the marriage of the petitioner with opposite party no. 2 was performed on 28-29.06.1999 and subsequently they were blessed with a baby girl in 2003. Somehow or the other, the differences cropped up between the parties, whereupon and the petitioner Kumar Gaurav filed Matrimonial Suit No. 120 of 2004 before Principal Judge, Family Court, Muzaffarpur on 08.11.2004 with a prayer for decree of divorce under Section 13 of the Hindu Marriage Act, 1956. Subsequently, the said matrimonial suit was dismissed on merit and the same was challenged before this Court in Miscellaneous Appeal and it is submitted by learned counsel for the opposite party no. 2 that the same has also been dismissed for default.

Subsequent to the filing of the matrimonial suit, the opposite party no. 2 filed Complaint Case No. 2780 of 2004 alleging torture for non-fulfillment of further dowry demand and performance of second marriage by the petitioner. Consequently, in the complaint case processes were directed to be issued after cognizance being taken for the offences punishable under Sections 498A/494 of the Indian Penal Code and Sections



3/4 of Dowry Prohibition Act, wherein the trial has concluded and the petitioner has only been convicted for offence punishable under Section 494 of the Indian Penal Code vide judgment dated 13.07.2017 passed by learned Sub-divisional Judicial Magistrate (East), Muzaffarpur.

The opposite party no. 2 filed Misc. Case No. 112 of 2004 before the Principal Judge, Family Court, Muzaffarpur on 25.11.2004 claiming maintenance under Section 125 of the Code of Criminal Procedure (hereinafter called as the 'Code'). The Principal Judge, Family Court, Muzaffarpur disposed of the Maintenance Case No. 112 of 2004 vide order dated 19.05.2007 and directed for making payment of Rs.6,000/- per month to opposite party no. 2 and her minor daughter from the date of filing of the maintenance application i.e. 25.11.2004. Immediately after disposal of the maintenance case on 25.11.2004, the opposite party no. 2 filed Misc. Case No. 14 of 2007 on 01.09.2007 under Section 27 of the Code for enhancement of quantum of maintenance amount of Rs.25,000/- on the ground that the cost of living has been enhanced and she has to make payment of Rs.2500/- tuition fee for the study of her daughter. Moreover, the petitioner has opened an Automobile company and his turn over is more than Six crores in a year. Consequently, learned



Principal Judge, Family Court, Muzaffarpur disposed of Misc. Case No. 14 of 2007 vide order dated 15.03.2013 enhancing the monthly maintenance from Rs.6,000/- to 10,000/-. Being aggrieved by the order of the Principal Judge, the opposite party no. 2 preferred Criminal Revision No. 452 of 2013 before this Court. The said criminal revision was disposed of by a Bench of this Court vide order dated 04.01.2016 enhancing the maintenance amount from Rs.10,000/- to 25,000/-. Order dated 04.01.2016 as contained in Annexure-1 reads as follows:-

“In view of the salary slip filed by the petitioner saying that the Opposite Party No. 2 earns Rs.12 lacs per year, the order dated 15.3.2013 passed by the Principal Judge, Family Court, Muzaffarpur in Maintenance Case No. 112 of 2004 (Misc. Case No. 14 of 2007) is hereby modified to the extent that the amount of maintenance be increased to Rs.25,000/- per month from today.

The Court below is directed to conclude the proceedings positively within a period of two months from the date of receipt of this order without granting unnecessary adjournments



to any party.

The application stands disposed of.”

Thereafter the petitioner filed present modification application on 04.04.2016. The said Bench issued notice to the opposite party no. 2 vide order dated 27.04.2016. The order dated 27.04.2016 reads as follows:-

“It has been submitted that the petitioner wishes to settle the dispute finally with the Opposite Party No. 2.

In the interest of the Parties, issue notice to the Opposite Party No. 2 for which requisites etc. under ordinary process as well as registered cover with A/D. must be filed within ten days, failing which this application as against her shall stand rejected without further reference to the Bench.

Notice through ordinary process shall go to the Court concerned to be served upon the counsel appearing on behalf of the Opposite Party No.2.

Rule is made returnable within six weeks.”

On appearance of the opposite party no. 2 the



matter was placed for Admission vide order dated 22.06.2016 which reads as follows:-

“Since the Opposite Party No. 2 has appeared, put up for Admission.”

Thereafter the concerned Court directed for putting up of the matter before another Bench vide order dated 13.07.2016 which reads as follows:-

“Put up this matter before another Bench after taking necessary permission from Hon’ble the Chief Justice.”

Consequently the mater was placed before this Court.

Since last more than one year the matter was adjourned on the joint prayer of the parties to resolve the issue. Though, it is submitted by learned counsel for the petitioner that he is ready to make payment of one time settlement amount of Rs.Fifty lacs and also to provide further financial help at the time of marriage of the daughter, but the counsel for opposite party no. 2 submits that opposite party no. 2 is not ready to accept the offer.

In view of the fact that the petitioner disputes the quantum expenditure as claimed by opposite party no. 2, whereas the quantum of income claimed by the petitioner is



disputed by the opposite party no.2, the issue is not likely to be resolved.

In view of this Court, considering the conflicting stand of the parties, the modification of an order passed by a bench of this Court in exercise of revisional jurisdiction will amount to exercise of power of review which is prohibited under Section 362 of the Code. Moreover, any modification of the order requires leading evidence which can only be done by the learned court below in exercise of jurisdiction under Section 127 of the Code which permits alternation in allowance on proof of change circumstances of any person.

Learned counsel for the petitioner submits that let this modification application be disposed of with liberty to raise all the contentions in a fresh application filed under Section 127 of the Code before the Principal Judge, Family Court, Muzaffapur.

Accordingly, the present modification application is disposed of with liberty to the petitioner to file fresh application under Section 127 of the Code after serving of the copy of the petition to the counsel for opposite party no. 2, which will be disposed of by the learned Court below within the



parameters of Section 127 of the Code within a time frame after giving due opportunity of hearing to both the parties.

DKS/-

(Dinesh Kumar Singh, J)

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