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**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**RPFAM NO. 168 OF 2022**

***Mahendra Naik***

....

***Petitioner***

Ms. Geetanjali Majhi, Advocate

*-versus-*

***Mina Kumari Naik and another***

....

***Opp. Parties***

**CORAM:**

**JUSTICE K.R. MOHAPATRA**

**ORDER**

**02.11.2022**

**Order No.**

- 5.
1. This matter is taken up through hybrid mode.
  2. The Petitioner in this RPFAM seeks to assail the order dated 23<sup>rd</sup> March, 2022 (Annexure-1) passed by learned Judge, Family Court, Sambalpur in Criminal Misc. Case No.05 of 2018, whereby an application filed by the Opposite Parties under Section 127 Cr.P.C. is allowed by enhancing the maintenance to Rs.10,000/- per month to be paid each of the Opposite Parties from the date of filing of the application i.e. on 2<sup>nd</sup> February, 2018.
  3. Ms. Majhi, learned counsel for the Petitioner raises three issues in assailing the order under Annexure-1 for consideration of this Court. She submits that since the Opposite Party No.2, the daughter of the Petitioner has become major, she is not entitled to any maintenance on attaining the age of majority, much less any enhancement in the maintenance. She further submits that the petition for enhancement of the maintenance should have been filed before learned Magistrate, who had

passed the order under Section 125 Cr.P.C. Thirdly, she raises an objection to the effect that the impugned order is bad in law as the enhanced amount has been directed to be paid from the date of application filed under Section 127 Cr.P.C. instead with effect from the date of the order. In support of her case, she relied upon the ratio decided in the case of **Raj Kumar –V- Shanta Bai**, reported in 2002 SCC OnLine Raj 220, wherein it is held as under:

*“13. A reading of Section 126 Cr. P.C. would show that it provides for procedure and the jurisdiction of the court where an application under Section 125 Cr. P.C. could be filed. Section 127 Cr. P.C. which is for alteration in the amount is completely different and for this Section 126, Cr. P.C. has no application. Section 127(1) Cr. P.C. provides a proof of change in the circumstances of any person, receiving under Section 125 a monthly allowance, or ordered under the same Section to pay a monthly allowance to his wife, child, father or mother, as the case may be, the Magistrate may make such alteration in the allowance as he thinks fit. The words “the Magistrate” would mean the Magistrate who had passed the first order of maintenance because Court is strengthened in this interpretation by the fact that Section 128 Cr. P.C. which is the section for enforcement order of maintenance specifically provides that such petition under Section 125 Cr. P.C. may be presented before “any Magistrate”. Therefore, in these circumstances, the petition under Section 127, Cr. P.C. will have to be filed before the Magistrate who has passed the first order of maintenance. Similar view has been taken by Andhra Pradesh High Court in the case of G. Balraj v. Smt. Mallamma (1).”*

4. In view of the ratio decided above, Ms. Majhi, learned counsel for the Petitioner submits that learned Judge, Family Court, Sambalpur had no jurisdiction to entertain an application under Section 127 Cr.P.C. seeking enhancement of the

maintenance. She further relied upon the decision in the case of ***Pilli Venkanna –V- Pilli Nookalamma and another***, reported in 1998 (2) ALD 611, in which it is held as under:

“5.           XXX                   XXX                   XXX

*This section, on its plain reading, furnishes the grounds on which the Court passing an Order Under Section 125 Cr.PC can modify that order and enhance the maintenance on proof of a change in the circumstances, but such an order for alteration of allowance can be made only from the date of order passed under this Section and not from the date of application seeking alteration. Under sub-clause (2) to Section 125 Cr.PC the Legislature has left it to the discretion of the Magistrate to award maintenance from the date of application for maintenance though normally it shall be payable from the date of the order in the petition. But under Section 127 Cr.PC no such discretion is left to the Magistrate to pass such order in the application seeking alteration of enhanced maintenance, from the date of filing of that application, since the Legislature itself did not provide, under Section 127 Cr.PC that the Magistrate could date back the order or alteration to the date of application. Hence it is not open to the Magistrate or the Revisional Court to exercise such jurisdiction and enhance the compensation from the date of filing of that application. The Courts have to act within the strict limitations set out for the exercise of its jurisdiction and they cannot over step the same on any equitable grounds. I have been fortified in my opinion by the decision of the High Court of Jammu & Kashmir in *Bansilal v. Pushpa Devi*, 1982 CrLJ 1081.”*

She, therefore, submits that the impugned order under Annexure-1 is not sustainable in the eyes of law and is liable to be set aside.

5.       Considering the submission made by learned counsel for the Petitioner and on perusal of the record, it appears that the

Opposite Parties had filed Criminal Misc. Case No.78 of 1993, in which learned S.D.J.M., Kuchinda directed the present Petitioner to pay Rs.400/- per month to Opposite Party No.1 and Rs.100/- per month to Opposite Party No.2 towards maintenance from the date of filing of the petition under Section 125 Cr.P.C. i.e. on 6<sup>th</sup> August, 1993. Subsequently, the monthly maintenance was enhanced to Rs.500/- each to the Opposite Parties by order dated 1<sup>st</sup> June, 2005 passed by learned S.D.J.M., Kuchinda in C.M.C. No.118 of 2005 and C.M.C. No.119 of 2005 respectively. Again monthly maintenance awarded in favour of the Opposite Parties was enhanced to Rs.1,500/- per month to each of the Opposite Parties vide order dated 3<sup>rd</sup> May, 2011 passed by learned S.D.J.M., Kuchinda in C.M.C. No.18 of 2010 and C.M.C. No.19 of 2010 respectively. Subsequently, the monthly maintenance was again enhanced to Rs.2,500/- per month to each of the Opposite Parties vide order dated 8<sup>th</sup> July, 2013 passed by learned Judge, Family Court, Sambalpur in C.M.C. No.458 of 2012. The instant application under Section 127 Cr.P.C. was filed on 2<sup>nd</sup> February, 2018 for enhancement of the maintenance to Rs.10,000/- per month to each of the Opposite Parties. The said application has been allowed by the impugned order directing the Petitioner to pay Rs.10,000/- per month to each of the Opposite Parties from the date of application i.e. on 2<sup>nd</sup> February, 2018.

5.1. Admittedly, the Opposite Party No.2 has attained her majority, as it is disclosed in the impugned order that she was 24 years old at the time of filing of the petition under Section 127 Cr.P.C.. In view of the provision under Section 125(1)(b)

Cr.P.C., a legitimate or illegitimate minor child, whether married or not, unable to maintain itself is entitled to maintenance under Section 125 Cr.P.C. Sub-section (c) attaches a qualification that, if a legitimate or illegitimate child (not being a married daughter) who has attained majority and in view of any physical or mental abnormality or injury unable to maintain itself, is entitled to receive maintenance. The Opposite Party No.2 does not satisfy the requirements of Section 125 (1)(c) Cr.P.C. to receive maintenance. Thus, the Opposite Party No.2 is not entitled to maintenance under Section 125 (1) Cr.P.C. from the date of her attaining majority. As such, question of enhancement of maintenance granted in her favour does not arise at all.

6. Section 7(2) of the Family Courts Act, 1984, clearly provides that a Family Court shall also have and exercise the jurisdiction exercisable by a Magistrate of the First Class under Chapter IX (relating to order for maintenance of wife, children and parents) of the Code of Criminal Procedure, 1973. In that view of the matter, upon establishment of the Family Court at Sambalpur it assumes jurisdiction to entertain all the powers of a Magistrate of First Class exercising jurisdiction under Chapter IX of Cr.P.C. Thus, this Court respectfully disagrees with the proposition laid down by the ratio decided in the case of **Raj Kumar** (supra), as the provision under Section 7(2) of the Family Courts Act, 1984 was not discussed therein.

7. So far as direction to pay enhanced maintenance from the date of order is concerned, it is apparent that Section 125 (2) Cr.P.C. has clearly provided that any allowance for maintenance or interim maintenance and expenses of the proceeding, should

be payable from the date of the order or if so ordered, then it shall be payable from the date of application for maintenance and expenses of proceedings as the case may be. In the instant case, the Court has exercised the power under Section 127 Cr.P.C. for enhancement of the maintenance in view of the changed circumstance as detailed in the impugned order itself. Although *pari materia* provision under Section 127 Cr.P.C. as that of Section 125 Cr.P.C., is not available, but there is no restriction under Section 127 Cr.P.C. to pay maintenance from the date of order only. On the other hand, an application is made for alteration of the maintenance as wife or child or parents, as the case may be, is unable to maintain itself with the maintenance awarded in its favour. Thus, there is no reason to award enhancement of maintenance from the date of the order only. The party seeking enhancement of maintenance comes to the Court by filing a petition, when it becomes difficult on its part to maintain itself with the amount so granted. Thus, it would be deemed that she is in requirement of an enhanced maintenance from the date of filing of the application. Further, a proceeding under Section 127 Cr.P.C. is an offshoot of a proceeding under Section 125 Cr.P.C. In that view of the matter, I respectfully disagree with the view taken by Andhra Pradesh High Court in the case of **Pilli Venkanna** (supra). Learned counsel for the Petitioner has not made out any ground to the contrary to enhance the maintenance from the date of the order only. Since there is no compelling circumstance to enhance the maintenance from the date of the order, I am of the considered

opinion that learned Judge, Family Court, Sambalpur has rightly directed to pay the same from the date of the application.

8. In view of the above, this Court while disagreeing with the view of learned Judge, Family Court, Sambalpur in enhancing maintenance in favour of the Opposite Party No.2, confirms the order of enhancement of maintenance to the Opposite Party No.1(Wife).

9. With the aforesaid modification in the impugned order, this RPFAM is disposed of.

10. Since this order is passed without issuing notice to the Opposite Parties, they are at liberty to seek for variation of this order, if they feel aggrieved.

Urgent certified copy of this order be granted on proper application.

(K.R. Mohapatra)  
Judge

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