

05.04.2023

Court No.35
Item No. 51

D.Hira

CRR 3054 of 2015
With
CRAN 1 of 2016 (Old No. CRAN 123 of 2016)

Tarun Dey
Vs.
Soma Dey

Mr. Alok Kumar Pal,
Mr. Koushik Bhattacharyya.

... for the petitioner

Mr. Zaidur Rahaman,
Mr. Arnab Mandal.

... for the OP

This is a revision to challenge the judgment of Judicial Magistrate, 1st Court, Raiganj, Uttar Dinajpur dated 06.12.2014, passed in case no. Misc. Judicial 01 of 2011.

The case Misc. Judicial 01 of 2011 was filed by the present opposite party/wife under Section 127 of the Code of Criminal Procedure in the Trial Court to pray for enhancement of the maintenance, granted to her earlier by the Court, that is, to the tune of Rs.2000/- per month. The case was disposed of by the Trial Court by dint of the judgment, impugned in this case, directing the present petitioner to pay maintenance to the tune of Rs.4,700/- per month with effect from 24.09.2012.

While challenging the said impugned judgment of the Trial Court learned Advocate for the petitioner has submitted that the impugned judgment is a result of non-application of judicious mind by the Magistrate to the facts and circumstances of the case.

It is submitted further that the necessary ingredients for proving the change in circumstances, as pleaded, indigence as well as imminent necessity, for grant of maintenance, were not brought on record by the petitioner there, that is, the opposite party/wife in this case.

It is further submitted that the Magistrate has erred in appreciating the settled legal provisions and principles, thereby misdirecting itself to perceive merits of the case in its wrong perspective and finally has come to an erroneous finding, by increasing the maintenance amount from Rs.2000/- per month to Rs.4700/- per month with effect from 24.09.2012.

Vehement objection has been raised on behalf of the opposite party/wife in this case, to the contention and prayer of the petitioner, on the grounds that at present the capacity of the petitioner to pay for maintenance is much more than what was there at the relevant point of time, when her cases, under section 125 CrPC as well as that under section 127 CrPC were disposed of.

It is also submitted that even at the relevant point of time the petitioner was earning handsomely, which the present opposite party/wife has duly proved in the court of law.

It is submitted that the impugned order suffers from no impropriety or illegality.

Mr. Rahaman, learned Advocate for the opposite party/wife has pointed out that as on the date of the impugned order, the opposite party is still devoid of any independent source of earning to maintain herself.

Heard both. Considered.

The Trial Court has been considering the prayer of the present opposite party/wife for enhancement of the maintenance earlier granted to her, that is, from an amount of Rs.2000/- per month to any appropriate amount. The Court considered the evidence on record and on the basis of the same has finally come to a finding that the amount of maintenance should be enhanced from Rs.2000/- per month to Rs.4700/- per month.

The petitioner argues that, firstly he earns much less than what has been projected in the trial Court, secondly he has several other liabilities to performe and thus questions the finding of the Court regarding his capacity to pay a maintenance to the tune of Rs.4700/- per month.

All these questions of fact has however, been dealt with by the trial Court in the judgment on the basis of the evidence. The earning of the petitioner is on record which is virtually not challenged, by producing any cogent document in support of the same.

Under such circumstances, the finding of the Court regarding the capacity of the petitioner to pay maintenance is found proper any doubt as regards the same, its propriety and legality, as envisaged on behalf of the petitioner is found to be untenable.

Section 127 of the Code of Criminal Procedure has provided that on proof of a change in circumstances of any person, receiving maintenance under Section 125 of the Code of Criminal Procedure, the Court has the power and discretion to make necessary alteration as to the order of maintenance earlier granted by it.

In this case, it appears that the present opposite party /wife has made out and proved in the trial Court regarding her change in circumstances like being not able to maintain herself with the existing amount of maintenance, due to change of price index. The Trial Court after consideration of the plea and the materials on record has come to the finding as above, which appears to be just and proper.

Under such circumstances, this Court is not inclined to find any cogent reason to interfere with the impugned order passed by the trial Court in this revision.

Hence, the revision fails.

CRR 3054 of 2015 is dismissed. The order of the Trial Court dated 06.12.2014 is upheld.

It is learnt during argument by the parties that the petitioner has been paying @ Rs.4000/- per month during pendency of the present case.

The petitioner is directed to remit the balance amount, in terms of the impugned order dated 06.12.2014 by way of three installments, be paid in the months of May, June and July, 2023, within 7th of each month.

So far as the current maintenance amount in terms of the trial Court's order dated 06.12.2014 is concerned, the petitioner shall regularly pay the same every month starting from the month of April, 2023 within the period as directed by the trial Court in the said order dated 06.12.2014.

With the directions as above, this revision is allowed and disposed of.

All pending applications, if any, are consequently disposed of.

Certified website copies of this order, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

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RAI
CHATTOPADHYAY
DHYAY

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(Rai Chattopadhyay, J.)