

03.05.2023  
Court No.35  
Item no.19  
I.T (p.a)

**CRR 3360 of 2016**

**Partha Pratim Mallick**  
**Vs.**  
**Smt. Kankanika Mallick nee Mandal**

Mr. Syed Imam,  
Mr. Md. Mokaram Hossain.

.... For the petitioner

Mr. Bibaswan Bhattacharya,

....For the O.P

The judgment dated 31.08.2016 of the Additional Sessions Judge, Fast Track, 2<sup>nd</sup> Court at Alipore, delivered in Criminal Motion No.91 of 2016, is under challenge in this case.

An order of the Magistrate dated 25.01.2016 passed in Misc. Case No.15/2010 is the genesis, challenging which the above motion was moved before the Sessions Judge. The Magistrate, by dint of his order dated 25.01.2016, in a proceeding under Section 127 of the Cr.P.C, directed the present petitioner to pay a sum of Rs.14,000/- per month to the opposite party/wife and a sum of Rs.4,000/- per month to the minor child of the parties, as enhanced maintenance amount.

The said order was challenged by both the petitioner and the opposite party as well and both cases have been disposed of in a common judgment, i.e, dated 31.08.2016, which is impugned in this case.

Mr. Syed Imam, who is appearing for the petitioner is specifically aggrieved with the order of the Sessions Judge, Fast Track Court, for payment the enhance amount of maintenance as above with effect from the date of filing of the case by the wife under Section 127 Cr.P.C. So far as the quantum of the same is concerned, no serious challenge has been raised as regards the same. The petitioner has affirmed a supplementary affidavit too. It is his contention that the wife may not have any lawful remedy to pursue, in absence of any genuine grievance. That she has all along acted with ulterior motive and maliciously, in so far as she has intended only to extract money from the husband, out of grudge and vengeance. Her adamant attitude and non-cooperating conduct is the exposition of such ill intention of the opposite party/wife. Mr. Imam has specifically referred to an order of this Court in C.O No. 2886 of 2010 dated 18.02.2011, wherein the Court has recorded its finding that the conduct of the wife appeared to be showing her interest in the matter of getting maintenance and alimony rather than disposal of the suit. The Court recorded as above in the context of the previous direction of the High Court regarding expeditious disposal of the matrimonial suit, between the parties. Mr. Imam has also indicated that when this matter was pending before the Mediator, the opposite party has exhibited absolute lack of interest and rather non-cooperation, not only with the petitioner but also with the learned Mediator.

Under such circumstances according to Mr. Imam this Court may come to the rescue of the petitioner so far as the impugned order

is concerned, particularly to the extent that the petitioner has been directed to pay enhance maintenance from the date of filing of the case. Mr. Imam has also relied on a judgment of this Court reported in **1991 Cri.L.J 2234 (Joydev Chakraborty vs. Smt. Bharti Chakraborty)**. The relevant portion of the same may be extracted as herein below:-

**“13.\*\*\*\*\* The main effect of passing an order of enhancement of maintenance retrospectively is, in the ultimate analysis imposing a liability upon one party. So the question is whether a legal liability can be created retrospectively when Legislature is silent on the point. Under Section 125 Cr. P.C., the Legislature has specifically empowered the Magistrate to create the liability either from the date of the order or from the date of the application. But Section 127 Cr. P.C. has not expressly empowered the Magistrate to create that liability.**

It has been also held that:-

**Though the two Sections are separate, still S.127, Cr.P.C. should be read as a proviso to Sec.125, Cr.P.C. and on this basis a proviso cannot take away what the Section gives as it is subordinate to main Section. In view of this position of law, Section 127, Cr.P.C. cannot be construed to be a surplusage but it can be read as a saving clause to S.125(1), Cr.P.C or as limiting the scope of this Section and cannot widen the scope of the express terms of Sec.125 (1). Cr.P.C.**

**19. \*\*\*\*\* The order directing the enhancement of maintenance amount can stand only from the date of the order and not from the date of the application.”**

Petitioner's contention and prayer has been vehemently objected to on behalf of the opposite party. So far as the principle point of dispute, that is, regarding payment of enhanced maintenance amount with effect from date of filing of the present case, is

concerned, Mr. Bhattacharya has relied on the judgment of the Hon'ble Supreme Court reported in **(2021) 2 SCC 324 (Rajnish vs. Neha & Anr)**. He has stressed on the point that a law relating to maintenance has seen a sea change with coming into light of the verdict of the Hon'ble Supreme Court, as above. He has indicated that the Court has found it proper to allow maintenance with effect from the date of filing of the case, as a natural course of thing. During his argument Mr. Bhattacharya has also referred to the provision under Section 125 (2) of the Cr.P.C, to submit that the statute has empowered the Magistrate for issuing directions for payment of maintenance in final or interim form and expenses of proceeding, with effect from the date of order or the application. Therefore according to Mr. Bhattacharya there is no embargo for the Magistrate to direct for payment with effect from the date of the filing of the case, particularly when, in this case previously in the proceeding under Section 125 Cr.P.C, the Court has recorded its satisfaction and findings as to the neglect caused by the petitioner to maintain the wife and the child and also as to the capacity of the petitioner for payment. He has also elaborated the proceedings under 127 Cr.P.C to be one in continuation of the proceeding under Section 125 of the Cr.P.C. He submits that the scheme of the statute as under section 125 Cr.P.C, is similarly applicable in case of a proceeding under section 127 of the same as well, like the present proceeding. Therefore, according to Mr. Bhattacharya, the petitioner's case, that is the instant one may not be considered to have any merit at all and the same may be dismissed.

Heard both the Ld. Counsels for the parties. Perused the affidavits along with the annexed documents as placed on records.

Indeed the law regarding payment of maintenance has seen a sea change with the Hon'ble Supreme Court's pronouncement in ***Rajnesh vs. Neha & Anr.*** reported in **(2021) 2 SCC 324**. The case specifically dealt with the provision of maintenance under different statutes in existence. The Court imparted attention to the provision under Section 125 of the Cr.P.C too. Regarding the specific point, with which we are concerned in this case as discussed above, the law was propounded in the following manner:-

***“109. The divergent views of different High Courts on the date from which maintenance must be awarded. Even though a judicial discretion is conferred upon the court to grant maintenance either from the date of application or from the date of the order in Section 125(2) Cr.P.C, it would be appropriate to grant maintenance from the date of application in all cases, including Section 125 Cr.P.C. In the practical working of the provisions relating to maintenance, we find that there is significant delay in disposal of the applications for interim maintenance for years on end. It would therefore be in the interests of justice and fair play that maintenance is awarded from the date of the application.***

***110. \*\*\*\*\* The entitlement of maintenance should not be left to the uncertain date of disposal of the case. The enormous delay in disposal of proceedings justifies the award of maintenance from the date of application.***

***The delay in adjudication was not only against human rights, but also against the basic embodiment of dignity of an individual. The delay in the conduct of the proceedings would require grant of maintenance to date back to the date of application.***

***111. The rationale of granting maintenance from the date of application finds its roots in the object of enacting maintenance legislations, so as to enable the wife to overcome the financial crunch which occurs on separation from the husband. Financial constraints of a dependent spouse hamper their capacity to be effectively represented before the court. In order to prevent a dependant from being reduced to destitution, it is necessary that maintenance is awarded from the date on which the application for maintenance is filed before the court concerned.***

**112. \*\*\*\*\* While dealing with the application of a destitute wife or hapless children or parents under this provision, the Court is dealing with the marginalised sections of the society. The purpose is to achieve “social justice” which is the constitutional vision, enshrined in the Preamble of the Constitution of India.**

**Therefore, it becomes the bounden duty of the courts to advance the cause of social justice. While giving interpretation to a particular provision, the court is supposed to bridge the gap between the law and society.**

**113. It has therefore become necessary to issue directions to bring about uniformity and consistency in the orders passed by all courts, by directing that maintenance be awarded from the date on which the application was made before the court concerned. The right to claim maintenance must date back to the date of filing the application, since the period during which the maintenance proceedings remained pending is not within the control of the applicant.”**

This Court is in agreement with the submissions made by Mr. Bhattacharya that a case under Section 127 Cr.P.C may be considered to be the continuation of the proceeding under Section 125 Cr.P.C. The power under section 127 flows from that under section 125 of the statute. The very language of 127 (1) Cr.P.C, indicates that the recipient of maintenance under Section 125 Cr.P.C shall be entitled to a modified order of such an amount, as was granted in the proceeding under Section 125 Cr.P.C, on proof of a change in circumstances of any person, who is either paying or receiving maintenance, in terms of Court’s order. Naturally, an order under section 125 Cr.P.C. still remains germane and at the core. Excepting the change in circumstances, no other point of eligibility for maintenance, as envisaged in the statute, are required to be proved in a proceeding under Section 127 Cr.P.C. On consideration of the same it can be found that a proceeding under Section 127 Cr.P.C. would

logically be a continuation of the proceeding under Section 125 of the Cr.P.C. Therefore, the law enunciated vide section 125(2) of the Cr.P.C. and the principle thereof, would also be applicable in a proceeding under section 127 of the Cr.P.C.

On the finding as above and also relying on the ratio and directions in the judgment of the Hon'ble Supreme Court in **Rajnesh's** case (supra), there is hardly any doubt that the trial Court, in the impugned judgment has not done any patent or palpable illegality or impropriety, in order to warrant any interference by this Court.

On the discussions as above and on that premise, this Court is not inclined to interfere with the order of the Additional Sessions Judge, Fast Track 2<sup>nd</sup> Court at Alipore dated 31.08.2016, in Criminal Motion No.91/2016, in any manner whatsoever. Hence, this revision fails.

CRR 3360 of 2016 is dismissed.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

**(Rai Chattopadhyay, J.)**