

**IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
Appellate Side**

Present: - Hon'ble Mr. Justice Subhendu Samanta.

CRR 2199 of 2018

**Seema Agarwal
Vs.
Sudarshan Agarwal & Anr.**

For the petitioner : Ms. Chandryi Alam,
For the respondents : Mr. Soumyajit Das Mahapatra,
Mr. Abdul Rakib,
Ms. Madhurai Sinha,
Heard on : 25.1.2024
Judgment on : 29-1-2024

Subhendu Samanta, J.

1. The instant revisional application has been preferred against the judgment and order dated 24.11.2017 passed by the learned Judicial Magistrate,, First Class, 5th Court, Howrah in Criminal MISC case No. 26182/2014 arising out of Misc. No. 677A/2012 and T.R. No. 80/2012 directing inter alia the opposite party no.1 to make payment enhanced amount of Rs.5000/- per month only as maintenance allowance for the petitioner and enhance amount of maintenance of Rs.4000/- per month for the minor son starting from date of this order under Section 127 of the Criminal Procedure Code.

2. The brief fact of the case is that the petitioner is the married wife of the present opposite party. Their marriage was solemnized on 19.4.2000. Out of the wedlock between the parties, a male child was birth on 16.5.2001. The relationship between the parties became strain, and as the opposite party no.1 neglected his wife and children; the present petitioner filed a mise case no.199 of 2002 before the learned Judicial Magistrate under Section 125 of the Code Criminal Procedure for getting maintenance. The learned Judicial Magistrate vide order dated 18.11.2004 has pleased the award of Rs.1,000/- as monthly maintenance for the son of the petitioner and Rs.2,000/- as monthly maintenance for the petitioner herself from the date of initiation of proceeding. It has been alleged by the petitioner that there are some execution cases pending between the parties as the opposite party failed to pay maintenance amount. After passing of eight years, the petitioner filed one application under Section 127 of the Code of Criminal Procedure for enhancement of the maintenance amount to Rs.15,000/- per month for herself and Rs.10,000/- per month for her son on the ground of acceleration of market price and huge expenditure on account of education of the minor son.

3. After hearing the parties, the learned Magistrate on 24.11.2017 passed the impugned order and enhanced the maintenance of minor son of the petitioner from Rs.1,000/- to Rs.4,000/- that of the petitioner Rs.2,000/- to Rs.5,000/- and directed the amount to be paid from the date of the order.

4. Bering aggrieved by and dissatisfied with the said order the instant revisional application has been preferred.

5. Heard the learned advocates and perused the affidavit-in-opposition filed by the opposite party. It appears that different litigation is pending between the parties at different stages before the different forum. It further appears that the learned Magistrate in a separate proceeding under Section 127 of the Code of Criminal Procedure filed by the Opposite party has reduced the maintenance amount to Rs.4,000/- for the petitioner and Rs.3,000/- for her son. However, I must restraint myself only upon the impugned order passed by the learned Magistrate on 24.11.2017. Apart from the quantum of maintenance which are being paid by the opposite party in different proceeding and being reduced by a separate proceeding, the same is not a matter of consideration by this Court. Only the issue to be determined by this Court that whether the order passed under Section 127 of the Code of Criminal Procedure can be order to be effective from the date of passing of the order or from the date of filing of the application under Section 127 of the Code of Criminal Procedure.

6. Learned advocate for the petitioner submits that the order passed by the learned Magistrate is erroneous, he should have ordered it to be effected from the date of filing the petition under Section 127 of the Code of Criminal Procedure. In support of his contention he cited the decision of Hon'ble Supreme Court in **Rajnesh Vs. Neha & Ors.**

7. Learned advocate appearing on behalf of the opposite party argued that the petitioner is not entitled to get any maintenance as she had an independent income. He further argued that the instant revisional application is filed by the petitioner by suppressing materials fact of earlier proceedings. He also argued that order passed by the learned Magistrate is justified that it should be take effect from the date of order as there are separate litigation pending between the parties and the petitioner receiving the maintenance by virtue of different order of the Court.

8. Heard the learned advocate and perused the materials on record and also perused the observation of the Hon'ble Supreme Court passed in **Rajnish Vs. Neha**; the relevant paragraph is quoted below:

"89. 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) Code of Criminal Procedure, it would be appropriate to grant maintenance from the date of application in all cases, including Section 125 Code of Criminal Procedure 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 interest of justice and fair play that maintenance is awarded from the date of the application."

9. Following the observation of **Rajnish Vs. Neha** it appears to me that the Hon'ble Supreme Court has framed the different guideline and the said judgment including the guideline that in all cases of

compensation the order should be take effect from the date of filing of the application not from the date of order.

10. Considering all aspect, I find merit to entertain the instant criminal revisional application. The order passed by the learned Magistrate is hereby modified to the effect that the impugned order dated 24.11.2017 shall take effect from the date of the filing of the application under Section 127 of the Code of Criminal Procedure.

11. On the above observation, CRR 2219 of 2018 is disposed of.

12. Connected CRAN applications, if any, are also disposed of.

13. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Subhendu Samanta, J.)