

**(Jaikumar Meena vs. Smt. Radha Meena & Anr.)**

**16.5.2017**

Shri Rishikesh Bohre, counsel for the applicant.

This Criminal Revision under Section 397, 401 of Cr.P.C. has been filed against the order dated 13.4.2017 passed by Principal Judge, Family Court, Guna in Case no. 54/2016 by which the application filed by the respondent No.1 under Section 127 of Cr.P.C. has been allowed and the monthly maintenance of Rs. 4,000/- has been enhanced to Rs. 15000/- per month.

The necessary facts for the disposal of the present revision in short are that the respondents had filed an application under Section 125 of Cr.P.C. against the applicant which was registered as MJC No. 45/2009 and the applicant was directed to pay Rs. 4000/- each of the respondent No.1 and 2 by order dated 22.02.2010. Thereafter the the respondents filed an application under Section 127 of Cr.P.C. on the allegation that because of the inflation and hike in price, the maintenance amount of Rs. 4000/- per month awarded to each of the respondent is liable to be enhanced to Rs. 15,000/- per month. As by order dated 22.2.2010, the Magistrate had directed that the respondent No.2 shall be entitled for maintenance amount till she attains the majority, therefore, the application filed by the respondent No.2 was rejected by the Trial Court and the maintenance amount of Rs. 4000/- awarded in favour of the respondent No.1 has been enhanced to Rs. 15000/- per month from the date of the application.

It is submitted by the counsel for the applicant that cost of articles of the daily needs have not increased so much so as to enhance the maintenance of Rs. 4000/- to Rs. 15000/- per month. It is further submitted that the applicant has other responsibilities to look after and he has to look after his parents and, therefore, his financial condition is not such so as to pay Rs. 15,000/- per month to the respondent No.1.

The applicant in his cross-examination has accepted that his take home salary is Rs. 50,000/- per month. Although the applicant did not produce his pay slip but it is undisputed that the applicant is working on the post of S.D.O. In view of the admission made by the applicant himself that his take home salary is Rs. 50,000/- per month, therefore, there is no difficulty in accepting that the take home salary of applicant is Rs. 50,000/- per month. The contention of the applicant that he has to look after his parents cannot be accepted because the applicant himself has admitted that one of his brother is posted on the post of ADPO whereas his another brother is working on the post of Drug Inspector. Thus, it is clear that the financial condition of the family of the applicant is good. The applicant has also claimed that he has a personal house at Indore for which he had taken a loan and is making payment of monthly installment of Rs. 24960/- but at the same time the applicant has also admitted that the said house is in the name of his father. When the house situated in Indore is in the name of the father of the applicant then the question of making

payment of loan installment by the applicant does not arise. Further, the applicant has admitted that at present he is working on the post of SDO, Kannod, District Dewas. The applicant has also claimed that he is required to spend Rs. 3,000/- to 4,000/- on the treatment of his parents. As the brothers of the applicant are also well established, therefore, it cannot be said that it is the sole responsibility of the applicant to maintain his parents. The applicant has also admitted that his monthly expenses comes to Rs. 20,000/-. The applicant has also admitted that the respondent No.1 had lodged a report against him alleging that his second wife Ramabai had beaten her.

So far as the question of payment of premium of insurance policies are concerned, the same cannot be said to be a compulsory deduction. Further, those policies are not in the name of the respondents. Under these circumstances, if the Trial Court has awarded an amount of Rs. 15,000/- per month to the respondent No.1 then it cannot be said that the said amount by considering the status of the parties is on a higher side. It is a well established principle of law that the wife is entitled for the same status which she would have otherwise enjoyed in her matrimonial house. The applicant cannot say that although he may be working on the post of SDO but his deserted wife should live the life of a destitute lady.

It is next contended by the counsel for the applicant that the Trial Court committed a glaring mistake in enhancing the maintenance amount from the date of the

application.

It is further submitted that under Section 127 of Cr.P.C. no discretion has been given to the Magistrate to alter the allowances from the date of the application. In support of his contention, the counsel for the applicant has relied upon the judgment of the High Court in the case of **Pilli Venkanna vs. Pilli Nookalamma & Anr.** reported in **1998 CRI.L.J. 1922.**

So far as the submission made by the counsel for the applicant that there is no provision in Section 127 of Cr.P.C. vesting any discretion in the Magistrate to alter the maintenance amount from the date of the application is concerned, the submission does not appear to be very convincing. The basic provision is Section 125 of Cr.P.C. Section 125 of Cr.P.C. specifically provides that the Magistrate may award maintenance from the date of the application also.

Section 127 merely deals with the alteration in allowance so awarded by the Court under Section 125 of Cr.P.C. If the submission made by the counsel for the applicant is accepted then it would mean that whenever an application under Section 127 for alteration of maintenance amount is filed then the husband even if he adopts different tactic to delay the proceedings but he would not be liable to pay the enhanced amount from the date of the application. The main provision is Section 125 of Cr.P.C. and Section 127 of Cr.P.C. merely deals with a provision giving an authority to the wife/husband to file an application for alteration of allowance. The alteration

of allowance by itself does not mean that the maintenance amount awarded under Section 125 of Cr.P.C. has to be enhanced. There may be various circumstances where the husband may also file an application for alteration of allowance seeking reduction of maintenance amount awarded under Section 125 of Cr.P.C. For example, if the wife gets an employment after the order under Section 125 of Cr.P.C. is passed and if her salary is sufficient to maintain her then the husband will be well within his right to seek reduction in maintenance amount by bringing the subsequent event on record. To consider that whether the Magistrate can alter the allowance from the date of the application or not then the provision of Section 125 (2) of Cr.P.C. would be relevant.

Section 125 (2) of Cr.P.C. reads as under:-

“125(2) Any such allowance for the maintenance or interim maintenance and expenses of proceeding shall be payable from the date of the order, or if so ordered, from the date of the application for maintenance or interim maintenance and expenses of proceeding, as the case may be.”

From the plain reading of Section 125(2) of Cr.P.C. it is clear that it is specifically mentioned in this Section that the order of maintenance shall be effective from the date of the order but the maintenance amount can be awarded from the date of the application also. However, there is no such provision under Section 127 of Cr.P.C. providing that the alteration of allowance would be

operative from the date of the order only. Once the legislature has chosen not to make any provision for making the order under Section 127 of Cr.P.C. effective from any specific date then it is clear that the discretion has been left to the Magistrate or the Family Court to pass necessary orders with regard to the date from which the enhanced/altered allowance shall be payable. Even otherwise, the provision of Section 127 of Cr.P.C. is beneficial in nature and, therefore, liberal interpretation has to be given and accordingly in absence of any provision making the applicability of the enhanced allowance from the date of the order, this Court is of the view that there was no need for the legislature to confer a discretion on the Magistrate/Family Court to award allowance from the date of the application also. Section 127 of Cr.P.C. has to be read along with Section 125 of Cr.P.C. As there is no provision for review in Cr.P.C. therefore a specific provision under Section 127 of Cr.P.C. has been made to alter the allowance if subsequent events so warrant.

Under these circumstances, if there is no provision under Section 127 of Cr.P.C. giving discretion to the Magistrate to award enhanced allowance from the date of the application, then it cannot be said that the Magistrate has no power to direct for alteration of allowance from the date of the application. It is nowhere mentioned in the memo of application that the applicant was not responsible for the delay in disposal of the application under Section 127 of Cr.P.C.. Even otherwise,

it appears that the application under Section 127 of Cr.P.C. was filed on 20.6.2016 and the order under challenge has been passed on 13.4.2017. Under the facts and circumstances of the case, this Court is of the view that as Section 127 of Cr.P.C. has been provided for the alteration in the order passed under Section 125 of Cr.P.C., therefore, Section 127 of Cr.P.C. cannot be treated as an independent provision and it has to be read along with Section 125 of Cr.P.C. and Section 125(2) of Cr.P.C. empowers the Magistrate to pass order of maintenance from the date of application.

Under these circumstances, the submission made by the counsel for the applicant that in absence of any provision granting discretion to the Magistrate to pass an order under Section 127 of Cr.P.C. from the date of the application, therefore the direction given by court below is bad and without jurisdiction cannot be accepted and it is hereby rejected. Accordingly, the order dated 13.4.2017 passed by the Principal Judge, Family Court, Guna is hereby affirmed.

The revision fails and is hereby **dismissed**.

**(G.S. Ahluwalia)**  
**Judge**

(alok)