

**IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS,
BONGAIGAON**

PRESENT: SYEDA FARIDA AFZAL ZINNAT

CASE NO: MISC. 40/2014

SMT. POMPA CHETRY

FIRST PARTY

VERSUS

DILIP CHETRY

SECOND PARTY

U/S 127 of the Code of Criminal Procedure

FOR THE FIRST PARTY:MR. P. BAIDYA, ADVOCATE

FOR THE SECOND PARTY:MR. M. KALITA, ADVOCATE

EVIDENCE RECORDED ON: 10/7/2014, 27/11/2014

ARGUMENTS HEARD ON: 3/11/2014

JUDGMENT DELIVERED ON: 9/12/2014

JUDGMENT

1. This proceeding U/s 127 of the Code of Criminal Procedure, 1973 has arisen out of a petition filed by the first party Pompa Chetry claiming enhancement of maintenance allowance from Rs. 1200/- per month to Rs. 10,000/- per month.

2. The case of the first party is that on 24/9/2000 the learned S.D.J.M (S), Bongaigaon awarded Rs. 500/- per month as monthly maintenance to her in connection with Misc. Case 9/2000. Subsequently, the amount of monthly maintenance allowance was increased to Rs. 800/- per month in Misc 12/2005. Further, in Misc. 81/2010 the amount was further increased to Rs. 1200/- per month. That, since the date of last enhancement order, the price of essential commodities has risen and as such the cost of living has also increased. That, the second party has got promotion in his job and his salary increased considerably to Rs. 35,000/- per month. The first party also stated that she has to live in rented house and is also suffering from illness and so it is not possible to maintain herself with Rs. 1,200/- per month. Thus she prayed for enhanced maintenance as above.
3. The second party contested by filing written statement stating therein that the petition is not maintainable and stated that the last enhancement was made only 2 years ago and so the enhancement sought is early. Second party denied that his salary is Rs. 35,000/-. According to the second party he did not get any promotion and is serving in the same post and gets a lump sum salary after deduction of departmental loans. He also pleaded that the second party can maintain herself without his help and she has filed this petition just to harass him and thus prayed for dismissing the petition.
4. Upon perusal of the pleadings the following points are taken up for consideration:

Whether the first party is entitled to enhancement and if so, to what extent?

5. In support of their case both the parties examined themselves as witnesses. I have gone through the arguments put forward by the

learned counsel of the parties and gone through the Evidence on Record.

6. DISCUSSION ON EVIDENCE, DECISION AND REASONS THEREOF:

7. First party stated on oath that in the year 2011 the learned S.D.J.M (S), Bongaigaon enhanced the maintenance allowance from Rs. 800/- to Rs. 1,200/-. That, at present she is getting Rs. 1,200/- per month and she ends up spending Rs. 200/- per month in coming to Court to collect the maintenance allowance. From the remaining Rs. 1000/- she spends Rs. 700/- in house rent and only Rs. 300/- is left for food and clothing. She stated that she finds it difficult to maintain herself in Rs. 300/-. She also stated that nowadays she suffers from chest pain but she is unable to afford treatment because of financial constraint. She even stated that she has no money to buy clothes.
8. During cross examination first party stated that she went to Civil Hospital once but she has not submitted the prescriptions in Court. She also admitted that the second party has two daughters from his second marriage.
9. Dilip Chetry, the second party stated in his evidence that he has two daughters and a brother and he looks after the family of his brother too along with his own family. He stated that he cannot afford to provide enhanced maintenance to the first party.
10. The first party had called for the salary slip of the second party from the concerned department of Railways. During cross examination, the second party exhibited the salary slip as Exhibit A which shows

that the gross pay of the second party is Rs. 50,060/- and his net pay after all the deductions is Rs. 38,327/-.

11. There is no denying the fact that the second party has two daughters from his second wife whose responsibilities are upon the second party. The second party is also looking after his brother's family. But this does not exempt him from paying adequate maintenance to his first wife who is struggling to survive with just Rs. 300/- which is left after paying house rent and transportation expenses to come to Court to collect the meagre amount of Rs. 1,200/- only. The salary slip of the second party shows that he gets a rather handsome amount as opposed to a lump sum amount for salary. Clearly, the amount of Rs. 1,200/- is not adequate in today's scenario of inflated price of essential commodities. Therefore, I am of the considered opinion that first party is entitled to enhancement of the monthly maintenance allowance. Keeping in mind all the aspects of the responsibilities upon the second party and the condition of the first party, I am of the considered opinion that an amount of Rs. 5000/- would be sufficient to meet the necessities of the first party.

Order

In the result, maintenance allowance is granted to the first party at the rate of Rs. 5,000/- per month from the date of this order.

This petition is disposed off accordingly.

Given under the hand and seal of this court on this the 11th day of December, 2014.

Syeda Farida Afzal Zinnat, AJS

J.M (1st CLASS) BONGAIGAON