

**IN THE COURT OF THE SESSIONS JUDGE ::::::::::: BONGAIGAON.**

**CRIMINAL REVISION NO. 05(1)/2014.**

Md. Kamrud Zaman .....Petitioner.  
Vs.  
Musstt. Manjuwara Khatun ...Respondent.

**PRESENT : Smt. M. Nandi,  
Sessions Judge,  
Bongaigaon.**

**ADOCATES APPEARED :** Sri M. Rahman, Advocate  
for the petitioner.

Mr. P. Baidya, Advocate  
for the respondent.

Date of Argument : 27.11.2014.

Date of Judgment : 10.12.2014.

**JUDGEMENT AND ORDER**

1. This Revision is directed against the order passed by learned Chief Judicial Magistrate, Bongaigaon dtd. 22.11.2013 in Misc. Case No. 61/13 U/S 127 CrPC.

2. The brief facts of the case, is that, the Opp. Party/respondent has brought a case vide Misc. Case No. 11/07 against the petitioner/2<sup>nd</sup> party U/S 125 CrPC claiming maintenance for herself and her daughter Nargis Zaman. After completion of trial, learned Magistrate allowed the petition of the respondent/1<sup>st</sup> party on 07.10.2009 awarding maintenance of Rs. 1,000/- per month.

3. It is stated in the petition that till the date of order 07.10.2009 the essential price of the goods are increased. The minor daughter of the 1<sup>st</sup> party/respondent is a school going child. She has been reading in Class I in Hazarat Omar Model Academy at Howly. The school fees, books

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cost, up and down fare also newly added expenditure in 1<sup>st</sup> party's daughter's daily life and it is not possible for her to maintain her daughter with Rs. 1,000/- per month. The petitioner/Opp. Party is a police constable, who at present draws monthly salary of Rs. 25,000/-. Hence, she filed the case U/S 127 CrPC for enhancement of her monthly allowance from Rs. 1,000/- to Rs. 5,000/- per month.

4. After taking evidence of the 1<sup>st</sup> party/respondent and after hearing both sides, the monthly maintenance of the respondent/1<sup>st</sup> party was enhanced from Rs. 1,000/- to Rs. 3,000/-.

5. Being highly aggrieved and dissatisfied with the order passed by the learned Chief Judicial Magistrate, Bongaigaon dtd. 22.11.2013 in Misc. Case 61/13, the petitioner begs to prefer this revision on the following grounds:

1. For that the learned trial Court has erred in law as well as in facts while passing the impugned Order dated 22.11.13 in Misc Case No. 61/2013.
2. For that the learned trial Court has committed gross error and illegality and failed to appreciate the matters on record in proper perspective while passing the impugned Order.
3. For that the learned court has exercised its jurisdiction in a very mechanical manner without applying its judicial mind while passing the impugned Order 22.11.2013. As such, the impugned Order is liable to be set aside.

6. I have heard arguments advanced by learned counsel of both sides. I have perused the evidence on record recorded by the learned trial Court. I have also perused Order delivered by learned Chief Judicial Magistrate, Bongaigaon.

7. In this case petitioner did not adduce any evidence and the

Opp. Party in Misc. Case 61/13 examined herself as PW 1 wherein she stated that she brought a case vide Misc. Case No. 11/2007 against the petitioner/Opp. Party claiming separate maintenance for her and her minor daughter. After due trial, the Court passed an order dated 07.10.2009 directing the 2<sup>nd</sup> party to pay Rs. 1,000/- per month. At the time of passing the said order, her daughter was not going to school, but at present she is reading in Class I in private Boarding School. As such, for maintenance of her daughter, Rs. 5,000/- per month is required for tuition fees and food and lodging etc. Price of essential commodities has increased. It is not possible for her to maintain her daughter with a meagre sum of Rs. 1,000/- per month. Her husband is a constable getting salary of Rs. 25,000/- per month. He has also landed properties and commercial vehicle wherefrom he earns Rs. 20,000/- to Rs. 25,000/- per month.

8. On the other hand, the petitioner/Opp. Party denied the fact that he is getting salary of Rs. 25,000/- per month rather he stated that he draws net salary of Rs. 12,000/- per month.

9. In a case of enhancement of maintenance U/S 127 CrPC, it is required to be considered the matter whether enhancement of maintenance is required on the part of the petitioner or not. It is true that the price of essential commodities has gone up in comparison with the year 2009 when the order was passed and after five years, it is difficult for a person to maintain her child with a meagre sum of Rs. 1,000/- per month.

10. One salary certificate of the petitioner is available in the record from which it reveals that his net salary was Rs. 17,726/- in the month of August, 2013. After one and half years, his salary is definitely increased i.e. more than Rs. 20,000/-. The monthly maintenance which was enhanced to Rs. 3,000/- is not unreasonable. A person who gets a salary of Rs. 20,000/- or above, has no difficulty to pay the maintenance of Rs. 3,000/- per month for maintenance of her daughter.

**O R D E R**

11. In the result, the revision is dismissed. The order passed by learned Chief Judicial Magistrate, Bongaigaon dtd. 22.11.2013 is upheld. The petitioner is directed to pay the maintenance allowance of Rs. 3,000/- per month to the respondent for her child in the trial Court. There is no order as to cost.

12. LCR be transmitted back with a copy of this Judgment and Order to the learned trial court.

Given under my hand and the seal of the Court on this **10<sup>th</sup>** day of **December, 2014**.

( M. Nandi )  
Sessions Judge,  
Bongaigaon.

*Dictated and corrected by me,*

( M. Nandi )  
Sessions Judge,  
Bongaigaon.

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**Criminal Revision No. 05(1)/2014**

**10.12.2014**

Judgment is delivered.

In the result, the revision is dismissed. The order passed by learned Chief Judicial Magistrate, Bongaigaon dtd. 22.11.2013 is upheld. The petitioner is directed to pay the maintenance allowance of Rs. 3,000/- per month to the respondent for her child in the trial Court. There is no order as to cost.

LCR be transmitted back with a copy of this Judgment and Order to the learned trial court.

Judgment prepared in separate sheets is kept with the case record.

*As dictated,*