

**HIGH COURT OF TRIPURA
AGARTALA**

Crl. Rev. P No.55/2019

1. Smti Supriya Bhattacharjee,

Daughter of Sri Jiban Sankar Bhattacharjee.
Abhoynagar : Jagatpur, Opposite to Agragati Club,
Agartala : West Tripura.

2. Miss Dikshita Chakraborty,

Daughter of Debabrata Chakraborty.
(She being minor is represented by her mother.
Residents of Abhoynagar: Jagatpur: Opposite to Agragati Club:
Agartala: West Tripura.

..... **Petitioner(s).**

Versus

Sri Debabrata Chakraborty,

Son of Monoranjan Chakraborty,
O.S.D, Directorate of Secondary Education,
2nd Floor : Shiksha Bhavan : Office lane : Agartala.

..... **Respondent(s).**

BEFORE

THE HON'BLE MR. JUSTICE S. G. CHATTOPADHYAY

For Petitioner(s) : Ms. A. Debbarma, Advocate.
For Respondent(s) : Mr. Alik Das, Advocate.
Mr. S. Pal, Advocate.
Date of hearing : 18th December, 2020.
Date of Judgment & Order : **20th January, 2021.**
Whether fit for reporting : NO.

JUDGMENT AND ORDER

[1] By means of this criminal revision petition, the petitioner (the wife hereinafter) has challenged the order dated 30.05.2019 of the Additional Judge, Family Court, Agartala passed in case No. Misc. 344 of 2018 whereby the monthly maintenance allowance payable to her has been enhanced from Rs.5000/- to Rs.8000/- declining her request for enhancing the amount from Rs.5000/- to Rs.23,500/- per month.

[2] The brief facts which have led to the filing of this revision petition are as under:

Marriage between the parties was solemnised in accordance with the rites and customs of Hindu marriage on 02/02/2003. After marriage, a daughter was born to them within their wedlock. Few years thereafter, matrimonial dispute developed between them for various reasons and the wife left the company of her husband along with her daughter and started living with her parents. Since the wife had no income and she was thus unable to maintain herself and her daughter, she claimed maintenance allowance under Section 125 of the Code of Criminal Procedure (Cr.P.C hereinafter) in the Family Court at Agartala. The Judge, Family Court by his order dated 01.11.2006 allowed her petition and taking into consideration the income of her husband and her needs allowed monthly maintenance allowance of Rs.2200/- to her and Rs.800/- to her daughter. Eager to take back his wife and resume

conjugal life, the husband then filed a petition in the Family Court at Agartala for restitution of conjugal rights. The wife contested the suit brought by her husband and ultimately the Family Court, Agartala vide order dated 06.05.2008 decreed the suit and asked the wife to come back to her husband for resumption of conjugal life. There was no response from the side of the wife. Therefore, the husband approached the Family court seeking a decree of divorce on the ground that there was no resumption of cohabitation between them for a period of more than one year after the decree for restitution of conjugal rights was passed by the Court. The wife contested the divorce suit and brought various allegations against her husband including physical torture and extra marital affairs etc. The Family Court, Agartala after hearing the parties and recording their evidence passed a decree of divorce dissolving their marriage under Sections 13(1A)(ii) of the Hindu Marriage Act, 1955 and while decreeing the suit for divorce the Family court allowed monthly maintenance allowance of Rs.5,000/- to the petitioner and it was ordered that maintenance allowance of Rs.3,000/- already granted to her in the past proceeding under Section 125 Cr. P.C shall be adjusted towards the maintenance allowance of Rs.5,000/- and finally the wife would get Rs.5,000/- per month. The said decree of divorce was passed on 16.09.2010. Circumstances rapidly changed thereafter. The salary of the husband rose after he became Headmaster of a Higher Secondary school. As a result of escalation in the price of essential goods and increase in the educational expenses of her daughter and for other reasons the wife

required more amount of maintenance allowance to support herself and her daughter as she had no other source of income. Therefore, she filed a petition in the Family Court in the year 2018 for raising her monthly maintenance allowance from Rs.5,000/- to Rs.23,500/- per month. The husband contested the case. The Family Court after hearing the parties allowed the petition of the wife raising her maintenance allowance from Rs.5,000/- to Rs.8,000/- vide order dated 30.05.2019. Aggrieved with this order, the wife has approached this Court by means of this criminal revision petition seeking enhancement of the amount of her maintenance allowance to Rs.23,500/- per month.

[3] In the course of the proceeding, the husband submitted written objection on 10.12.2020. In his written objection, he has claimed that the wife is responsible for the termination of their marital relationship. Repeated efforts from the side of the husband for restoration of their relationship did not work because of the adamant attitude of the wife and according to the husband, his divorced wife (petitioner) is an earning lady who is quite capable of supporting herself and more over he is still willing to take back his divorced wife and daughter and therefore, the petition, according to him is devoid of merit and liable to be rejected.

[4] Heard Ms. A. Debbarma, learned counsel appearing for the wife and Mr. S. Paul, learned counsel appearing for the husband.

[5] Ms. A. Debbarma, learned counsel appearing for the wife submits that the learned Judge, Family Court did not record any reason as to why her claim for raising maintenance allowance to Rs.23,500/- per month was declined. According to Ms. A. Debbarma, learned counsel, the contention of the husband that the wife is an earning lady is absolutely false and such claim is not supported by any documentary evidence. It is further submitted by the learned counsel of the wife that the child alone needs more than Rs.8,000/- per month for her educational expenses and other needs and as such Rs.8,000/- is not enough even for the child alone. It is further contended by Ms. A. Debbarma, learned counsel that the wife has filed a salary certificate of the husband which indicates that his monthly salary as on 30.07.2019 was Rs.62,400/-. About the claim of the husband that his carry home pay after deduction is far less than his actual salary, learned counsel submits that the salary certificate will indicate that husband contributes a handsome amount of Rs.15,000/- per month to his GPF Account. It is submitted by Ms. A. Debbarma, learned counsel that the husband cannot be allowed to defeat the claim of his wife on the ground of such deduction from salary because contribution to GPF after a certain amount is voluntary and the husband can reduce the amount of contribution to discharge his obligation to his daughter and divorced wife. It is vehemently contended by Ms. A. Debbarma, learned counsel that the Family Court did not appreciate the fact that the wife was entitled to a life of the same standard which she lived while she was with her husband and it was the sacrosanct duty of the husband to

provide adequate financial support to his wife and daughter so that they could live their life with dignity. In support of her contention learned counsel has referred to a decision of the Apex Court in **Bhuvan Mohan Singh Vrs. Meena and others;** reported in **(2015) 6 SCC 353**. Learned counsel therefore, urges the Court to raise the maintenance allowance of the petitioner by allowing her petition.

[6] Mr. S. Pal, learned counsel appearing for the husband on the other hand submits that claim of the wife is absolutely unjustified in view of the fact that the wife is a earning lady and the husband has a lot of dependants in his family including his present wife whom he has married after the decree of divorce with the petitioner has been granted by the Family Court in his favour. It is further contended by learned counsel of the husband that the husband and his present wife have been suffering from various ailments for which they have recurring medical expenditure and as such he is quite unable to pay more than Rs.8,000/- per month to the petitioner. Learned counsel therefore, urges the Court for dismissal of the claim of his wife.

[7] I have considered the submissions of learned counsel representing the parties and perused the materials available on record. The husband had taken almost the same plea in the Family Court to defeat the claim of his wife with regard to enhancement of her maintenance allowance. He claimed that his divorced wife (the petitioner) had income from her employment and she was quite able to maintain

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herself. But he could not provide any particulars with regard to her employment and income. It appears from impugned order dated 30.05.2019 of the Family Court that the learned Judge had taken into consideration the salary certificate of the husband which indicated that his monthly salary was Rs.62,400/- and after considering the amount of his carry home pay after deduction and the rising needs of the petitioner and her daughter enhanced the amount of maintenance allowance from Rs.5000/- to Rs.8000/- per month though the wife claimed Rs.23,500/- per month.

[8] Income of the spouse is one of the prime considerations for determination of maintenance allowance to wife and children. Apparently, the monthly salary of the husband was Rs.62,400/- when the impugned order was passed. The husband himself issued his salary certificate dated 03.07.2019 which has been produced by the wife as Annexure-6 in this proceeding. It appears from the said salary certificate that other than compulsory deductions towards Professional Tax, Group Insurance and Income Tax, the amount of Rs.15,000/- is deducted from his salary towards his contribution to General Provident Fund and Rs.10,000/- is deducted towards recovery of loan taken by him from his Provident Fund. There is adequate force in the submission of Ms. A. Debbarma, learned counsel of the petitioner that the husband can reduce his contribution to GPF to discharge his obligation towards the petitioner and his daughter and he cannot defeat their claim on the ground of such deduction.

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Moreover, the husband could not produce any documentary proof in support of his claim that his wife has adequate income and she is quite able to maintain herself. No such proof has been adduced by the husband either in the Family Court or in this Court. There cannot be any denial of the fact that Rs.8,000/- per month is far less than adequate for the petitioner to maintain herself and her daughter who is a school going child. The submission of learned counsel that the wife and daughter are entitled to the same standard of life which they lived in the house of the respondent has merit. The Apex Court in paragraph-2 of the judgment in ***Bhuwan Mohan Singh Vrs. Meena and others*** relied on by a learned counsel has held as under:

"2. Be it ingeminated that Section 125 of the Code of Criminal Procedure (for short "the Code") was conceived to ameliorate the agony, anguish, financial suffering of a woman who left her matrimonial home for the reasons provided in the provision so that some suitable arrangements can be made by the court and she can sustain herself and also her children if they are with her. The concept of sustenance does not necessarily mean to lead the life of an animal, feel like an unperson to be thrown away from grace and roam for her basic maintenance somewhere else. She is entitled in law to lead a life in the similar manner as she would have lived in the house of her husband. That is where the status and strata come into play, and that is where the obligations of the husband, in case of a wife, become a prominent one. In a proceeding of this nature, the husband cannot take subterfuges to deprive her of the benefit of living with dignity. Regard being had to the solemn pledge at the time of marriage and also in consonance with the statutory law that governs

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the field, it is the obligation of the husband to see that the wife does not become a destitute, a beggar. A situation is not to be maladroitly created whereunder she is compelled to resign to her fate and think of life "dust unto dust". It is totally impermissible. In fact, it is the sacrosanct duty to render the financial support even if the husband is required to earn money with physical labour, if he is able bodied. There is no escape route unless there is an order from the court that the wife is not entitled to get maintenance from the husband on any legally permissible grounds."

[9] In a recent judgment in ***Rajnesh Vrs. Neha and Another:*** reported in **2020 SCC OnLine SC 903**, the Apex Court has also discussed about the determinants of maintenance allowance payable to wife and children. In this regard, the following observations have been made by the Apex Court:

"III Criteria for determining quantum of maintenance

(i) The objective of granting interim / permanent alimony is to ensure that the dependant spouse is not reduced to destitution or vagrancy on account of the failure of the marriage, and not as a punishment to the other spouse. There is no straitjacket formula for fixing the quantum of maintenance to be awarded.

The factors which would weigh with the Court *inter alia* are the status of the parties; reasonable needs of the wife and dependant children; whether the applicant is educated and professionally qualified; whether the applicant has any independent source of income; whether the income is sufficient to enable her to maintain the same standard of living as she was accustomed to in her matrimonial home; whether the applicant was employed prior to her marriage; whether she was working during the subsistence of the marriage; whether the wife was required to sacrifice her employment opportunities for nurturing the family, child rearing, and looking after adult members of the family; reasonable costs of litigation for a non-working wife.

In *Manish Jain v Akanksha Jain* this Court held that the financial position of the parents of the applicant-wife, would not be material while determining the quantum of maintenance. An order of interim maintenance is conditional on the circumstance that the wife or husband who makes a claim has no independent income, sufficient for her or his support. It is no answer to a claim of maintenance that the wife is educated and could support herself. The court must take into consideration the status of the parties and the capacity of the spouse to pay for her or his support. Maintenance is dependent upon factual situations; the Court should mould the claim for maintenance based on various factors brought before it.

On the other hand, the financial capacity of the husband, his actual income, reasonable expenses for his own maintenance, and dependant family members whom he is obliged to maintain under the law, liabilities if any, would be required to be taken into consideration, to arrive at the appropriate quantum of maintenance to be paid. The Court must have due regard to the standard of living of the husband, as well as the spiralling inflation rates and high costs of living. The plea of the husband that he does not possess any source of income *ipso facto* does not absolve him of his moral duty to maintain his wife if he is able bodied and has educational qualifications.

(ii) A careful and just balance must be drawn between all relevant factors. The test for determination of maintenance in matrimonial disputes depends on the financial status of the respondent, and the standard of living that the applicant was accustomed to in her matrimonial home.

The maintenance amount awarded must be reasonable and realistic, and avoid either of the two extremes i.e. maintenance awarded to the wife should neither be so extravagant which becomes oppressive and unbearable for the respondent, nor should it be so meagre that it drives the wife to penury. The sufficiency of the quantum has to be adjudged so that the wife is able to maintain herself with reasonable comfort.

(iii) Section 23 of HAMA provides statutory guidance with respect to the criteria for determining the quantum of maintenance. Sub-section (2) of Section 23 of HAMA provides the following factors which may be taken into consideration : (i) position and status of the parties, (ii) reasonable wants of the claimant, (iii) if the petitioner/claimant is living separately, the justification for the same, (iv) value of the claimant's property and any income derived from such property, (v) income from claimant's own earning or from any other source.

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(iv) Section 20(2) of the D.V. Act provides that the monetary relief granted to the aggrieved woman and / or the children must be adequate, fair, reasonable, and consistent with the standard of living to which the aggrieved woman was accustomed to in her matrimonial home.

(v) The Delhi High Court in *Bharat Hedge v Smt. Saroj Hegde* laid down the following factors to be considered for determining maintenance :

1. Status of the parties.
2. Reasonable wants of the claimant.
3. The independent income and property of the claimant.
4. The number of persons, the non-applicant has to maintain.
5. The amount should aid the applicant to live in a similar lifestyle as he/she enjoyed in the matrimonial home.
6. Non-applicant's liabilities, if any.
7. Provisions for food, clothing, shelter, education, medical attendance and treatment etc. of the applicant.
8. Payment capacity of the non-applicant.
9. Some guess work is not ruled out while estimating the income of the non-applicant when all the sources or correct sources are not disclosed.
10. The non-applicant to defray the cost of litigation.
11. The amount awarded u/s 125 Cr.P C is adjustable against the amount awarded u/ 24 of the Act. 17."

(vi) Apart from the aforesaid factors enumerated hereinabove, certain additional factors would also be relevant for determining the quantum of maintenance payable."

[10] There is no denial of the fact that monthly salary of the husband as per Annexure-6 is Rs.62,400/-. As the Headmaster of the school, he himself issued his salary certificate. With regard to his existing liability he has stated that after divorce with the petitioner he has remarried Smt. Sonali Bhattacharjee who is a dependant of him. The husband has also stated that both he and his present wife suffer from various kinds of ailments for which they have a recurring medical

expenditure. Apparently there is no proof of any serious ailment of them. His divorced wife i.e. the petitioner on the other hand is struggling with their daughter for survival. Admittedly, the daughter is a school going child and Rs.8,000/- which has been sanctioned by the Family Court is not at all adequate for them particularly when the husband is capable of paying more. Though he earns Rs.62,400/- per month his carry home pay has been reduced due to contribution of Rs.15,000/- to GPF and GPF recovery of Rs.10,000/-. The husband can bring down these amounts by contributing less to GPF and raising the number of instalments for recovery of loan taken from GPF. He cannot be permitted to ignore his responsibility for maintaining his divorced wife and daughter on the ground of inadequacy of carry home pay.

Having taken into consideration the relevant factors for determining the quantum of maintenance in the light of the legal principles laid down by the Apex Court in the judgments cited supra, this Court is of the view that Rs.17,000/-(rupees seventeen thousand) per month would be appropriate amount of maintenance in this case.

[11] Therefore, the husband namely, Sri Debabrata Chakraborty is directed to pay Rs.17,000/- (rupees seventeen thousand) per month to the wife namely, Smti Supriya Bhattacharjee for her maintenance and maintenance of their daughter namely, Miss Dikshita Chakraborty. Income of the husband was less when the petition for enhancement of maintenance allowance was filed on 07.08.2018. Therefore, the CrI. Rev. P No.55/2019.

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maintenance allowance at the enhanced rate ordered by this Court shall be paid w.e.f the date of the impugned order i.e. from 30.05.2019. Accordingly, the husband will pay the said amount of Rs.17,000/-(rupees seventeen thousand) to the petitioners as monthly maintenance allowance by depositing the money in the savings bank account of the wife. Maintenance allowance for the month of January, 2021 shall be so deposited within the 7th day of February, 2021, failing which the Family Court, Agartala shall order for deduction of the same from the salary of the husband. For paying the arrears falling due under this order i.e. arrears from 30.05.2019 till 31.12.2020, the husband will pay Rs.3,000/- per month in addition to the monthly maintenance allowance of Rs.17,000/- till recovery of the whole arrear w.e.f. 30.5.2019, failing which, the Family Court will also realize the amount at the rate aforesaid by way of deduction from his salary.

This criminal revision petition is thus disposed of.

Copy of the order be given to both of the parties free of costs.

Send back the LCR along with a copy of the judgment.

JUDGE

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Dipankar