

**IN THE COURT OF THE SUB DIVISIONAL JUDICIAL MAGISTRATE (M)**  
**GOHPUR, SONITPUR**

**M.R. Case No. 23/2019**

**Smti Manjumoni Das Hazarika**

1<sup>st</sup> Party

**Vs**

**Sri Ranjit Hazarika**

2<sup>nd</sup> Party

**PRESENT: Sri B. Acharyya, LL.M., AJS**

Sub Divisional Judicial Magistrate (M), Gohpur

Advocate for the 1<sup>st</sup> Party: Sri Arnab Kumar Das

Argument heard on: 04.11.2020

Final Order: 06.11.2020

**FINAL ORDER**

1. The present case has arisen out of a petition filed by Petitioner Smti Manjumoni Das Hazarika u/s 127 of Cr.P.C praying for enhancement of her maintenance amount against her husband claiming enhanced maintenance of Rs. 8,000/- (Rupees Eight thousand) only per month for herself and Rs. 8000/- (Rupees Eight thousand) only per month for her son as ordered vide order dated 12.04.2004 based on the amicable settlement in Misc. Case 15 of 2003.
2. The case of the 1<sup>st</sup> Party/Petitioner in brief is that the 2<sup>nd</sup> Party as per Court's Order dated 12.04.2020 in Misc. Case No. 15/2003 has been paying monthly maintenance of Rs. 1000/- to the 1<sup>st</sup> Party and that 2<sup>nd</sup> Party had paid monthly maintenance regularly for few years but after then he has not paid any maintenance amount till date. Now son of the Petitioner got admission in Science stream in Chaiduar College and 1<sup>st</sup> Party is finding it difficult to maintain herself

and her son's educational expenses and also her medical expenses has increased with the passage of time and the cost of living has also increased. Petitioner further stated that she does not have any source of income of her own.

3. Petitioner further stated that 2<sup>nd</sup> Party, on the other hand, is a Government Employee in the Department of Irrigation, Assam. He is drawing a handsome amount as salary of Rs. 25,000/- to Rs. 35,000/- per month. He also has own land and property. Hence, 1<sup>st</sup> Party/Petitioner has prayed for enhancement of monthly allowance of Rs. 8,000/- (Rupees Eight thousand) only per month for herself and Rs. 8000/- (Rupees Eight thousand) only per month for her son.
4. Notice was duly served to the 2<sup>nd</sup> Party who in spite of receiving notice did not turn up and remain absent without step and hence this case became exparte against the 2<sup>nd</sup> Party/ O.P
5. Thereafter Petitioner/ 1<sup>st</sup> Party adduced her evidence in Affidavit as well as her father but they were not cross examined as this case already became exparte against the 2<sup>nd</sup> Party/ O.P
6. I have heard argument of Ld. Advocate for the Petitioner/ 1<sup>st</sup> Party and carefully gone through the evidences and materials on record.

#### **POINTS FOR DETERMINATION**

**Whether there has been any change of circumstances from the date of the order of maintenance of the Petitioner under Section 125 of Cr.P.C, requiring enhancement of maintenance amount and if so, what enhanced amount of maintenance is the Petitioner entitled to?**

#### **DISCUSSION, DECISION AND REASONS THEREOF:**

7. On careful perusal of the materials and evidences on record and by hearing the argument duly advanced by the Learned Counsel for the Petitioner/ 1<sup>st</sup> Party, it can be ascertained that

- 8.** Sri Tarun Das, father of the Petitioner/ 1<sup>st</sup> Party has submitted his evidence on Affidavit PW 1 and he has totally affirmed with the contents of the petition filed by the Petitioner/ 1<sup>st</sup> Party u/s 127 Cr.P.C and also in the same line as submitted by the Petitioner/ 1<sup>st</sup> Party in her Affidavit as PW 2.
- 9.** Petitioner/ 1<sup>st</sup> Party as PW 2 has also adduced her evidence on Affidavit supporting the contents of the petition u/s 127 Cr.P.C.
- 10.** It can be ascertained that as there is no adverse claim against the plea taken by the Petitioner/ 1<sup>st</sup> Party on record, hence it can be ascertained that there is no denial or objection against the petition and 2<sup>nd</sup> Party who is the husband of the Petitioner/ 1<sup>st</sup> Party did not turn up even after receiving the notice of this case which means that he has knowledge about this case. Hence as there is no denial or objection against the prayer of the Petitioner, it can be ascertained that averments of the Petitioner/ 1<sup>st</sup> Party are true and genuine.
- 11.** Moreover, it can be said without doubt that since the order of payment of maintenance, more than 16 (sixteen) years has passed which is a long time span. The order for payment of maintenance to the 1<sup>st</sup> Party/ Petitioner was ordered in the year 2004 and present we are at the fag end of the year 2020. In such a long time span prices of essential commodities and standard of living has significantly increased. Moreover, son of the Petitioner/ 1<sup>st</sup> Party is undergoing higher studies in the college pursuing Science stream which is also a bit expensive. Moreover, 1<sup>st</sup> Party as well as the 2<sup>nd</sup> Party has not been divorced and 1<sup>st</sup> Party has also not remarried. As such, as per Section 127(3) (a) the first requirement is a divorce, which is not proved in the instant case.
- 12.** Further, upon going through aforesaid discussion and considerations, it can safely be held that Petitioner/ 1<sup>st</sup> Party is entitled to an enhanced maintenance after a long span of 16 (sixteen) years without which it will be unable for the Petitioner as well as her son to live and lead a normal and dignified life and right to live with dignity and right to basic minimum necessities of life falls within the ambit of right to life which is also a basic feature of the Indian Constitution.

- 13.** In view of aforesaid discussion and considerations, it is therefore held that 1<sup>st</sup> Party is entitled to the prayer as prayed in the petition u/s 127 Cr.P.C.

**ORDER**

- 14.** In the view of the above discussion and considerations, the 2<sup>nd</sup> Party/ O.P shall pay an amount of Rs. 3,500/- (Rupees three thousand and five hundred) only per month to the Petitioner/ 1<sup>st</sup> Party as enhanced maintenance w.e.f the date of this order and further to pay an amount of Rs. 3,000/- (Rupees three thousand) only per month to the son of the Petitioner/ 1<sup>st</sup> Party, i.e. total amount of Rs. 6,500/- (Rupees six thousand and five hundred) only per month and the amount is to be paid within 10<sup>th</sup> of every month.
- 15.** Willful violation of this order shall result in penal punishment in accordance with law.

This Order is given under my hand and seal of this Court on this the 06<sup>th</sup> day of November, 2020

This case is accordingly disposed off

Furnish a free copy of this Judgment to the Petitioner.

B Acharyya  
SDJM (M), Gohpur, Sonitpur

**Appendix:**

**Petitioner's Witnesses:**

PW 1: Sri Tarun Das

PW 2: Manjumoni Das Hazarika

Petitioner's Exhibits: Nil

B Acharyya  
SDJM (M), Gohpur, Sonitpur

SONITPUR DISTRICT JUDICIARY