

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.R. 3804 of 2013

Mrs. Bandita Kundu

-Vs-

Sri Satyendra Kumar Kundu

For the Petitioner : Mr. Abhra Mukherjee
Mr. Sauradeep Dutta

For the Opposite Party : Mr. Jagannath Ganguly

Heard on : 26.04.2023, 10.08.2023.

Judgment on : 27.09.2023.

Ananya Bandyopadhyay, J.:-

1. The instant revisional application is directed against the impugned judgment and order dated 26.09.2013 passed by Learned Judicial Magistrate, Bidhannagar, North 24 Parganas in M. Case No. 1 of 2007 under Section 127 of Code of Criminal Procedure which enhanced the amount of Rs. 3,500/- to only Rs. 7,000/-, from the date of the Order and not from the date of filling of the application in 2007 when the petitioner prayed for enhancement to Rs. 10,000/- per month since she was suffering from different ailments, she was residing in her elder's brother's flat alone, she had to pay monthly huge electric bill of Rs. 700/- plus-minus in average, maintenance charges of the flat Rs. 150/- per month as on date, she had to

bear daily expenses of food and medicine clothes including other incidental expenses including payment of Rs. 800/- for temporary maidservant, cell phone charges Rs. 700/- for emergency to keep in touch with the elder brother monthly, and the expenditure altogether in average was more than Rs. 10,000/- per month. The judgment and order dated 12.10.07 passed by this Hon'ble Court in CRR No. 75 of 2006 (Sri. Satyendra Kumar Kundu vs. Bandita Kundu) reduced the amount of the maintenance of Rs. 4,300/- to Rs. 3,500/- as passed in M. Case No. 1 of 2005 by the Ld. J.M., 1st Court, Bidhannagar, inter-alia, on the ground that at the then point of time the wife was residing in Govt. flat of the husband who subsequently retired in March 2008 and that the son who had been a patient of Schizophrenia was residing with him in different place and illegal endeavor on the part of the husband to quash the instant Section 127 of Cr.P.C. proceeding by filing CRR No.1788 of 2011 (Sri Satyendra Kumar Kundu vs. Bandita Kundu) which was dismissed on 17.10.12. and in such CRR No. 1788 of 2011 he had suppressed that already on the self same cause of action another revision was pending before the Ld. District & Sessions Judge, Barasat i.e. Cri. Motion No. 61 of 2011 (Sri Satyendra Kumar Kundu vs. Bandita Kundu). It was suppressed before the Ld. Sessions Judge that the husband himself also filed such CRR No. 1788 of 2011 on the self-same cause of action whereby the husband after suppressing such alleged issue to both the Courts of law wanted to get a relief under Section 127 Cr.P.C. proceeding to put the wife in more distress.

2. The only son of the parties now aged about 28 years who is admittedly suffering from acute Schizophrenia is residing with the husband. The

petitioner is practically passing her days at the care of the elder brother of the petitioner in his flat near their parental resident after the opposite party abandoned the wife.

3. In the year 2007 the wife/petitioner filed a petition under Section 127 Cr.P.C., inter-alia, praying for Rs. 10,000/- per month on enhancement from Rs. 3,500/- being the proceeding in issue on the ground as stated therein which was registered as M. Case no.1 of 2007.
4. The Impugned judgment and order dated 26.9.13 passed by Ld. J.M., Bidhannagar, 24 - Parganas (N) in M. Case No.1 of 2007 under Section 127 of Cr.P.C enhanced the amount of Rs. 3,500/- to only Rs. 7,000/- that too from the date of the Order and not from the date of filing of the application when the petitioner prayed for enhancement to Rs. 10,000/- per month since she is suffering from different ailments, she was residing at her elder's brother's flat.
5. The petitioner stated that in such meager amount Rs. 3,500/- or Rs. 7,000/- or Rs.10,000/- as on date was insufficient in the given background of the case specifically when the wife had to depend on her brother in whose flat she had been residing. The petitioner hardly can attend the Court of Law due severe illness and joint pain.
6. The Learned Advocate for the petitioner submitted that :-
 - i. The Learned Magistrate ought to have provided Rs 10,000/- per month when the prayer was made in the year 2007 which amount is meager in the year 2013.

- ii. The Learned Magistrate ought to have passed the order of Rs. 10,000/- from the date of the filing of the application.
 - iii. The Learned Magistrate ought to have passed an order of litigation cost.
 - iv. The amount is too meager to maintain herself.
 - v. Unless the prayer is allowed the wife will continue to suffer which cannot be compensated by the value of money.
7. The petitioner was given several opportunities to represent herself before the Court and thereafter the Learned Advocate was appointed by High Court Legal Services Authority, who did not appear before the Court. The opposite party was present before the Court along with medical documents of the treatment undergone by the son of the petitioner.
8. Perused the impugned order. In view of the decision passed by the Hon'ble Supreme Court in ***Rajnesh Vs. Neha & Anr.***¹ since the marriage between the parties is not disputed, the opposite party having a means to provide for the wife should continue to pay as sum of Rs. 7,000/- per month within 7th day of each succeeding month from the date of filing of the application. Arrears to be paid in 48 installments.
9. In view of the above, the instant criminal revisional application is dismissed.
10. There is no order as to cost.
11. Let the copy of this judgment be sent to the Learned Trial Court as well as the police station concerned for necessary information and compliance.

¹ (2021) 2 SCC 324

12. All parties shall act on the server copy of this judgment duly downloaded from the official website of this court.

(Ananya Bandyopadhyay, J.)