

**IN THE COURT OF JUDICIAL MAGISTRATE, 3RD COURT AT
BARRACKPORE**

**PRESENT:- Smt. Pratigya Pradhan
Judicial Magistrate, 3rd Court at BARRACKPORE.**

J.O.Code- WB01453

Misc. CASE NO: 07 of 2017

New No.7(3)of 2017

WBNP 150035752017

Smt. Sharmila Das (Ghosh) -----Petitioner

-VS-

Sri. Ranjit Kumar Das -----Opposite Party

Under Section 127 of Cr.P.C.

Date of Delivery of Judgment: 06.03.2025

Petitioner's case is that the petitioner is the wife of the Opposite Party. Petitioner had filed a case u/s. 125 Cr.P.C against the Opposite Party being M Case No.329/10 claiming maintenance allowance for herself and her minor daughter. On 06.12.2013 the Opposite Party was directed to pay maintenance allowance of Rs.1800/- for the minor daughter. However, the prayer for maintenance allowance for the petitioner herself was rejected.

It is the case of the present petitioner/ wife that due to the change in circumstances and high market price it is not possible on the part of the petitioner to maintain her daughter with the meager amount of maintenance allowance. The petitioner has been passing her days in acute hardship. It is also submitted that the daughter of the petitioner is studying in class II at Nimta Jeebantosh Ghosh Memorial High School. She has to bear tuition fee of Rs.500/- per year, Rs.500/- for two private tutor, Rs.300/- for the art school and Rs.400/- for the dance school. The Opposite Party is an employee of Birati Leather Factory and he earns Rs.15,000/- per month. Thus the petitioner has prayed for enhancement of maintenance allowance from Rs.1800/- to Rs.6000/- per month for her daughter.

The Opposite Party on the other hand had filed written objection denying all the allegations and praying thereby for dismissal of the instant petition. The Opposite Party further submitted that the petitioner has filed his case to harass the OP and she did not reveal the actual facts. At the time of hearing of the maintenance allowance the court had considered and rejected the prayer of the petitioner as she was having a sufficient income of her own. The petitioner is not willing to continue the matrimonial life with the Opposite Party and she has filed this case to squeeze the money from the OP. The income of the Opposite Party has not increased and at present he earns Rs.4000/- per month. If the petitioner is unable to maintain the child then the OP is always ready to look after the child and maintain her in his own status. The Opposite Party himself has liability. The petitioner herself is capable to maintain herself and her child and she has left the matrimonial home on her own whims and accord. As such she is not entitled to any quantum of maintenance as prayed for.

:EVIDENCE ADDUCED:

In course of the trial the petitioner has deposed as P.W 1 and the Opposite Party has deposed in this case as O.P.W. 1.

During evidence petitioner and the Opposite Party did not file any documents.

Points for consideration

- 1) **Whether there is any change of circumstances for enhancement of the maintenance allowance passed vide order dated 06.12.13?**
- 2) **Whether petitioner has been able to prove the case successfully against the Opposite Party?**

DECISION WITH REASONS

Both the points are taken up jointly for sake of brevity and convenience of discussion.

The P.W-1 in her examination-in-chief deposed that she was married to Ranjit Das on 6.12.08 and after marriage she went to her matrimonial house and started living her conjugal life. Out of the said wedlock she gave birth to one daughter in the year 2009 who resides with her at present. The said daughter studies in Nimta Jeebantosh Ghosh Memorial High School in class III. In Mcase no.329/10 this court had passed maintenance allowance of Rs.1800/- per month in favour of her daughter in the year 2013. At present it is not possible for her to meet the requirements of her daughter with Rs.1800/- per month as her educational expenses have increased and she also has to pay the tutors. The market price of all the commodities have substantially increased. Her husband works at Birati labour factory and he used to earns Rs.15,000/- per month when she was residing at her matrimonial home. His income has increased and she has prayed for Rs.6000/- per month as maintenance allowance for her daughter. Her father in law has expired and her mother in law receives pension.

During her cross-examination, P.W-1 deposed that she has filed this case for enhancement of monthly maintenance allowance for her daughter. It is admitted that the court had rejected maintenance allowance in her favour holding that she had sufficient income to maintain herself. She cannot say in which post her husband works at Birati leather factory and she also cannot say since when her husband has been working in the said factory. She also cannot say where her husband worked prior to the said factory. She cannot say if the factory was closed or not but she voluntarily stated that her husband regularly went to the factory for work. She did not file any document to show the income of her husband as Rs.15,000/- per month. She further deposed that she has no knowledge regarding the academic qualification of her husband nor where her husband worked at the time of marriage. At the time of her marriage her husband resided with eight relatives. He works at a private company and the owner / employer thereof can terminate his service at any point of time. During her stay at her matrimonial house her husband worked as a security guard. She did not get any order of maintenance in her favour as she is employed and she was employed even prior to her marriage. Her husband has been paying maintenance allowance in the court in favour of her daughter and she withdraws the same per month from the court. She also deposed that her

mother in law is alive and she is residing with her husband and her father in law died prior to her marriage with her husband. Her husband and his brothers bears all the expenses of her mother in law. She cannot file any document to show that her mother in law is a pension holder. She has also not filed any document relating to the tuition fees of her daughter. At present she earns Rs.4800/- per month.

The O.P.W-1 in his examination-in-chief stated that his wife Sarmila Das has filed the instant case against him for enhancement of monthly maintenance amount of her daughter Priyanka Das. His wife has filed one maintenance case being M case no.229/10 claiming maintenance for herself and her minor daughter and the Ld. Court was pleased to reject the maintenance claim of the petitioner for herself but allowed maintenance in favour of her minor daughter @ Rs.1800/- vide order dt.06.12.2013. He studied upto class VIII. His marriage was solemnized on 06.12.2008. His wife had the knowledge that he studied upto class VIII and after knowing the fact she gave her consent to the marriage. There are other criminal case filed by his wife against him. His mother is aged about 75 years and suffering from different ailments and Rs.1000/- per month is the medicine cost of his mother. His mother has no source of income and dependent upon him. His brothers and sisters reside separately. His mother lives with him and he bears the entire expenses of his mother. He works at J.J.Plastic, Birati on no work no pay basis. He gets Rs. 5000/- monthly as salary. He has brought the original salary certificate issued by J.J.Plastic in his favour. The salary certificate has been marked as **Exhibit-A (objected to)**. Last year due to lock down, he did not get any salary from J.J.Plastic. He has filed one reply dt.8.3.21 under RTI Act, 2005 which was sent to him on 17.3.21 by the Child Development Project Officer, North Dum Dum (U) ICDS Projects along with the envelope. The same has been marked as **Exhibit-B and B/1**. It is a fact that his wife had prayed for maintenance previously which was rejected for the wife and only a maintenance allowance of Rs.1800/- per month was allowed for the minor daughter as per the final order. He has filed the original received copy RTI application dated 08.03.2021 made before SPIO/CDPO, Child Development Project officer, North Dum Dum Urban ICDS Project. The same has been marked as **Exhibit-C**. It is a fact that the income of his wife has increased since the final order of the court. It is a fact that the said increase in income has been reflected in the RTI reply. Since Covid-19 his income has not increased. It is a fact that he is continuously paying the maintenance allowance of Rs.1800/- per month to his child as per the order of the court.

During his cross-examination, O.P.W-1 stated that when he was married to the petitioner he was residing with his mother. It is a fact that he has filed a written objection to the petition but he cannot say what is written therein. He has a daughter and she was born on 29.09.2009. He does not know the name of her school. It is a fact that his daughter studied in Class 2 when she filed the case for maintenance. She is studying in Class VIII. She will soon reach Class IX. He also deposed that may be in the year 2010 the order of maintenance of Rs.1,00/- was allowed. Witness was shown **Exhibit-A** and put question as to date in the said document. Witness replied that the document is dated 24.02.2021. He did not file any other salary certificate since 24.02.2021. He did not file any document as to the increment of his

salary. He filed **Exhibit-C** but he does not know what is written there. He had filed **Exhibit-B**. Witness was shown the same. He replied he cannot say anything regarding the same. He cannot recollect the name of my daughter. His daughter is 14 years old and she is unmarried. He did not apply for any LIC for his daughter. He did not send any money to his daughter by way of money order after filing of this case. He also did not send her any money prior to filing of this case. It is a fact that this case was filed on 2017. It is a fact since then the price of commodities have increased. It is a fact that the amount of Rs.1800/- as maintenance is not enough for his daughter. It is a fact that his daughter is studying at present and she studies in Class IX. He has studied till Class VIII. It is fact that his written objection has been stated in English and he cannot read and say what is written there. He can say if it is stated in Bengali. His Ld. Advocate prepared his written objection.

Heard the argument on both sides.
Considered.

From the substantive evidences of the both the parties the following points were considered.

- a) The petitioner was awarded a sum of Rs. 1800/- per month as maintenance allowance for her daughter on 06.12.2013.
- b) The petitioner has claimed for enhancement of such allowance for her daughter in accordance with the present market price.
- c) The Opposite Party has claimed that he works at J.J.Plastic, Birati on no work no pay basis and he gets Rs.5000/- monthly as salary
- d) Opposite Party has filed certain documents.

It can be observed that in M Case No.329/10 the Opposite Party was directed to pay maintenance allowance of Rs.1800/- for the minor daughter on 06.12.2013. Since then more than 10 years have elapsed. At the time of filing his show cause/written objection on 08.08.201, Opposite Party stated that he Rs.4000/- per month as salary. As per his affidavit of assets and liabilities dated 20.01.2025, the OP earns Rs.5000/- per month as labour in J.J Plastics. Opposite party has filed one document issued by one of the partner of J.J.Plastic as to the salary of the Opposite Party which has been marked as **Exhibit-A**. As per the said document the Opposite Party gets Rs.5000/- per month as salary. It is pertinent to mention here that the said document is dated 24.02.2021 and the Opposite Party had filed the same on 21.05.2022 during his evidence.

It is argued that the monthly income of the petitioner has increased. On perusal of **Exhibit-B** which is the reply of letter dated 08.03.2021 under RTI Act, 2005 it appears that the petitioner is receiving Rs.6300/- per month. Petitioner in her affidavit of assets and liabilities dated 13.01.2025 stated that she earns Rs.5000/- per month as helper as Anganwari.

Heard the respective submissions from either of the parties and both the Ld. Counsels. Heard the submissions from the side of the petitioner who submitted that the same has corroborated her statement in terms of her petition and the order of maintenance passed be enhanced. Heard the submissions of the Learned Counsel for the Opposite Party who submitted that the petitioner has failed to prove her case and prayed for dismissal of the enhance petition.

After going through the evidence it can be observed that the income of both the parties have increased. It is a solitary principle of law that every husband is bound to maintain his wife and child. When a person entered into a bonding of marriage then it is presumed that he has willfully accepted the liability of maintaining of his wife and children. The object of section 125 of Cr.P.C. is to prevent vagrancy and destitution. The maintenance allowance for the minor child was allowed when she was 4 years old. At present, the said minor child studying in class VIII. Thus, it can be seen that the educational expenses of the minor child has increased.

As such, I am of the opinion that the the monthly maintenance amount awarded to the minor daughter is not sufficient to suffice the present market price. On analysis of the substantive evidences of both the sides it is proved that the the present allowance of Rs.1800/- is insufficient. Thus, the allowance of the minor daughter needs to be enhanced.

Now in determining the quantum of amount, court must have to see that the maintenance amount should be just, and cannot be excessive or extortionate. The Opposite Party has not filed any document as to his present income. Since 2013 his income must have increased. Considering all these, I am of my view that Rs. 3000/- per month is just, fare, reasonable and sufficient for the minor daughter of the petitioner.

Hence it is,

ORDERED

that the instant Misc case be and same is allowed on contest.

The maintenance order passed by this court on 6.12.13 in connection with M Case No.- 329/10 in favour of the minor daughter is hereby enhanced from Rs. 1800/- to Rs. 3000/- per month.

The Opposite Party is hereby directed to pay a sum of Rs.3000/- to the minor daughter as monthly maintenance allowance from the date of this order and to be paid within 15th of each succeeding month.

Let a copy of this judgment/order be given free of cost to the petitioner in terms of Section 128 of Cr.P.C.

Dealing Assistant is directed to make necessary entries in germane registers and CIS.

Typed and corrected by me.

**(Pratigya Pradhan)
J.M.3rd Court, Barrackpore**

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