



**IN THE HIGH COURT OF SIKKIM
GANGTOK**

Revision Petition (Family Court) No.1 of 2008

Shri D. P. Sewa,
R/O Chalamthang,
Pakyong,
P.O. & P.S. Pakyong,
East Sikkim.

Petitioner/Revisionist

Versus

Smt. Shanti Sewa,
R/O Ranipool,
P.O. & P.S. Ranipool,
East Sikkim.

Respondent

For the Appellant : Mr. B. Sharma, Senior Advocate with
Mr. S. P. Bhutia, Advocate for the
Petitioner/Revisionist.

For the Respondent : Mr. S. S. Hamal, Advocate for the
Respondent.

Present : The Hon'ble Mr. Justice A. P. Subba, Judge.

Date of last hearing : 12th March, 2009.

Date of Order : 8th April, 2009.

ORDER

A. P. Subba, J.

This Revision Petition is directed against the judgment dated 5.7.2008 passed by the learned Family Court at Gangtok under Section 125 of the Code of Criminal Procedure, 1973 in Family Court Criminal Case No.1 of 2008 whereby the learned Family Court, inter alia, directed the opposite party, the petitioner herein, to pay monthly



maintenance as well as to make all necessary arrangements for providing dwelling house to the petitioner's wife, i.e. the respondent herein and her two minor children.

2. Heard Mr. B. Sharma, learned Senior Counsel assisted by Mr. S. P. Bhutia, learned Counsel appearing on behalf of the petitioner and Mr. S. S. Hamal, learned Counsel appearing on behalf of the respondent.

3. Even though number of grounds had been taken in the Revision Petition, Shri B. Sharma, learned Senior Counsel, in the course of his submission, confined himself to the two issues relating to the quantum of maintenance allowance and provision for residence of the respondent.

4. As far as the first issue relating to the quantum of monthly maintenance is concerned, it is jointly submitted by the parties at the Bar that they have now come to an amicable settlement in terms of which an amount of Rs.5,250/- (Five thousand two hundred fifty) shall be paid by the petitioner to the respondent every month. This issue thus stands resolved amicably.

5. So far as the second issue relating to direction for provision of residence is concerned, the petitioner raises serious objections. It is contended by the learned counsel that Section 125 Cr.P.C. under which the learned Family Court has exercised jurisdiction, authorises the Court only to award monthly allowance for maintenance and nothing beyond that. Even though this position in law is very fairly conceded by the learned counsel for the respondent, it is submitted by him that it would be a great relief to the needy wife



and children if the petitioner also makes provision for residence of the respondent wife and her two minor children.

6. No doubt, the provision contained in Sections 125 to 128 Cr.P.C. is intended to help the needy wife, children and the parents. However, it does not mean that while passing orders under this Section, the Court can exceed the parameters of the statutory provision. We cannot loose sight of the fact that provision contained in Chapter IX of Cr.P.C. though benevolent and provides for simple and speedy remedy, the relief that can be granted under the provision is limited to the extent of monthly allowance for the maintenance of needy wife, children and parents. This is so, because Section 125 provides only a speedy remedy against starvation of a deserted wife or child or indigent parents, thereby preventing vagrancy.

7. A decision having a direct bearing on the point referred to and relied on by the learned Counsel for the Petitioner is **Shankergar Trithvigar v. Bhachibai Sambhugar** reported in **AIR 1953 Kutch 21**. In this case which was under the old code, it had been held that Section 488 of Cr.P.C. authorizes the Magistrate to award only monthly maintenance and an order directing the husband to provide for wife's residence would be contrary to the terms of the section. No doubt, the decision is one under the repealed Code, yet it must be noted that Section 125 of the present code under which the learned Family Court has exercised its powers in the present case substantially corresponds to sub-Section (1) to (5) of the old section 488 of the repealed code. In other words, the relief which can be claimed and that can be granted under the provisions of Section 125 Cr.P.C. of the present code as well, is limited to the grant of monthly allowance and provision



for residence falls outside the scope and ambit of the section. Looked at from this point of view, it becomes manifest that the learned Family Court has far exceeded its jurisdiction in directing the husband to make provision for residence for wife and children while passing the impugned order and, as such, the impugned order is not sustainable in the eye of law. In this view of the matter, it must be observed that the manner in which the learned Family Court approached the issue before it and granted a relief clearly falling outside the scope and ambit of the related provision, leaves much to be desired.

8. In view of the foregoing discussion, this Revision Petition is disposed of with the following order :-


(i) As mutually agreed between the parties, the petitioner shall pay a monthly maintenance allowance of Rs.5,250/- (Five thousand two hundred and fifty) only, per month to the respondent and her two minor children from the date of application.

(ii) The part of the impugned order directing the petitioner husband to make provision for residence to the respondent wife and her two minor children, is set aside.

9. Needless to say, this order shall not come in the way of the respondent seeking such remedy as may be permissible under appropriate provision of law.

The impugned order stands modified to the extent indicated above.

Lower Court records be returned forthwith.


(A. P. Subba)
Judge
08/04/2009