

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CRMMO No.102 of 2006

Date of decision : June 30, 2009

Krishan Chauhan

...Petitioner.

Versus

Rajni Chauhan and another

...Respondents.

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting? Yes.

**For the Petitioner : Mr. G.C. Gupta, Senior Advocate
with Mr. Ashish Jamalta, Advocate.**

For the Respondents : Ms. Sunita Sharma, Advocate.

Surjit Singh, J (Oral)

Petitioner is aggrieved by the order, dated 29th December, 2005, of the learned Additional Chief Judicial Magistrate, Shimla, whereby application moved by respondents Rajni Chauhan and Bhanu Chauhan, under Section 127 of the Code of Criminal Procedure, for enhancement of maintenance allowance, stands allowed and the maintenance allowance has been raised from Rs.500/- per month to Rs.1,300/- per month, in the case of respondent Rajni Chauhan and from Rs.500/- per month to Rs.1,200/- per month, in the case of respondent Bhanu Chauhan. Petitioner is also aggrieved by the order, dated 5th May, 2006, of learned Sessions Judge, whereby Revision Petition filed by him, against the aforesaid order of the learned Additional Chief Judicial Magistrate, has been dismissed.

Whether reporters of the local papers may be allowed to see the judgment?

2. Admitted facts are that respondents had been granted monthly maintenance allowance, under Section 125 of the Code of Criminal Procedure, at the rate of Rs.500/- each, vide order dated 12th May, 2000, of learned Judicial Magistrate 1st Class, Shimla. Respondents applied for enhancement of maintenance allowance, under Section 127 of the Code of Criminal Procedure. Allowing their application, learned Additional Chief Judicial Magistrate, vide order dated 29th December, 2005, increased the maintenance allowance, as aforesaid. Revision Petition filed by the petitioner against the said order, in Sessions Court at Shimla, stands dismissed, vide order dated 5th May, 2006. Now, the petitioner has approached this Court, under Section 482 of the Code of Criminal Procedure, for setting aside or suitably modifying the order, regarding enhancement of maintenance allowance.

3. Only submission, which has been made on behalf of the petitioner, is that the two Courts below have taken into account the income of the father of the petitioner, while assessing his capacity to pay maintenance allowance. I agree with the submission that the income of the father could not have been taken into account. However, from the record, I find that in June, 2005, gross salary of the petitioner was Rs.10,723/-, out of which he had been contributing Rs.4,000/- towards his General Provident Fund and carrying Rs.6,593/- home. Total amount of maintenance allowance, which the petitioner has been ordered to pay to his wife and the minor child comes to Rs.2,500/- per month. Carry home salary of the

petitioner is Rs.6,593/-. In case the petitioner feels that the amount, which is left with him, after payment of maintenance allowance, is not sufficient to meet his personal requirements and other social obligations, he can reduce the monthly contribution to his General Provident Fund, which in the year 2005 was Rs.4,000/-.

4. It is further submitted by the learned counsel that the petitioner met with an accident, which has rendered him physically disabled and that he has engaged an attendant on monthly charges of Rs.1,200/-. It is also submitted by him that the petitioner has opened a Recurring Deposit Account in the name of minor respondent.

5. Learned counsel for the respondent submits that salary of the petitioner has registered substantial increase since 2005, when his gross salary was Rs.10,723/- and carry home salary was Rs.6,593/-.

6. Judicial notice can be taken that the salary of Government servants has registered an increase of about 50 per cent since June, 2005. So, the submission by the learned counsel for the petitioner that the petitioner has to pay Rs.1,200/- to a personal attendant and has also to deposit Rs.200/- per month, in the Recurring Deposit Account of minor respondent, is of little consequence.

In view of the abovestated position, present petition is dismissed.

June 30, 2009_(sd)

(Surjit Singh), J.