

**HIGH COURT OF TRIPURA
AGARTALA**

CRP No.30 of 2021

Shri Indra Biswas

-----Petitioner(s)

Versus

Smt. Putul Rani Biswas

-----Respondent(s)

For Petitioner(s) : Mr. T. D. Majumder, Sr. Adv.

For Respondent(s) : Mr. R. G. Chakraborty, Adv.

HON'BLE MR. JUSTICE S. TALAPATRA

Order

30/06/2021

Heard Mr. T. D. Majumder, learned senior counsel appearing for the petitioner as well as Mr. R. G. Chakraborty, learned counsel appearing for the sole-respondent.

02. The grievance of the petitioner, as canvassed in this petition filed under Section 19(4) of the Family Courts Act, 1984 arises from the order dated 09.02.2018 delivered in Case No. Misc.408 of 2016. The respondent had filed a petition under Section 125 of the Cr.P.C. for praying maintenance from the petitioner being Misc. Case No.428 of 2009. In that proceeding, by the order dated 12.05.2010, the petitioner was directed to pay a sum of Rs.2000/- per month to the respondent. For change in the circumstances relating to the factors contributing in the cost of maintenance, the

respondent filed an application under Section 127 of the Cr.P.C. on 11.08.2016 seeking enhancement of the maintenance allowance to the extent of Rs.8000/- per month. In support of her claim, the respondent adduced evidence but the petitioner had disputed the claim stating that even though he had been drawing the net salary of Rs,22,138/-, but he has two daughters from his second marriage to raise. Their educational expenses according to the petitioner are very high.

03. However, having appreciated the submissions in the said backdrop, the maintenance allowance has been enhanced to Rs.5000/- per month payable to the petitioner with effect from 01.02.2008 and such amount shall be paid every month within 10th day of English calendar month. The remittance charge shall be borne by the petitioner herein.

04. Mr. Majumder, learned senior counsel has categorically submitted that no reason has been given why the payment of the enhanced maintenance has been directed to be paid with effect from 01.02.2008, whereas the original petition for maintenance was filed in the year 2009. Moreover, the alteration cannot be retrospective operation inasmuch as the sole-respondent when the respondent noticed the change

in the circumstances, she had approached the Judge, Family Court, Agartala only on 11.08.2016.

05. Mr. R. G. Chakraborty, learned counsel appearing for the respondent has submitted that there is no harm in granting the maintenance retrospectively.

06. Having appreciated the submission of the counsel for the parties, this court finds sufficient force in the submission of Mr. T. D. Majumder, learned senior counsel inasmuch as Section 127 of the Cr.P.C. has been phrased cautiously. It says that on proof of a change in the circumstances of any person, receiving, under section 125 a monthly allowance for the maintenance or interim maintenance, or ordered under the same section to pay a monthly allowance for the maintenance, or interim maintenance, to his wife, child, father or mother, as the case may be, the Magistrate may make such alteration, as he thinks fit, in the allowance for the maintenance or the interim maintenance, as the case may be.

07. Therefore, unless the evidence is placed before the court there is a change in the circumstances no alteration enhancing for the maintenance can be ordered. Moreover, what this court has noticed is that even the respondent did

not make any prayer for granting enhanced maintenance from an another date. Thus the Judge, Family Court has exceeded his jurisdiction. Hence, the impugned order stands interfered with and set aside.

08. However, having considered the facts and circumstances of the case and the records of the evidence, this court is of the view that the enhanced maintenance allowance will be entitled to the respondent, the petitioner in Misc.408 of 2016, from 01.08.2016. The said date has been fixed having exercised the discretion for convenience of calculation.

09. In terms of the above, this petition stands allowed and disposed of. The petitioner is directed to pay the outstanding enhanced maintenance allowance within a period of 3(three) months from today without fail and he shall continue to pay the enhanced maintenance allowance in terms of the order of the Judge, Family Court, West Tripura, Agartala.

A copy of this order be supplied to the counsel for the parties.

JUDGE