

**Biswanath Debbarma Vs. Sumitra Debbarma**

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**SooperKanoon Citation :** [sooperkanoon.com/129781](http://sooperkanoon.com/129781)

**Court :** Guwahati

**Decided On :** Apr-28-2005

**Judge :** I.A. Ansari, J.

**Acts :** [Family Courts Act, 1984](#) - Sections 17; [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 125, 126, 127, 397 and 401; Code of Civil Procedure (CPC) - Sections 60(1)

**Appeal No. :** Crl. Rev. No. 26 of 2005

**Appellant :** Biswanath Debbarma

**Respondent :** Sumitra Debbarma

**Advocate for Def. :** S. Sana, Adv.

**Advocate for Pet/Ap. :** S. Deb, Adv.

**Disposition :** Revision dismissed

**Judgement :**

**I.A. Ansari, J.**

1. This criminal revision under Section 397/401 Cr.P.C. is directed against the order, dated 22.12.2004, passed by the learned Judge, Family Court, Agartala, Tripura West, in Misc. Case No. 37 of 2004, whereby the present petitioner, as the

second party in the proceeding, has been directed to pay, in all, Rs. 3,000 to the opposite party herein and their minor female child as maintenance allowance @ Rs. 1,500 each per month and the authorities concerned have been directed to deduct every month the said maintenance allowance from the salary of the petitioner-second party and remit the same by money order to the first party-opposite party herein.

2. Heard Mr. S. Deb, learned counsel appearing for the petitioner, and Mr. S. Saha, learned counsel for the opposite party.

3. The order, dated 22.12.2004, aforementioned has been challenged on the ground that the same is in violation of provisions of Section 17 of the [Family Courts Act, 1984](#), and also contrary to the provisions contained in the proviso (ia) to Sub-section (1) of Section 60 of the CPC.

4. For the purpose of appreciating the grievances raised by the second party-petitioner, the material facts, which have led to file the present revision, may, in brief, be set out as follows :

By an order passed, on 31.8.1993, in Misc. Case No. 3 of 1999, the learned Judicial Magistrate, First Class, Agartala, had allowed maintenance allowance at the rate of Rs. 250 per month in favour of the first party and another sum of Rs. 150 per month in favour of the female child of the parties concerned. By making an application under Section 127 Cr.P.C., which gave rise to Misc. Case No. 37 of 2004 aforementioned, the first party, later on, sought for enhancement of the said maintenance allowance on the ground, inter alia, that the amounts of maintenance, which had been fixed for her and their minor child, were too meagre, and they were entitled to enhancement of the maintenance allowance, for, the second party, who is a driver in MT Pool of the Police Department, had, upon revision of his pay, started receiving Rs. 10,000 per month as his salary. On perusal of the material on record, the learned Judge, Family Court, noticed that the second party had been drawing more than ten thousand rupees as pay and allowances per month from the Government and that the maintenance allowance, which had been fixed in the year 1999, needed to be enhanced. It was on these considerations that the second party was directed to pay, in all, Rs. 3,000 as

maintenance allowance per month.

5. From the materials placed before this Court too, I notice that the second party-petitioner receives, after deducting requisite taxes, more than Rs. 10,000 as his pay and allowances. Situated, thus, it is clear that the quantum of maintenance allowance, which the second party has been directed to pay, is less than 30% of the total pay and allowance of the first party. Though, strictly speaking, the proviso (ia) to Sub-section (1) of Section 60 C.P.C relates to attachment of salary in execution of decree for maintenance in a civil suit, yet even if the spirit of Section 60 is adhered to, it is clear that the maintenance allowance directed to be paid by the impugned order is in conformity with the spirit of proviso (ia) to Sub-section (1) of Section 60 CPC. This apart, Section 17 of the [Family Courts Act, 1984](#), which has been referred to by the petitioner, lays down as to what a judgment of the Family Court shall contain. Though an order made under Section 127 Cr.P.C. is not really a judgment, yet what Section 17 of the [Family Courts Act, 1984](#), requires is that the judgment shall contain a concise statement of the case, the point for determination, the decision thereon and the reasons for such decision. In the case in hand, the impugned order clearly reflects the case of the parties, the question, which was posed for determination, and assigns the reasons as to why the direction for enhancement of the maintenance allowance had been given. Viewed from this angle, I do not find that the impugned order suffers from any infirmity of law and/or incorrect and/or improper.

6. It has also agitated by Mr. Deb, learned counsel for the petitioner, that the Sections 125, 126 and/or 127, when read as a whole, give no indication that the Magistrate is empowered to direct deduction of maintenance allowance from the salary of any person and remit the same to the party seeking maintenance allowance. While dealing with this aspect of the matter, one has to bear in mind that the provisions of Section 125 Cr.P.C. are intended to fulfil a social purpose. Its object, inter alia, is to compel a man to perform the moral obligation, which he owes to society in respect of his wife and children. By providing a simple, speedy but limited relief, Section 125 Cr.P.C. seeks to ensure that the neglected wife and children are not left as beggars and destitutes and be not driven to a life of vagrancy, immorality and crime for their sustenance, (see : 1975 CriLJ40 ).

7. Coupled with the above, it is also important to recall, that though there is no express provision under Section 125 Cr.P.C. and/or in the Code of Criminal Procedure, as a whole, empowering the Magistrate to pass any interim order for maintenance pending disposal of the proceeding, yet in the case of Smti. Savitri v. Govind Singh Rawat (AIR 1986 SC 194), the Apex Court allowed the interim maintenance. While so allowing the prayer for interim maintenance, the Apex Court observed and held as follows :

'... In the absence of any express prohibition, it is appropriate to construe the provisions in Chapter IX as conferring an implied power on the Magistrate to direct the person against whom an application is made under S. 125 of the Code to pay some reasonable sum by way of maintenance to the applicant pending final disposal of the application. It is quite common that applications made; under S. 125 of the Code also take several months for being disposed of finally. In order to enjoy the fruits of the proceedings under S. 125, the applicant should be alive till the date of the final order and that the applicant can do in a large number of cases only if an order for payment of interim maintenance is passed by the Court. Every Court must be deemed to possess by necessary intendment all such powers as are necessary to make its orders effective. This principle is embodied in the maxim 'ubi aliquid conceditur, conceditur et; id sine quo res ipsa esse non potest (where anything is conceded, there is conceded also anything without which the thing itself cannot exist) (Vide Earl Jowitt's Dictionary of English Law 1959 Edn. p. 1797). Whenever anything is required to be done by the law and it is found impossible to do that thing unless something not authorised in express terms be also done then that something else will be supplied by necessary intendment. Such a construction though it may not always be admissible in the present case however would advance the object of the legislation under consideration. A contrary view is likely to result in grave hardship to the applicant, who may have no means to subsist until the final order is passed.

8. From the above observations, it becomes clear that every court must be deemed to possess such powers as are necessary to make its order effective. This is the principle, which maxim 'ubi aliquid conceditur conceditur et id sine quo res ipsa esse non potest (Where any is conceded there is conceded also anything

without which the thing itself cannot exist)' conveys.

9. It also follows, from the above observations made in Smti. Savitri (supra) that when an act is required to be done by law and it is found impossible to be done without doing something, which is not authorised to be done in express terms by law, shall be deemed to be impliedly available to the court, for, otherwise, the order of the court will not be meaningful and effective. In other words, when a Court grants relief, it must ensure that the relief, which it has granted, does not remain merely on papers and must become meaningful for the parties concerned. It is with this object in view that the prayer of the petitioner for direction to the authorities concerned to deduct maintenance allowance from the salary of the opposite party ought to have been considered and has, in fact, been considered.

10. In view of the fact that the first party and her minor child had already been allowed the maintenance allowance of Rs. 3,000 per month, it was the duty of the Court to ensure that the direction, so passed, was effectively carried out. Viewed from this angle, the directions given to the authorities concerned to deduct every month from the pay and allowances of the second party-petitioner the said sum of Rs. 3,000 and to remit the same to the first party-opposite party herein as maintenance allowance, as indicated hereinabove, cannot be treated as untenable in law.

11. What emerges from the above discussion is that the impugned order, dated 22.12.2004, aforementioned is wholly consistent with the materials on record and the law relevant thereto.

12. In view of the above, I do not find that the petitioner has been able to make out any case for interference with the impugned order.

13. In the result and for the foregoing reasons, this revision is not admitted and the same shall accordingly stand dismissed.