

IN THE COURT OF ADDITIONAL SESSIONS JUDGE: BIJNI.

Present: N. U. Ahmed, AJS.

Additional Sessions Judge,

Bijni.

Criminal Revision case No. 01(1)/2019.

(Arising out of MCR. Case No.20/2018, u/s 397/399 of the Cr. P. C.)

Makhan Chandra DasPetitioner/2nd party.

-Vs-

Bancha Rani DasOpp. Party/ 1st party.



Appearance for the parties:

For the petitioner : Mr. N. K. Ghosh,

Mr. Banani Deka, learned Advocates.

For the O. P. : Mr. Amrit Das, learned Advocate.

Date of Argument : 25-07-19

Date of Judgment : 07-8-19

J U D G M E N T

1. The present revision petition aims to challenge the correctness, legality and propriety of the order dated 30-01-2019, passed by learned S.D.J.M. (M), Bijni in connection with M.C.R case No.20/2018, u/s 397/399 of the Cr. P. C, whereby the

Handwritten signature and date 7/8/19
Addl. Sessions Judge,
Bijni

learned Magistrate allowed monthly maintenance at the rate of Rs.2000/- for the 1st party/Opp. Party by giving effect the order from the date of order.

2. After receipt of notice, the opposite Party entered her appearance. The LCR was called for and the same was received.

3. The facts leading to file the present revision is that the opp. Party as 1st party has filed a petition u/s 125 Cr. P. C against the petitioner/ 2nd party for seeking maintenance for herself from her son. In the original petition the Opp. Party/1st party stated that she is the mother of petitioner/2nd party and she is an old women and her husband passed away. The second party has been living separately with his wife and children from the First Party. The other two sons of the First Party do not have regular income. But they have been providing her maintenance to some extent as per their capacity. After death of her husband the first party has been in possession of a plot of land left behind by her husband. The Second Party gets salary of Rupees Ten thousand to Twelve thousand per month. The First party does not have any income of her own for survival. Due to her old age and illness the First party has been suffering from a lot. Despite having sufficient means the Second Party has deliberately neglected to provide her maintenance. With these pleading Opp. Party / 1st party filed the petition u/s 125 of the Cr. P.C. claiming maintenance.

4. The petitioner as second party appeared in M.C.R Case No. 20/2018 and contested the case by filing written statement. In the written statement the petitioner/ second party admitted that the 1st party is his mother but according to him the claim of the First Party is baseless, false and concocted. He has pleaded that the First Party herself driven 2nd party and his wife out of her house depriving him from his ancestral property. So, his uncle gifted him a plot of land where he has been residing with his family members. The First party has ten Bighas of land. He has admitted that he is engaged in a temporary Home Guard Job and he gets salary of Rs. 7000/- (Rupees Seven Thousand) only per month. Therefore, to maintain his wife and children he has to do daily labour. He has averred that his son Manuj Das is a student of class III and his daughter Riya Das is a student of class IX. He has further pleaded that the First Party stays with her two other sons. He has contended that his brothers are rich. The Second Party has beetle nut garden, bamboo tree garden and a pond. He has further pleaded that with his limited income he has been surviving with hand mouth. On these counts the petitioner/2nd party prayed to reject the petition of the 1st party.



Handwritten signature and date: 7/8/19
Addl. Sessions Judge,
Bijni

5. During trial Opp. party/ 1st party adduced two witnesses and petitioner/ 2nd party adduced also adduced two witnesses in support of their case. After hearing argument Ld. S.D.J.M. (M), Bijni passed the impugned order dated 30-01-19 and allowed monthly maintenance of Rs. 2000/- towards the first party and given effected of the order from the date of order.

6. On being highly aggrieved and dissatisfied with the impugned order of trial court the second party as petitioner preferred this revision on the ground mentioned in the memo of revision.

7. I have heard both the sides Ld. Advocate. I have gone through the case record as well as evidence of record.

8. From the evidence on record it reveals that it is admitted fact that the opposite party/ first party is the mother of petitioner/ second party and petitioner/2nd party is the eldest son of the Opp. party/1st party. Opp. Party/1st party in her examination in chief stated that her two other son do not have own income. She has testified that her husband passed away ten months ago. She has deposed that she need money for her medical treatment and her hand was fractured. She has deposed that she did not have anything except a residential house of her deceased husband. But during cross-examination she admitted that her one son has business and another son do private job at Shillong. Therefore, in view of foregoing discussion it is proved that the First Party has three sons. The Second Party is the eldest son of the First Party. It is proved that Second son of First Party is a shop keeper and the third son of the First Party do private job. It is also proved that after death of her husband the First party got a plot of land with a house and a pond and beetle nut trees. It transpires that the First Party is an old woman. It is not dispute that the First Party stays with her two younger sons. Though the opposite party/ first party failed to prove the definite income of second party but every able bodied person is bound to maintain his mother. The provision u/s 125 of the Cr. P.C is a Social legislation with the main object to prevent the distress woman from begging and prostitution. The petitioner/ second party is an able bodied person and he has no physical incapability. Petitioner/ second party is the son of opposite party / First party. So, the petitioner is duty bound to maintain his mother i.e. opposite party / first party. So, I find that Ld. S.D.J.M. (M), Bijni rightly hold that the petitioner/ second party is duty bound to maintain the first party/ opposite party. The opp. Party/1st party has three sons. Other two sons also able bodied persons and they have also income. So, they are also liable to maintain the Opp. Party/1st party. Next



[Signature]
7/8/19
Addl. Sessions Judge,
Bijni

we should decide whether the quantum of maintenance amount is justifiable or not. From the evidence on record it reveals that 2nd party has two school going children and he has to maintain his wife. The 2nd party is working a Home Guard. The service of Home Guard is not permanent and the service is for a period of six months at a time. The total monthly income of the 2nd party is Rs.7000/-. The learned trial court awarded maintenance to the 1st party at the rate of Rs.2000/- per month. The Opp. Party/1st party has a pond and some beetle nut trees and she has earned from that property. So, in my considered view considering the monthly income of 2nd party and the income of other sons who are resided in their ancestral property, the monthly maintenance allowance is little bit high. Therefore, I find that a little interference is warranted in respect of quantum of the maintenance allowance. In my considered view if the second party/ petitioner is directed to pay the maintenance allowance at the rate of Rs.700/- to the 1st party per month then it would be justified.



From the discussion made above, I find that the quantum of maintenance is required to modify to the extent as indicated above and other finding of learned trial court warrant no interference.

10. In the result the revision petition is partly allowed as indicate above. However, the parties are left to bear their own costs.

11. Send back the LCR along with copy of the judgment.

Given under my hand and seal of this court on this the 7th day of August, 2019.

Dictated and correct by me,

Additional Sessions Judge,
Bijni.

Bijni.

(N. U. Ahmed)
Addl. Sessions Judge,
Bijni.
Additional Sessions Judge,
Bijni.