

AFR



IN THE HIGH COURT OF ORISSA AT CUTTACK

MATA No. 133 of 2024

Nirmal Karnakar

....

Appellant

Mr. A.P. Bose,
Advocate

-versus-

Parbati @ Parbati Karnakar

....

Opposite Parties

Mr. Sadananda Sahoo,
Advocate

CORAM:

THE HON'BLE MR. JUSTICE B. P. ROUTRAY

THE HON'BLE MR. JUSTICE CHITTARANJAN DASH

Date of Judgment: 14.02.2025

By The Bench:

1. The present appeal arises out of the judgment dated 21.02.2024 passed by the learned Judge, Family Court, Rourkela, in Civil Proceeding No. 132 of 2021, whereby the maintenance payable to the respondent-wife was enhanced from ₹1,500 per month to ₹10,000 per month. The Appellant-Husband has challenged this order on the ground that the enhancement was beyond the relief sought by the Respondent and that, the Family Court failed to properly assess his financial liabilities.

2. The Respondent-Wife, aged 63 years, is an elderly woman with no independent source of income. She is entitled to limited government benefits, including ₹500 per month under a government



scheme and 5 kg of free rice, which she has been admittedly receiving. However, these benefits are insufficient to meet her daily living and medical expenses. Given her advanced age, she requires regular medical care and incurs additional household expenses.

3. Section 25(2) of the Hindu Marriage Act, 1955, reads as follows –

“(2) If the court is satisfied that there is a change in the circumstances of either party at any time after it has made an order under sub-section (1), it may at the instance of either party, vary, modify or rescind any such order in such manner as the court may deem just.”

Under this section, the Court has the power to vary, modify, or rescind maintenance orders if there is material change in circumstances of either party. The phrase *“at the instance of either party”* mandates that a formal application must be made, and judicial discretion must be exercised within the framework of the claim and evidence provided. Similarly, Section 127 of the Criminal Procedure Code, 1973, permits alteration of maintenance based on changes in financial circumstances. Section 127 CrPC reinforces this position in the context of orders of maintenance under Section 125 CrPC, stating that *“on proof of a change in the circumstances of any person receiving maintenance, the Magistrate may make such alteration, increase or decrease in the allowance as he thinks fit.”* It is well established that Courts can modify maintenance upon proof of material change in circumstances. While Courts have the power to modify maintenance based on changed circumstances, this power is not suo motu and must be exercised only on the application of either party.



4. The Punjab and Haryana High Court, while deciding the issue of awarding maintenance exceeding the claimed amount, in the matter of *Kamaldeep Kaur and Anr. vs. Balwinder Singh*, reported in **2005 SCC OnLine P&H 417**, has held that –

“21. Now the question which requires determination is whether the Magistrate is competent to award the maintenance more than the amount claimed by the applicant in his maintenance application. Section 125 Cr. P.C. provides that a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct (emphasis supplied). Under this provision, it is the duty of the Magistrate to provide just maintenance to the deserted wife or destitute child. The amount of maintenance should be such that a wife is able to maintain herself decently and with dignity. If after considering the material placed before the Magistrate, the Magistrate thinks that a particular amount is a reasonable amount, he is required to award the said amount as maintenance, and in my opinion, he cannot refuse to grant the said amount merely because the claimant has not claimed such an amount in her application. Once the legislation has cast duty on the Court to award just and reasonable amount of maintenance in the facts and circumstances of a case, the same cannot be denied on mere technicalities i.e. the claimants had not claimed the said amount in their application. Though the words “just and reasonable” have not been used in Section 125 Cr. P.C., but in my opinion, the aforesaid words can be read in the expression as the Magistrate thinks fit”. Once discretion has been given to the Court to award an amount of maintenance, it will always be just and reasonable, in the facts and circumstances of a case. There is no specific restriction under Section 125 Cr. P.C. that the Magistrate cannot award more than the amount claimed in the petition. Rather, duty has been imposed on the Magistrate to award



compensation which he thinks fit. In such situation, the Court is not debarred from Awarding compensation exceeding the claimed amount.”

5. In the above decision, the learned High Court emphasised that the awarded maintenance should be just and proper, considering the husband’s financial capacity and the needs of the dependents. The Court noted that the husband was gainfully employed and had a steady income, which justified the enhancement of the maintenance amounts.

In like manner, the decision of Andhra Pradesh High Court, in the matter of *G. Amrutha Rao vs. The State of Andhra Pradesh*, passed in **Crl.R.C. No. 80 of 2023**, addressed a similar maintenance claim where the wife initially sought a monthly maintenance of ₹30,000 (₹20,000 for herself and ₹10,000 for her minor child). The trial Court enhanced this amount to ₹50,000 per month, significantly exceeding the wife’s original request. The Court’s enhancement reflected its assessment of the wife’s needs and the husband’s financial capacity. The decision underscored the Court’s duty in ensuring adequate support for the wife and child in light of the circumstances presented during the trial.

6. In the instant case, it is evident that the Family Court exceeded its jurisdiction by granting ₹10,000 maintenance when the wife had only claimed ₹7,000. However, as per Section 25(2) of the Hindu Marriage Act, 1955, and based on precedents, the Court has the discretion to increase maintenance based on substantial change in circumstances. This part of the order of the Family Court can at best be said that the Court erred procedurally in awarding more than what was claimed but the substance of its decision remains correct, given the financial assessment of both parties.



The Appellant-Husband, aged 72 years, is a retired railway diesel engine driver receiving a pension of ₹50,000 per month. He argues that he has substantial expenses, including ₹10,000 per month on medical treatment, as he is a heart patient and a senior citizen, and family obligations, including a wife and three children, one of whom, a 26-year-old son, may still be dependent. However, despite these claims, the Appellant has not provided any documentary evidence (such as medical bills, household expense records, or educational expenses) to substantiate these alleged liabilities. The lack of documentary proof weakens his claim of financial incapacity.

The fact that cannot be blinked away, and is apparent from the record, is that the learned Family Court, Rourkela, considered the fact that the Appellant was drawing ₹50,000 per month as pension, a detail that was not within the knowledge of the Respondent until it was disclosed through the affidavit filed by the Appellant himself. Due to this, the Respondent was unable to specifically claim an appropriate maintenance amount in her petition. Furthermore, the amount granted by the learned Family Court is less than 25% of the Appellant's pension. Hence, the maintenance awarded is just and proper, ensuring that the Respondent receives a fair and reasonable amount for her sustenance.

7. The judicial discretion must be exercised to provide a fair and just maintenance amount, considering the dependent's actual needs and the payer's financial capability, even if the claim was initially understated. The enhancement, in the instant case, is warranted based on necessity rather than technicalities of the



original plea. Considering the Appellant's pension income and the Respondent's financial needs, this Court finds no ground to interfere with the learned Family Court's conclusion. Despite procedural lapses in granting an amount beyond the pleadings, the ultimate finding of the Family Court is justified and does not warrant reversal.

8. Accordingly, the Matrimonial Appeal is dismissed, and the order dated 21.02.2024 of the Judge, Family Court, Rourkela is confirmed. The Appellant is directed to continue paying the ₹10,000 maintenance to the respondent, including any arrears, as ordered.

(B. P. Routray)
Judge

(Chittaranjan Dash)
Judge

A.K.Pradhan/Bijay

Signature Not Verified

Digitally Signed
Signed by: BIJAY KETAN SAHOO
Reason: Authentication
Location: HIGH COURT OF ORISSA
Date: 18-Feb-2025 15:40:24

