

THE HIGH COURT OF SIKKIM: GANGTOK
(Criminal Revisional Jurisdiction)

SINGLE BENCH: THE HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE

Crl. Rev. P. No. 01 of 2025

Santosh Kumar Chettri (Kharka),
S/o Late Gar Singh Kharka,
R/o 2nd Mile Turning,
P/o Tarku, P.S. Temi,
District Namchi, 737126.

..... Revisionist

Versus

Kamlesh Chettri,
W/o Shri Santosh Kumar Chettri (Kharka),
R/o Malaguri,
Siliguri, West Bengal, 734001.

.....Respondent

**Application under Section 397 and 401 read with
Section 482 of the Code of Criminal Procedure, 1973.**

*(Order dated 08.04.2024 and 29.04.2024 passed by the learned
Family Court in Crl. Misc. Case No. 03 of 2023 allowing
enhancement of Maintenance.)*

Appearance:

Mr. Abhinav Kant Jha, Advocate for the Revisionist.

Mr. Pramit Chettri and Mr. Abhishek Tamang,
Advocates for Respondent.

Date of Hearing : 28.10.2025
Date of Order : 28.10.2025

O R D E R (ORAL)

Bhaskar Raj Pradhan, J.

1. The present Criminal Revision Petition has been
filed by the revisionist seeking to assail two orders passed

by the learned Family Court in an application for enhancement of maintenance under section 127 of the Code of Criminal Procedure, 1973 (Cr.P.C.).

2. The first Order dated 08.04.2024 notes the status of pension drawn by the revisionist. It also notices that the previous Order dated 31.05.2014 passed by the learned Family Court under section 125 Cr.P.C. had directed the revisionist to pay a sum of Rs.7000/- as monthly maintenance. Thereafter keeping in mind *“present market rate, health condition, the age of the petitioner and retirement gratuity received”* by the revisionist the learned Family Court directed the revisionist to pay Rs.14,000/- as monthly maintenance from May, 2024 to the respondent to be deducted from his pension. After deciding the quantum of maintenance allowance to be paid by the revisionist (i.e. Rs.14,000/- per month) the learned Family Court sought further information and on receipt thereof vide the second impugned Order dated 29.04.2024 directed the revisionist to pay a further sum of Rs.2 lakhs within three months to the respondent. This was done, again *“keeping in mind the present market rate, health condition, the age of the petitioner and retirement gratuity”* received by the revisionist.

3. A perusal of section 127 of the Cr.P.C. reflects that the Court is empowered to alter “the monthly allowance” on proof of a change in the circumstances. The impugned order does not give sufficient reasoning as to how the learned Family Court was satisfied about the change in circumstances to alter the monthly allowance to Rs.14,000/-. Section 127 of the Cr.P.C. permits alteration of the monthly allowance only. The impugned orders does not state or reason whether the direction to the revisionist to pay Rs.2 lakhs from his retirement benefits was also part of the monthly allowance.

4. The learned counsel for the revisionist also draws the attention of this Court to the written response filed by the revisionist to the application under section 127 of the Cr.P.C. filed by the respondent drawing court’s attention to the judgment of the Supreme Court in **Rajnesh vs. Neha & Anr.**¹ wherein certain directions were passed with regards to maintenance applications. It is his submissions that the learned Family Court neither considered the direction nor followed it.

5. The impugned orders also do not reflect that the learned Court considered the directions passed by the Supreme Court in **Rajnesh** (supra) in the facts of this case.

¹ (2021) 2 SCC 324

6. In such view of the matter this Court is of the view that the two impugned Orders dated 08.04.2024 and 29.04.2024 must be set aside and the matter be remanded for re-consideration on all points to ensure justice is done. It is ordered accordingly. As an interim measure, the revisionist is directed to continue to pay Rs.14,000/- per month to the respondent until a final decision is taken by the learned Family Court on the application filed by the respondent keeping in mind all the legal parameters required to be considered.

7. The Criminal Revision Petition is allowed to the above extent and the impugned orders set aside. The application under section 127 of the Cr.P.C. filed by the respondent is directed to be re-heard and disposed of as per law by the learned Family Court, at Namchi.

(Bhaskar Raj Pradhan)
Judge

Approved for reporting : **Yes**
Internet : **Yes**
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