

**Criminal Revision**  
Present: **The Hon'ble Justice Ashim Kumar Roy**  
Judgment on: 22.02.2010  
**C.R.R. No. 428 of 2010**  
**Sumantra Paul**  
**versus**  
**Smt. Sangita Paul**

**Point:**

**MAINTENANCE:** Order of maintenance passed by criminal court- Civil Court passed an order- For cancellation or variation of order of maintenance whether a separate and substantive application necessary under Section 127 (2) of the Code of Criminal Procedure - Code of Criminal Procedure, 1973, S. 125, 127 (2).

**Fact:** The petitioner in connection with a proceeding under Section 125 of the Code of Criminal Procedure was directed to pay monthly maintenance to the wife and child. The husband/petitioner filed an application under Section 9 of the Hindu Marriage Act for restitution of conjugal rights and during pendency of such application for restitution of conjugal rights, the wife moved an application under Section 127 of the Code of Criminal Procedure for enhancement of amount of maintenance. Subsequently, the said suit for restitution of conjugal rights was decreed in favour of the husband and he thereafter filed an application in connection with the said proceeding under Section 127 for recalling the order of maintenance. However, the Learned Magistrate rejected the said application.

**Held:**

If the husband sought for cancellation or variation of an order of maintenance in consequence of any decision of a competent Civil Court, then in that case, he has to file a separate and substantive

application under Section 127 (2) of the Code of Criminal Procedure.

Paragraph – 3

For Petitioner : Ms. Kabita Mukherjee  
Mr. Manas Dasgupta

The Court:

The petitioner in connection with a proceeding under Section 125 of the Code of Criminal Procedure was directed to pay monthly maintenance at the rate of Rs. 3000/- to the wife and Rs. 2000/- to the child. In the meantime, the husband/petitioner filed an application under Section 9 of the Hindu Marriage Act for restitution of conjugal rights. During the pendency of such application for restitution of conjugal rights, the wife moved an application under Section 127 of the Code of Criminal Procedure for enhancement of amount of maintenance. After the said suit for restitution of conjugal rights at the behest of the husband, decreed the husband filed a Misc. application in connection with the said proceeding under Section 127 for recalling the order of maintenance. However, the Learned Magistrate rejected the said application.

2. Heard Ms. Kabita Mukherjee, learned advocate appearing for the petitioner with Mr. Manas Dasgupta. Perused the impugned order and other materials on record.

3. Having gone through the impugned order, I find that the Learned Magistrate rejected the petitioner's such prayer on the ground if the husband sought for cancellation or variation of an order of maintenance in consequence of any decision of a competent Civil Court, then in that case, he has to file a separate and substantive application under Section 127 (2) of the Code of Criminal Procedure.

I do not find that such finding of the Learned Magistrate suffers from any illegality and/or infirmity.

This criminal revisional application has no merit and, accordingly, stands dismissed.

I make it clear, it will be open to the husband/petitioner to file appropriate application under Section 127 (2) of the Code of Criminal Procedure and it is further directed, if such application is filed, the Learned Magistrate shall consider the same in accordance with law and disposed of the same within eight weeks from the date of filing.

Criminal Section is directed to deliver urgent Photostat certified copy of this Judgement to the parties, if applied for, as early as possible.

**( Ashim Kumar Roy, J. )**