

(2012) 02 GAU CK 0053

Gauhati High Court

Case No: Criminal Petition No. 382 of 2011

Hamidur Rahman

APPELLANT

Vs

Mosstt. Anisa Begum

RESPONDENT

---

**Date of Decision:** Feb. 21, 2012**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 125, 125(4), 397, 397(3), 399(3)
- Penal Code, 1860 (IPC) - Section 498A

**Citation:** (2012) 2 GLD 411**Hon'ble Judges:** Ujjal Bhuyan, J**Bench:** Single Bench**Advocate:** S. Dutta, for the Appellant; M.U. Mandal, for the Respondent**Final Decision:** Dismissed

---

**Judgement**

Ujjal Bhuyan, J.

The respondent wife filed a petition u/s 125, Cr PC in the Court of the learned Judicial Magistrate, First Class, Bilaspara against the petitioner husband, which was registered as Misc. Case No. 4 of 2009. The respondent alleged that though she is the legally married wife of the petitioner, following dowry demand and physical assault, she was driven out of her matrimonial home by the petitioner. She had to take shelter in the residence of her parents. Claiming that she has no source of income to sustain herself whereas the petitioner is a healthy person and earning good income, she claimed maintenance at the rate of Rs. 3000/- per month from the petitioner. The petitioner contested the said case by filing written statement. Though he admitted the respondent to be his wife, he has denied the other allegations made by the Opp. Party. He further contended that he had obtained a decree for restitution of conjugal right against the respondent in Title Suit No. 8 of 2009 on 10-09-2009 but in spite of that the respondent refused to live with him.

2. In support of their respective claims, both the sides adduced evidence. Since the factum of marriage between the petitioner and the respondent was admitted by both the sides, the said issue was not deliberated upon.

3. Considering the evidence on record and after hearing the arguments advanced on behalf of both the sides, the learned Magistrate arrived at the following conclusions:

(1) The respondent wife had sufficient cause to refuse to live with her husband;

(2) The respondent wife is unable to maintain herself;

(3) The petitioner has sufficient means of income, the monthly income being Rs. 10,000/-, to maintain his wife;

(4) The petitioner has refused and neglected to maintain his wife;

(5) The respondent is entitled to maintenance, and;

(6) The respondent is entitled to Rs. 1500/- per month as maintenance to be paid by the petitioner.

Accordingly, vide the judgment and order dated 17-06-2010, the learned Magistrate ordered the petitioner to pay monthly maintenance of Rs. 1500/- to the respondent.

4. Aggrieved by the aforesaid, the petitioner preferred a revision petition in the Court of the learned Sessions Judge, Dhubri against the aforesaid judgment and order dated 17-06-2010. The said revision petition was registered as CR Case No. 5(3) of 2010. Revisional Court below by the judgment and order dated 07-06-2011 upheld the decision of the learned Magistrate but modified the quantum of maintenance by reducing the same from Rs. 1,500/- per month to Rs. 1,000/- per month.

5. The petitioner husband is now before this Court with the present petition u/s 482, Cr PC impugning the aforesaid judgment of the learned revisional Court below as well as the judgment and order of the learned Magistrate.

6. Heard Mr. S. Dutta, learned counsel appearing for the petitioner. Also heard Mr. M.U. Mandal, learned counsel for the respondent.

7. Mr. Dutta, learned counsel for the petitioner, submits that both the Courts below failed to consider the effect of the decree of restitution of conjugal right obtained by the petitioner against the respondent and the same has vitiated the judgments impugned. According to the learned counsel, in view of the aforesaid decree for restitution of conjugal right it can be said that the respondent has refused to live with her husband without any sufficient reason within the meaning of sub-section (4) of Section 125, Cr PC or conversely, it cannot be said that the petitioner has refused to maintain his wife as is the requirement of sub-section (1) of Section 125, Cr PC. In support of his aforesaid submission, Mr. Dutta has placed reliance on two

judgments of the High Court of Calcutta and High Court of Punjab and Haryana. The Hon"ble Calcutta High Court judgment is dated 21-07-1994 in CrI. Revn. No. 677 of 1994; [In Re: Rabindra Nath Roy, .](#) The judgment of the Hon"ble Punjab and Haryana High Court is dated 08-11-1996 in CrI. Revn. No. 5 of 1996; [Sher Singh Vs. Rajwinder Kaur, .](#) He, therefore, prays for setting aside both the impugned judgments.

8. Responding to the above submissions, Mr. Mandal, learned counsel for the respondent, submits that the decree for restitution of conjugal right was duly taken note of by both the learned Courts below. He submits that there is no infirmity in the decisions of the learned Courts below. He further contends that though the present petition has been filed u/s 482, Cr PC, the same is in fact a second revision, which is statutorily barred u/s 397(3) and Section 399(3), Cr PC. He, therefore, prays for dismissal of the present petition.

9. Replying to the above submission, Mr. Dutta, learned counsel for the petitioner, submits that it is a settled proposition that the prohibition of second revision u/s 397(3) does not completely bar the High Court's power to entertain a revision petition u/s 482, Cr PC In this connection, the learned counsel has placed reliance on a number of decisions of this Court as well as of the Apex Court.

10. The Supreme Court in the case of [Shakuntala Devi and Others Vs. Chamru Mahto and Another](#), has held that in special cases the bar u/s 397(3) Cr PC can be lifted and that the power of the High Court to entertain a petition u/s 482, Cr PC is not subject to the prohibition under Sub Section 3 of Section 397, Cr PC and is capable of being invoked in appropriate cases.

11. As the petitioner has raised a legal issue of some merit, it would not be appropriate to close the door on him on the ground that the present petition is basically an attempt at second revision. Therefore the same is taken up for consideration on merit.

12. Since the petitioner has relied heavily on the decree for restitution of conjugal right, let us examine the same at the first instance itself.

13. In Title Suit (M) No. 8 of 2009 instituted by the petitioner against the respondent and her parents, the learned Munsiff, Bongaigaon decreed the said suit ex-parte vide the judgment and order dated 10-09-2009. The learned Munsiff in the course of the judgment recorded as under:

That, on 2-11-08 when the Defendant No. 2 went to the matrimonial home of the Defendant No. 1 for a curtsy visit, the Defendant No. 1 against the will and prohibition of her husband and her in laws went away with her father, Since then, the Defendant No. 1 had not returned to her matrimonial home to lead a conjugal life with the Plaintiff. The Plaintiff and his father on many occasions i.e. on 11-11-08, 14-11-08 and 21-11-08 requested the Defendant No, 1 to return to their home but she did not listen to their request, Ultimately the plaintiff sent Advocate's notice on

18-11-08, 26-11-08 and 22-01-09, But it was of no effect. As such, finding no other alternative way, the Plaintiff has instituted this suit against the defendant for the restitution of the conjugal rights against the Defendant No. 1"

Thereafter, the learned Munsiff decreed the suit ex-parte by directing the defendant No. 1 i.e. the respondent herein to lead a conjugal life with the plaintiff petitioner from the date of the said judgment.

14. From a close examination of the aforesaid judgment, besides the fact that it was decided ex-parte, the following two other facts emerge:

(1) On 02-11-2008, the defendant No. 1 (respondent) went with her father against the will and prohibition of her husband and her in-laws.

(2) The plaintiff (petitioner) sent advocate's notices to the defendant No. 1 (respondent) on 18-11-2008, 26-11-2008 and 22-01-2009.

15. From the above, it is apparent that the respondent was under some kind of restraint from going to her parents' house. It is clear that the petitioner did not want, rather prohibited, the respondent from going with her father. This itself is quite unusual and abnormal. Every woman, whether married or otherwise, has an emotional attachment with her parents and, parental home. A husband would normally not prevent his wife from visiting her parents. To prevent her from going to her parents' house may have an adverse impact on her mental health and emotional well being. In an appropriate case, that may even amount to mental cruelty. It further transpires that the petitioner also sent advocate's notices to the respondent on a number of occasions. That again is quite unusual and abnormal. When the spouses communicate amongst themselves through a pleader, it can safely be presumed that all is not well at the matrimonial front.

16. The learned Magistrate considered the said decree for restitution of conjugal right but observed that no valiant effort was made by the petitioner to bring the respondent back home or to provide her maintenance even after obtaining a decree for restitution of conjugal right. It further appears from the evidence on record that the respondent has filed a criminal case against the petitioner u/s 498A, IPC, which was also taken note of by the learned revisional Court below. Referring to the decree for restitution of conjugal right, the learned revisional Court below observed that the respondent refused to return back to her matrimonial home because of serious apprehension which was clearly brought out by the evidence adduced, further observing that no one would like to leave the matrimonial home without any sufficient reason.

17. Though sub-section (4) of Section 125, Cr PC provides amongst others that if a wife refuses to live with her husband without any sufficient reason, she will not be entitled to receive maintenance from her husband, there may be a variety of reasons, circumstances or situations for which a wife may not be able to live with

her husband. In this connection, it may be pointed out that there need not be any overt act on the part of the husband driving out the wife so as to entitle her to claim maintenance. The situation in the matrimonial home or the conduct of the husband may be such that return of the wife to her matrimonial home or to live with her husband may be highly detrimental to her mental health and emotional well being, not to speak of apprehension of physical abuse. That will not debar her from claiming maintenance from her husband. In such a situation, the husband cannot claim that the case falls within the ambit of Section 125(4) Cr PC by saying that the wife refused to live with him without any reasonable cause. It would still be a case amounting to refusal by the husband to maintain his wife.

18. Human relationship is complex in nature and more often than not, it is quite enigmatic. It does not always follow a set pattern. It cannot always be compressed within the four corners of the legal framework or examined through the legal prism. Even in the face of a decree for restitution of conjugal right, a wife cannot be forced or compelled against her will to live with her husband. There may be a variety of reasons for a wife to refuse to live with her husband which may be beyond the judicial reach. The fact that the husband has obtained a decree for restitution of conjugal right and the wife refuses to resume her conjugal life, it will not automatically mean that the wife has refused to live with her husband without any sufficient cause, thus disentitling her from claiming maintenance from her husband. As pointed out above, in spite of such a decree, there may be a variety of reasons preventing the wife from resuming her conjugal life. Again, if the husband does not extend a helping hand to the needy wife on the ground that he has obtained a decree for restitution of conjugal right and the wife has refused to comply with the same, he cannot get the benefit of sub-section (4) of Section 125, Cr PC. An order for restitution of conjugal right by itself is not a ground for refusal of maintenance u/s 125, Cr PC unless it is made out that the person in whose favour it was made was willing to discharge his obligations as a husband. In the present case, the learned Magistrate has held that no effort was made by the petitioner to bring the respondent home or to provide her maintenance even after obtaining the decree for restitution of conjugal right.

19. Coming to Section 125, Cr PC, it is evident that proceedings thereunder are of summary nature. The order passed in an application u/s 125, Cr PC does not finally determine the rights and obligations of the parties. The said provision is meant to achieve a social purpose and has been enacted with a view to provide summary relief to a wife, children and parents, the purpose being to prevent vagrancy and destitution. Being a proceeding of summary nature, the learned Magistrate is expected to pass orders on prima facie satisfaction and it is not necessary for him to go into the matrimonial dispute between the parties in great detail.

20. Coming to the decision of the Hon"ble Calcutta High Court, that was a case where initially the husband obtained a decree for restitution of conjugal right. As the

wife did not comply with it, the husband brought a suit for dissolution of marriage, which was also decreed. 16(six-teen) years thereafter, the wife filed a petition u/s 125, Cr PC claiming maintenance. In the fact situation of that case, the Hon"ble Calcutta High Court held that if the wife does not comply with the decree for restitution of conjugal right, she would be disentitled to claim maintenance. Similar is the view taken by the Hon"ble Punjab and Haryana High Court. However, though the facts are different, it appears that the general view taken in the said two decisions is that if the husband obtains a decree for restitution of conjugal right and the wife does not comply with the same, she would not be entitled to claim maintenance u/s 125, Cr PC.

21. However, with great respect, for the reasons mentioned in the foregoing paragraphs of this judgment I am unable to persuade myself to take a view similar to the view taken by the Hon"ble Calcutta High Court in the case *In Re: Rabindra Nath Roy* and the Hon"ble Punjab and Haryana High Court in the case *Sher Singh v. Rajwinder Kaur*, that if the wife does not comply with a decree for restitution of conjugal right, she would be disentitled to claim maintenance.

22. In view of the discussion made above, I find no merit in this petition and the same is accordingly dismissed. Parties to bear their own cost.