
(2012) 09 CAL CK 0037

Calcutta High Court

Case No: C.O. No. 1898 of 2012

Babalu Singh

APPELLANT

Vs

Smt. Sanju Singh

RESPONDENT

Date of Decision: Sept. 26, 2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) " Section 125#Hindu Marriage Act, 1955 " Section 13(1)(ia)(ib), 24

Citation: (2012) 09 CAL CK 0037

Hon'ble Judges: Prasenjit Mandal, J

Bench: Single Bench

Advocate: Debajyoti Basu and Mr. Kunal Ganguly, for the Appellant; Probal Kumar Mukherjee and Mr. Upendra Roy, for the Respondent

Final Decision: Allowed

Judgement

Prasenjit Mandal, J.

Challenge is to the Order No. 22 dated April 11, 2012 passed by the learned Additional District Judge, 3rd Court,

Hooghly in Matrimonial Suit No. 624 of 2010 thereby disposing an application u/s 24 of the Hindu Marriage Act filed by the husband/petitioner

herein. The husband/petitioner herein instituted the aforesaid matrimonial proceeding u/s 13(1)(ia)(ib) of the Hindu Marriage Act. In that

matrimonial suit, the wife/opposite party herein filed an application u/s 24 of the Hindu Marriage Act praying for alimony. By the impugned order,

the learned Trial Judge granted alimony pendente lite at the rate of Rs. 3,500/- per month for the wife and Rs. 3,000/- per month for the minor

daughter and litigation costs of Rs. 10,000/- to the wife. Being aggrieved by such orders, the husband has preferred this application.

2. Now, the question is whether the impugned order should be sustained.

3. Upon hearing the learned Counsel for the parties and on going through the materials on record, I find that previously, the wife/opposite party

herein instituted a proceeding u/s 125 of the Cr.P.C. and in that proceeding, the learned Magistrate granted interim maintenance to the tune of Rs.

3,500/- per month for the wife and Rs. 1,500/- per month for the minor daughter w.e.f. the date of application. While dealing with application u/s

24 of the Hindu Marriage Act, the learned Trial Judge has made an observation as appearing in inner page nos. 2 & 3 of the certified copy of the

impugned order on the maintenance granted by the learned Magistrate, but, while passing the final order on the said application, I find that the

learned Trial Judge did not consider the interim maintenance as granted by the learned Magistrate. But, he has simply recorded in the observation

that the maintenance allowance that may be granted u/s 125 of the Cr.P.C. in future days shall be always adjusted with the amount of maintenance

pendente lite granted by the learned Additional District Judge.

4. As per materials on record, I find that the husband/petitioner herein challenged the interim order of maintenance before the Hon"ble Court and

then by an order dated August 25, 2011, this Hon"ble Court directed that the interim order of maintenance shall be stayed subject to the condition

that the husband goes on paying maintenance to the wife at the rate of Rs. 2,000/- per month for the wife and Rs. 1,000/- per month for the child.

As per materials on record, the order of attachment was issued and the Controlling Officer of the husband at his place of service had already

started deduction of Rs. 9,328/- per month (i.e. Rs. 5,000/- as interim maintenance plus Rs. 3,800/- as arrears and Rs. 528/- as postal charge)

from the pay and allowances of the husband/petitioner herein. This will be apparent from the papers, such as, the letter of Controlling Officer of the

husband appearing at page no. 19, pay slips appearing from the page nos. 21 to 25, etc. By the impugned order, the learned Trial Judge has

recorded that the final outcome in the maintenance proceeding u/s 125 of the Cr.P.C. in future days shall be adjusted against the amount of

maintenance pendente lite granted by this Court. But, I find from the materials mentioned earlier that the employer of the husband had already

started deduction for maintenance from the salary of the husband by way of attachment. So, the impugned order that adjustment against future

maintenance to be awarded u/s 125 of the Cr.P.C. becomes meaningless.

5. Under the circumstances, since the effect of attachment of the salary of the husband has not been taken into consideration in the impugned

order, in view of the decision of Sudeep Chaudhary Vs. Radha Chaudhary, the adjustment is essential.

6. It is not known whether the proceeding u/s 125 of the Cr.P.C. or the civil revision arising from the interim order has been disposed of.

7. This being the position, I am of the view that the impugned order should be set aside and the learned Trial Judge shall be directed to hear out the

matter afresh on taking into consideration the subsequent events, if any, relating to interim maintenance as granted by the Judicial Magistrate or the

other civil revision.

8. The application succeeds and is, therefore, allowed. The impugned order is hereby set aside.

9. The learned Trial Judge is directed to hear out the application u/s 24 of the Hindu Marriage Act afresh keeping in mind the interim order granted

by the learned Judicial Magistrate and the subsequent events, if any, relating to interim order of maintenance. The learned Trial Judge is also

directed to dispose of the said application by the end of November 2012 without fail.

10. Considering the circumstances, there will be no order as to costs. Urgent xerox certified copy of this order, if applied for, be supplied to the

learned Advocates for the parties on their usual undertaking.