

(2010) 02 CAL CK 0020

Calcutta High Court

Case No: C.R.R. No. 2649 of 2008

Samita Saha

APPELLANT

Vs

Mohan Saha and Another

RESPONDENT

Date of Decision: Feb. 12, 2010

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 125, 125(1), 125(4), 397, 397(3)
- Special Marriage Act, 1954 - Section 22

Citation: (2010) 2 CALLT 487 : (2011) 1 DMC 218

Hon'ble Judges: Raghunath Ray, J

Bench: Single Bench

Advocate: Arup Chandra Chatterjee and Asit Baran Ghosh, for the Appellant; Sourav Chatterjee, for Opposite Party No. 1 and K.A. Ahmed, for State, for the Respondent

Judgement

Raghunath Ray, J.

By filing an application under Sections 401 and 482 of the Code of Criminal Procedure the Petitioner wife has sought to challenge the Judgment and Order dated 4.6.2008 passed by the learned Additional Sessions Judge, 3rd Court, Burdwan in Criminal Motion No. 108 of 2007 affirming the judgment and order dated 26.9.2007 passed by the learned Judicial Magistrate, 6th Court. Burdwan in Misc. Case No. 212 of 2005 whereby she has rejected the Petitioner's claim for maintenance from the opposite party husband.

2. Background facts leading to filing of this revisional application may be capsulised as under:

An application u/s 125, Code of Criminal Procedure was filed by the Petitioner wife claiming maintenance @ Rs. 2,000 p.m. on the ground that she has been abused and tortured by her husband and in-laws since their further dowry demand could not be satisfied by her mother. The marriage between her and the O.P. husband was solemnized in accordance with Hindu religious rites on 9.8.2004 and such

solemnisation of marriage was also preceded by registration of their marriage on 7.4.2004. It is, further, contended by her that she is unable to maintain herself while her husband has sufficient earnings from her employment in a aluminium steel shop and also from her 5/7 bighas of landed properties. This Misc. Case No. 212 of 2005 u/s 125, Code of Criminal Procedure has accordingly been instituted at the instance of Petitioner wife.

3. The husband O.P. has sought to resist the claim of maintenance by controverting all the material allegations of torture and further demands, etc., in his written objection. It is also contended therein inter alia that she left her matrimonial home on 26th Bhadra 1411 BS since he could not concede to her proposal of staying in her mother's house as a domesticated son-in-law. He thereafter, had to file a suit u/s 22 of Special Marriage Act praying for restitution of their conjugal rights, but to no effect. Since his wife is residing at her mother's house out of her own accord and is also earning sufficient money by coaching music students, he is not liable to pay any maintenance. He has, therefore, prayed for dismissal of the maintenance proceeding.

4. On consideration of averments made in the pleadings and evidence adduced by the parties coupled with other relevant circumstances and materials on record, learned Magistrate rejected her petition dated 27.7.2005, claiming maintenance, vide Order dated 26.9.2007.

5. Against such order of rejection the Petitioner wife preferred a revision registered as criminal motion 108/2007 which was also subsequently dismissed on contest by learned Additional Sessions Judge, 3rd Court, Burdwan on 4.6.2009.

6. This revision has thus been preferred challenging concurrent findings of both the learned Courts below.

7. Mr. Arup Chandra Chatterjee appearing with Mr. A.K. Ghosh submits in support of the revision that all ingredients of Section 125, Code of Criminal Procedure have fully been satisfied in this case. The Petitioner being an able-bodied person is liable to pay maintenance to his wife and provisions u/s 125(4), Code of Criminal Procedure have no role to play in the facts and circumstance of the present case. More so, whenever it is specifically averred in her maintenance petition that she is unable to maintain herself. According to him, both the Courts below have failed to appreciate the nature and spirit of this beneficial legislation which indicates husband's moral obligation to maintain his wife. Therefore, orders impugned should be set aside in exercise of this Court's inherent jurisdiction to prevent vagrancy and destitution.

8. Mr. A.K. Ahmed, learned Counsel for the State submits that since the marriage is admitted and the wife Petitioner having no independent source of income, has approached this Court, her prayer for maintenance deserves consideration, although she has failed to get any relief from the learned Courts below.

9. Mr. Sourav Chatterjee, Advocate appearing on behalf of the OP husband supports the concurrent findings of both the learned Courts below and argues that in absence of any proof of torture or neglect by her husband, she is not entitled to get any maintenance. More so, whenever she is staying away from her matrimonial home without any sufficient reason. It is further submitted by him that the husband made sincere and persistent endeavour to bring his wife back to his house and he even did not hesitate to take recourse to law by filing a proceeding u/s 22 of the Special Marriage Act, 1954. But by filing a written objection in the said proceeding the wife has expressed her unwillingness to resume their conjugal life in her matrimonial home.

10. In this context Mr. Chatterjee refers to a ruling of the Division Bench of this High Court reported in (1994) 2 Cal LT 205 , Rabindra Nath Roy v. Anjana Roy and argues that a husband can successfully resist the claim of maintenance if the wife fails to comply with a decree of restitution of conjugal rights on the ground of desertion. He has also sought to rely upon the decision of a Single Bench of this Court reported in [Partha Pratim Basak Vs. Arundhuti Basak](#), wherein it is held that whenever a wife leaves the matrimonial home on her own and stays in her parental abode without any just cause she shall not be entitled to receive any allowance for the maintenance from her husband. Relying upon another Single Bench decision of the Bombay High Court reported in 1984 Cri L.J.1524 , Sangita Arutt Mhasvade v. Arun Aba Mhasvade and Anr. it is argued by him that in the event of the Petitioner wife's failure to prove neglect or refusal to maintain her by the husband, the wife is entitled to no maintenance. Mr. Chatterjee further refers to the decision of the Hon'ble Apex Court reported in [Rajan Kumar Machananda Vs. State of Karnataka](#), and argues that the statutory bar of Section 397(3), Code of Criminal Procedure cannot be circumvented by invoking inherent jurisdiction of the High Court u/s 482 of Code of Criminal Procedure Therefore, according to him, the second revision even in the garb of invoking inherent jurisdiction is not maintainable in the eye of law.

11. I have meticulously considered the submissions made by the learned Counsel for the parties. In her petition u/s 125, Code of Criminal Procedure the Petitioner's grievance is that, although she was a legally wedded wife of the O.P. since 9.8.2004 and led their conjugal life in the matrimonial home, she was pressurised for more dowry in kind e.g. Hero Honda Motor Cycle, and Gold Chain, etc. and on her parents' failure to meet such dowry demands she was tortured both physically and mentally now and then. However, ultimately on 26th Bhadra, 1411 B.S. she was driven out of her matrimonial home. She is now to reside with her widow mother having no independent source of income while O.P. is an employee of steel shop of Hindustan Aluminium, Burdwan. His monthly earning is Rs. 3,000 per month. That apart, he being the owner of 5-6 bighas of landed property also earns Rs. 5,000 - 7,000, p.a. but till the date of filing of the petition he was not paid any maintenance.

12. Such averments of the Petitioner's wife claiming of maintenance have, however, been seriously disputed by the OP husband in his written objection. According to the O.P., the Petitioner left her matrimonial home out of her own accord. That apart, she also created pressure upon him to reside as a domesticated son at her mother-in-law's house. On his refusal to accept such proposal at the cost of his self-prestige and dignity, this maintenance proceeding has been initiated by his wife, the petitioner. According to him her monthly earning is Rs. 600 per month only.

13. Against such factual backdrop, evidence and circumstances on record are required to be scrutinized with utmost circumspection. It appears that the Petitioner herself is the sole witness in respect of her claim for maintenance while the OP has examined himself and his employer Mrs. Suchitra Addya as OP 2.

14. Admittedly the Petitioner is a legally wedded wife of the OP. It is also not disputed that within one year from the date of her marriage she filed this maintenance proceeding against her husband on the allegation of torture in the event of non-fulfilment of further dowry demands. It is also an admitted position that a petition seeking restitution of conjugal rights is also pending between the parties.

15. During her cross-examination she has frankly admitted that she is not willing to lead a conjugal life with her husband at her matrimonial home. She further adds that her mother proposed to her husband that he should reside with them at her parental home and both of them also tried to persuade the OP. husband to accept their proposal. But his husband did not accede to such proposal She also makes it clear that there was no necessity on her part to file such a maintenance proceeding, if her husband was ready to accept their proposal. She also gives out in her cross-examination that her father does not reside with her mother who has also filed a maintenance proceeding against her father and such proceeding is still pending. It is also admitted by her during her cross-examination that she has filed a written objection in the proceeding for restitution of conjugal rights filed by her husband. It appears that she also took similar stand in her objection filed in connection with the aforementioned restitution case. At any rate, in view of the Petitioner's unwillingness to go back to her husband's place, the husband's attempt to take back his wife has thus not yielded any result.

16. The revisionist husband has also stated in his evidence before the learned Trial Court in the instant maintenance proceeding that he filed a case seeking restitution of conjugal rights on 21.4.2007 and such case was pending before the learned 5th Additional District Judge. The OP has also stated in his evidence that a case filed by his mother-in-law against his father-in-law claiming maintenance is still pending. It is also contended by him in his deposition that he did not agree to reside at his in-laws house as a domesticated son-in-law. He categorically states that he wants to lead a conjugal life with his wife in his parental home. Another witness examined on behalf

of the OP is his employer. As OP W2 he has merely stated that as an employee of his shop the OP gets Rs. 600 per month only.

17. On consideration of evidence so adduced by both sides coupled with their averments made in the respective pleadings it is clearly established that the Petitioner wife had to file this maintenance proceeding within one year of her marriage since there was a refusal from the part of the husband to lead a conjugal life in his mother-in-law's house as a domesticated son-in-law. It is significant to note that the Petitioner wife has failed to bring any independent witness to show that he was ever neglected by her husband or her husband has ever refused to maintain her. She has also failed to lead any corroborative evidence to prove that she was actually driven out of her matrimonial home by her husband on her mother's alleged failure to fulfil her husband's further dowry demands. Her mother has not even come forward to depose in her favour in order to substantiate her allegation of mental and physical torture upon her on her mother's failure to meet her husband's demand for more dowry.

18. In my considered view, her broad statement in her examination-in-chief that after her marriage the behaviour of her husband and in-laws was not good and she was beaten and denied food is totally insufficient to prove alleged assault and torture upon her in absence of any corroborative evidence in this regard. In fact, during her cross examination truth has come out while allegation of torture, in fact, stands demolished. She herself has admitted that she refused to reside with her husband at matrimonial home. The reason for such refusal has been specified by the Petitioner's wife herself in her cross-examination by testifying that all their persuasion fell flat upon her husband because of his adamant attitude not to accept their proposal of being a domesticated son-in-law at her mother's house.

19. In such circumstances, I am of the definite view that the learned Magistrate has arrived at a correct decision by rejecting her prayer for maintenance on appreciation of evidence and circumstances on record in its proper perspective. She is absolutely justified in her finding that the wife Petitioner is entitled to no maintenance since she left her husband's house out of her own volition.

20. Learned Additional Sessions Judge, 3rd Court, Burdwan has also rightly dismissed criminal motion filed by the Petitioner against the judgment and order of the learned Trial Court on the ground that the Petitioner herself has stayed away from the company of her husband which has disentitled her to claim maintenance from her husband and in such view of the matter learned revisional Court did not find anything to interfere with the impugned order which does not suffer from any illegality or impropriety.

21. The Petitioner wife has urged this Court to invoke its inherent jurisdiction and to set aside such concurrent findings of learned Trial Court as well as revisional Court. I am afraid, such submission is not legally acceptable for the simple reason that the

power u/s 482, Code of Criminal Procedure is to be invoked only in exceptional cases rather in rarest of rare cases where exercise of such extraordinary power is required to prevent the abuse of process of law or to secure the ends of justice. In the present case, as already discussed earlier no such exigencies indicating any miscarriage of justice has been shown. In a catena of rulings it has been clearly spelt out by the Hon"ble Apex Court that the High Court in its criminal revisional jurisdiction cannot enter into a fresh review or re-appraisal of the evidence and examined the question of credibility of witnesses where the two Courts have concurrently found that the Petitioner has failed to establish his/her case by adducing cogent, consistent and corroborative evidence and materials on record in respect of his/her claim. The settled position of law is that the High Court in its revisional jurisdiction cannot go into the questions of fact in order to examine whether concurrent findings of Trial Court and revisional Court are correct or not. There is no doubt that in exceptional circumstances High Court can interfere on the questions of fact if it is satisfied that the Trial Court or revisional Court has committed an error of law or procedure as a result of which there has been a serious miscarriage of justice and in such a compelling situation only High Court in its revisional jurisdiction would interfere with the concurrent findings of the revisional Court and Trial Court.

22. As already discussed earlier, there is nothing on record to indicate that exceptional and special circumstances exist in this case and it has also not been shown from the side of the Petitioner's wife that any substantial injustice has been done warranting interference of this Court in case of concurrent findings in exercise of inherent jurisdiction of this Court. Rather it has rightly been pointed out by the learned Counsel for the husband OP that in order to cross the hurdle of Section 397(3) of Code of Criminal Procedure the Petitioner wife has filed this petition under Sections 482, 401, Code of Criminal Procedure instead of filing another revisional application u/s 397, Code of Criminal Procedure. But simple insertion of Section 482, Code of Criminal Procedure in the cause title is not sufficient for exercise of inherent jurisdiction by this High Court. In my considered opinion, statutory bar in respect of second revision cannot be overcome in this fashion. In this context it is quite apt to quote the relevant observation of the Hon"ble Apex Court as available in the ruling reported in [Rajan Kumar Machananda Vs. State of Karnataka](#),

Merely by saying that the jurisdiction of the High Court for exercise of its inherent power was being invoked, the statutory bar could not have been overcome. If that was to be permitted, every revision application facing the bar of Section 397(3) of the Code of Criminal Procedure could be labelled as one u/s 482 of the Code of Criminal Procedure.

23. In the light of foregoing discussion it is held that this application under Sections 401 and 482 of the Code of Criminal Procedure is not maintainable since the Petitioner wife has sought to take recourse to an application under Sections 401 and

482, Code of Criminal Procedure to avoid statutory bar of filing second revision embodied u/s 397(3), Code of Criminal Procedure That apart, as indicated earlier the essential legal requirements warranting invocation of inherent jurisdiction of this Court have also not been satisfied. In such a situation I am to hold that the learned Courts below have not committed any error of law or procedure as a result of which there has been a serious miscarriage of justice necessitating this Court's interference against concurrent findings of learned Courts below in exercise of its inherent jurisdiction. More so, whenever after carefully considering entire evidence and circumstances on record both the Courts have arrived at a concurrent finding that the Petitioner's wife is not entitled to any maintenance in view of her failure to prove torture upon her by her husband and in-laws and also because of her residing in her mother's house without any just cause.

24. Therefore, it is held that, in view of the Petitioner wife's failure to prove torture or neglect as required u/s 125(1), Code of Criminal Procedure and also for her refusal to reside with her husband without any sufficient reason, she is entitled to no maintenance allowance from her husband as per provisions envisaged in Section 125(4), Code of Criminal Procedure So the concurrent findings of the learned Court below need not be disturbed. In fact, in given circumstances there is no scope for interference in exercise of inherent jurisdiction of this Court.

25. Accordingly the instant petition under Sections 401, 482, Code of Criminal Procedure is dismissed and the order of the learned Magistrate, 6th Court, Burdwan as affirmed by the learned Additional Sessions Judge, 3rd Court, Burdwan is upheld.

26. CRR 2649 of 2008 thus stands disposed of.

27. A copy of this Judgment and order be forwarded to the learned Courts below for information and necessary action, if any.

Urgent xerox certified copy of this order, if applied for, be supplied on priority basis to the parties.