

## In Re: A. B. Md. Musfeqoos Salehin

**Court:** Calcutta High Court

**Date of Decision:** Sept. 11, 2012

**Acts Referred:** Criminal Procedure Code, 1973 (CrPC) â€” Section 125, 156(3)  
Penal Code, 1860 (IPC) â€” Section 232, 34, 406, 498, 498A

**Hon'ble Judges:** Toufique Uddin, J

**Bench:** Single Bench

**Advocate:** Tarit Kr. Bhattacharya and Mr. Subrata Ghosh, for the Appellant; Kazi Safiullah, Ms. Madhuri Das and Mr. Kazi Abrurullah for the O.P. No. 2, for the Respondent

**Final Decision:** Dismissed

### Judgement

Toufique Uddin, J.

Heard the learned counsel for the parties. The background of this Misc. case is that the petitioner is married to O. P.

No. 1 on 22.6.97 according to Islamic rights and customs. Out of wedlock, a female child named Musfique Salehin Shruti and a male child named

Md. Salehin Shravan were born on 20th July, 1997 and 2nd November, 2002 respectively.

2. The O.P. No. 1 filed an application u/s 125 of the Code of Criminal Procedure against the petitioner in the court of learned C.J.M., Bankura

being Misc. Case No. 9 of 2009. The said case was subsequently transferred to the 6th court of learned J.M., Bankura and renumbered as Misc.

Case No. 27 of 2009 (hereinafter referred to as the said application in short).

3. It was contended in the petition that after some days on the demand of dowry, the petitioner and her in-laws tortured O.P. No. 1 both

physically and mentally though the father of the O.P. No. 1 met almost all the demands made by the petitioner. Further, it was alleged by the O.P.

No. 1 that the petitioner and her in-laws tortured her on 9th June, 2008 and drove away her and her two children from matrimonial home and

since then the petitioner was neglecting to maintain O.P. No. 1. The petitioner is working as Panchayat Development Officer and he earns Rs.

16000/- p.m.

4. The petitioner contested that case by denying all material allegations and taking specific plea that O.P. No. 1 not only left the matrimonial home

on her own accord, but also took two children alongwith her without any consent of the petitioner. As such the petitioner was compelled to file

application u/s 7, 10 and 25 of the Guardians & Wards Act before the learned District & Sessions Judge, Murshidabad being Guardianship case

No. 35 of 2008 for custody of the children and that case is pending.

5. The O.P. No. 1 even has not permitted him/petitioner to see his children and talk to them. Many times the petitioner tried to send money,

garments, food. Even he sent money by money order but the O.P. No. 1 refused.

6. The learned trial court by order dated 14.8.2009 allowed the petition filed by O.P. No. 1 for interim maintenance in part directing the petitioner

to pay Rs. 2500/- to O.P. No. 1 and Rs. 1000/- each to two children with effect from the date of the said order.

7. Being aggrieved by and dissatisfied with the order dated 14.9.2009 passed by the learned trial Judge the petitioner moved the criminal revision

before Hon"ble Court being CRR No. 3557 of 2009 which is pending.

8. One false allegation of cruelty O.P. No. 1 also filed an application u/s 156(3) of the Code of Criminal Procedure before the learned CJM,

Bankura against the petitioner. A chargesheet was framed u/s 498/ 232/ 406/ 506/ 34 of the Indian Penal Code on 7th August, 2009 against the

petitioner and other members by the Police. Being aggrieved the petitioner filed criminal revision application before the Hon"ble Court being CRR

No. 3532 of 2009 which is also pending.

9. By order dated 31.12.2010, the 6th Court of Learned Judicial Magistrate, Bankura allowed the application filed u/s 125 of the Code of

Criminal Procedure in Misc. Case No. 27 of 2009 directing the petitioner to pay a sum of Rs. 3000/- p.m. to the O.P. No. 1 and Rs. 2000/-p.m.

to each of the children.

10. Being aggrieved by and dissatisfied with the impugned order dated 31.12.2010 of the learned J.M., 6th Court, Bankura, the petitioner has

launched this revision.

11. It was contended by the learned counsel for the petitioner that the mother of the petitioner is very ill and she is totally dependent on him (the

petitioner) and he took loan. But still he has been paying @ Rs. 7000/- p.m. to the petitioner and her children. Further it was contended that she is

having a beauty parlour but yet he is still willing to take his wife back. It was also contended by him that the petitioner wilfully refused to come to

his place.

12. On the other hand, learned counsel for the O.P. No. 1 contended that the plea taken by the petitioner is totally false and rather the petitioner is

up and doing to spread a bad name of his wife by raising the canard that she is leading an adulterous life with another man. The learned counsel

further contended that the girl of the petitioner is reading in class VIII while the son is reading in class V and he has also purchased a flat and his

present salary is Rs. 35000/- after latest Revision of Pay & Allowances.

13. Now, it has to be considered if the order under challenge calls for any interference or not.

14. The marriage is admitted. So too the birth of the children and their study in respective classes. At page 4 of the impugned judgment it transpires

that present petitioner hurled allegation that the O.P. No. 1 was having an illicit relation with one man of village Maniknagar but the petitioner when

cross-examined, replied that he would not be able to produce any witness from Maniknagar to prove the allegation. This piece of allegation raised

by the husband regarding the chastity of his wife is no less than causing mental cruelty entitling the petitioner to refuse to live with him.

15. The O.P. No. 1 is also seen to have filed a case u/s 498A and other of the IPC against the petitioner.

16. From the impugned judgment of the learned court below it does not appear that the petitioner paid regularly maintenance to his wife or even

for his children. That matter has been taken care of well by the learned court below. Regarding income of the petitioner, there is no doubt that his is

holding a very good post under the Government of West Bengal.

17. Considering all aspects as put forward by the husband as well as the wife, the learned Magistrate held that the husband had sufficient means to

maintain his wife and children who were neglected. The judgment is a speaking one and ex-facie there appears to be no infirmity which a revisional

court is to see. The amount granted to the extent of Rs. 3000/- p.m. for the O.P. No. 1 and Rs. 2000/- p.m. each for two children of the petitioner

appears to be reasonable in view of the minimum need including educational expenses.

18. In the given facts and circumstances, I do not find any merit in the instant criminal revision and accordingly, the same stands dismissed on

contest.

19. I pass no order as to costs. Urgent certified copies, if applied for, to be issued according to rules.