

**(2002) 05 CAL CK 0009****Calcutta High Court****Case No:** C.R.R. No. 905 of 2001

Anal Adhikary

APPELLANT

Vs

Krishna Adhikary

RESPONDENT

**Date of Decision:** May 6, 2002**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 125

**Citation:** (2003) 2 ALD(Cri) 18 : (2002) 4 CHN 743 : (2003) CriLJ 297 : (2003) 2 DMC 570**Hon'ble Judges:** Malay Kumar Basu, J**Bench:** Single Bench**Advocate:** S.N. Biswas and Amal Sinha, for the Appellant;**Final Decision:** Dismissed**Judgement**

Malay Kumar Basu, J.

This revisional application is directed against the judgment and order dated 17th January, 2000 passed by the learned Sessions Judge, Birbhum in Criminal Motion No. 42 of 2000 of that court arising out of an order passed by the learned Judicial Magistrate, Bolepur dated 17th April, 2000 in Misc. Case No. 26 of 1999. The learned Sessions Judge reversed the findings of the learned Judicial Magistrate and directed the husband (the present revisional applicant) to pay a sum of Rs. 300/- per month in favour of the wife (the present opposite party) towards her maintenance. The relevant facts leading to this revisional application are in short as follows:--

The wife, Smt. Krishna Adhikary, filed a petition u/s 125 of the Cr. P. C. for maintenance against her husband, Anal Adhikary in the court of the said learned Judicial Magistrate. The learned Judicial Magistrate after hearing the petition rejected her prayer on the ground, inter alia, that the petitioner-wife (the P.W. 1) had stated in her cross-examination that she had been compelled to file that petition for maintenance in order to meet the expenses to be borne by her in fighting out the two litigations filed by her husband against her. The learned Magistrate has been of

the opinion that since the wife filed the case and prayed for maintenance only for the purpose of meeting the costs arising out of the said two litigations, it cannot be said that she has any need for money for the purpose of maintaining herself and being governed by such a thinking he has refused to grant any maintenance in her favour as prayed for.

2. Being aggrieved by that order, the wife preferred a motion before the learned Sessions Judge, Birbhum challenging the said order as erroneous and perverse. The learned Sessions Judge passed the impugned order after hearing both sides whereunder he set aside the aforesaid judgment and order of the learned Judicial Magistrate and awarded maintenance in favour of the wife at the rate Rs. 300/- per month payable by the husband to the wife with effect from the date of filing of the case.

3. Being aggrieved by that order the husband has preferred the present revisional application challenging the said order of the learned Sessions Judge as legally incorrect and unsustainable.

4. It has been argued by Mr. Sinha, learned advocate appearing on behalf of the petitioner-husband, (the opposite party has not entered her appearance before this court nor has appointed any counsel to conduct this case on her behalf in spite of having received the notice of this case) that the findings of the learned Judicial Magistrate were correct, inasmuch as, it was the flat statement of the wife-petitioner in her cross-examination that she had been forced to file this application for maintenance when the burden of meeting the costs of conducting the two litigations was imposed on her by her husband. Mr. Sinha contends that after such a statement is made by the wife, it cannot be assumed by any stretch of logic or inference that she required any money for maintaining herself. I am unable to subscribe to such a view. The above statement referred to and relied upon by Mr. Sinha again and again appears to have been made by the deponent while giving answer to a specific question put to her in her cross-examination. That was not her case as made out in her petition u/s 125 of the Cr. P. C. nor in her examination-in-chief. In her examination-in-chief she has made it manifestly clear that she has been passing her days at present in her father's house with great hardship because her father is a very poor man while her husband's economic condition was quite good having 5/6 bighas of paddy land and having regular private tuition through coaching classes in his own house and hence she has filed this maintenance case for getting maintenance for herself every month. In such a back-ground her stray statement, that too, in answer to certain specific questions put to her by the husband's counsel during her cross-examination have to be interpreted in its proper perspective. That statement that she was compelled to file this maintenance petition having been unable to bear the extra costs arising out of the said two litigations filed by her husband does- never mean that she filed this petition not for maintenance but for that purpose alone. That fact of extra costs

imposed upon her due to the sudden filing of two litigations by her husband may have accelerated the pace with which she was conducting the case or that fact might have prompted her to file the cases with greater speed. But it can never be assumed or presumed that she had no necessity for money for the purpose of maintaining herself while living in her father's house, particularly when it is an admitted fact that she has no independent income of her own and has been living on her father's income and kindness. It is not understood how the learned Judicial Magistrate would have failed to see the reason which is very much implicit in the entire evidence on record. From the evidence on record I find that it has been sufficiently made clear that the petitioner-wife is, unable to maintain herself and that she had to leave the house of her husband after being tortured and further that the husband has got income from paddy lands as well as from private coaching. Under such circumstances, the awarding of a meagre sum of Rs. 300/- per month by the learned Sessions Judge appears to be not at all fraught with any impropriety or unreasonableness.

5. In view of the above reasons, I do not find any justification for interfering with the order passed by the learned Sessions Judge granting maintenance in favour of the wife and therefore, in the result, the revisional application be dismissed the impugned order be affirmed.