

(1994) 02 CAL CK 0011

Calcutta High Court

Case No: Criminal R. No. 20 of 1993

Dipak Kumar Chatterjee

APPELLANT

Vs

Smt. Leena Chatterjee

RESPONDENT

Date of Decision: Feb. 25, 1994

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 125, 401, 482

Citation: (1994) 2 DMC 155

Hon'ble Judges: A.K. Dutta, J

Bench: Single Bench

Advocate: Purnasish Gupta, for the Appellant; Ajit Kumar Roy, for the Respondent

Final Decision: Dismissed

Judgement

A.K. Dutta, J.

By the instant Revisional Application u/s 401, read with Section 482 of the Code of Criminal Procedure (hereinafter shortened into Code), the petitioner-husband (hereinafter referred to as husband) has prayed the Court for quashing and/or setting aside the Order No. 75 dated 16.11.92 passed by the Chief Judicial Magistrate at Howrah in Misc. Case No. 773 of 1985 before him directing him (husband) to pay the arrears of maintenance to the petitioner-wife in terms thereof, on the grounds set forth therein.

2. The facts giving arise to the instant Revisional Application may shortly be stated as follows :

3. The parties were married according to Hindu Rites on 13.12.65. But they could not live together for long. The opposite-party-wife (hereinafter referred to as wife) had filed an application for maintenance against the husband u/s 125 of the Code on 6.9.1985, in the circumstances stated therein, on the ground that the husband had refused and neglected to maintain her. A suit for divorce, being Mat. Suit No. 189 of 1985, had been subsequently filed before the District Judge, Howrah, on 14.12.85. In

the said Mat. Suit on application by the wife for interim alimony, the learned District Judge by order dated 26.3.86 had allowed her alimony pendente lite against the husband at the rate of Rs. 300/- only per month. The interim alimony so allowed by the learned District Judge had subsequently been enhanced to Rs. 400/- per month by order dated 13.1.87 in the said Mat. Suit. The application filed by the wife u/s 125 of the Code, being Misc. Case No. 773 of 1985, had thereafter been disposed of by the learned Chief Judicial Magistrate at Howrah by order dated 10.4.89 allowing her application for maintenance and directing the husband to pay her maintenance at the rate of Rs. 500/- only per month. The opposite-party-husband in the said proceeding had brought to the notice of the Court the order of interim alimony passed by the learned District Judge in the aforesaid Mat. Suit against the husband which appears to have been taken note off by the learned Magistrate. After the passing of the aforesaid order dated 10.4.89 by the learned Magistrate for maintenance at the rate of Rs. 500/- only per month, the husband had filed an application before him (Magistrate) u/s 127 of the Code for modification of the order on 20.4.89 on the ground that he was paying maintenance pendente lite to the wife u/s 24 of the Hindu Marriage Act. The said application was rejected by the learned Magistrate by his order dated 6.7.89. The husband had thereupon come up for revision before this Court there-against in Criminal Revision Case No. 1194 of 1989 which was rejected on 11.3.90. The husband had thereafter filed an application before the learned Magistrate on 31.3.90 for adjustment of maintenance in view of the aforesaid two orders of maintenance passed by the two Courts, as indicated above. The said Application was allowed by the learned Magistrate by his order dated 4.2.91, whereupon the wife had moved this Court in Revision, being Criminal Revision Case No. 993 of 1991. The said Revisional Application was allowed by this Court by order dated 7.9.92 whereby the order dated 4.2.91 passed by the learned Magistrate, wherein he had taken into consideration the amount which was paid by the husband in terms of the order of the Matrimonial Court u/s 24 of the Hindu Marriage Act for working out of the figure of arrears maintenance payable by the husband, had been set aside. The learned Magistrate was directed thereunder to work out the arrears of maintenance due to the wife from the husband in the light of the observations made therein. The question of adjustment of the maintenance payable by the husband to the wife having thus been disposed of by the order of this Court in the aforesaid Criminal Revisional Case No. 993 of 1991, it is not open to the husband to re-agitate the point over again in the grab of the instant application.

4. It would also be pertinent to note that the Order of Interim Alimony passed by the learned District Judge concerned in the aforesaid relevant Matrimonial Suit and the order of maintenance passed by the learned Magistrate in the relevant application u/s 125 of the Code have not ever been challenged by the husband. Remaining unchallenged and unassailed, the said two orders passed by the competent Courts of law must clearly stand as such. The same could neither be allowed to be disturbed in the manner sought for by the husband in terms of the prayers in the

instant Revisional Application, even though there might be some arguable points in his favour.

5. It may be noted that in terms of the aforesaid two orders passed by the aforesaid two Courts, the wife would be entitled to maintenance from the husband at the rate of 400/- only per month (in terms of the order passed in the aforesaid Matrimonial Suit) and at the rate of Rs. 500/- only per month (in terms of the order passed by the learned Magistrate), totalling at Rs. 900/- only per month. The husband had stated in his evidence before the Court that he is Deputy Director (Mechanical Engineering), National Test House, Alipore, under the Government of India. His gross monthly salary admittedly, is Rs. 5,000/- only. But, as stated by him, his take home (nett) monthly salary amounts to Rs. 2,200/- only, after necessary deductions. Even though there might be quite some force in his contention that the wife would not be entitled to obtain maintenance from him at the rate of Rs. 900/- only per month in view of his aforesaid means and in view of the position and station in life of the parties, the order of Interim Alimony passed in the relevant Matrimonial Suit and the order for maintenance passed by the learned Magistrate u/s 125 of the Code could not conceivably be disturbed under this proceedings when the same had been allowed to remain unchallenged by the husband. The husband's prayers for adjustment could not clearly be entertained, in the aforesaid circumstances, by any manner of means. The husband not having availed himself of the remedies available to him under the law, the provisions of Section 482 of the Code could neither be invoked in the facts and circumstances amply and appallingly made clear above.

6. In view of the discussions above, there seems little substance in the instant Revisional Application, more particularly, when the impugned order dated 16.11.92 passed by the learned Chief Judicial Magistrate, Howrah, on the face of it, does not seem to suffer from any incorrectness, illegality or impropriety calling for interference by this Court in Revision. The Revisional Application is, accordingly, liable to fail, as it should.

7. Realising the difficulty somewhat tardily, the learned Advocate for the husband has prayed the Court for payment of the arrears of maintenance by instalments since he is not in a position to pay the same in lump at a time in view of his financial position, which is opposed by the learned Advocate for the writ mainly on the ground that the husband, who is going to retire shortly from his service, is likely to flee away from the country to avoid his liability to pay maintenance to her. But that could, by itself, be little ground for rejecting the husband's prayer if it otherwise merits consideration. It could be gathered during the hearing that the husband is left with about one year to retire from his service, more or less. There could, therefore, be little scope for any such apprehension if the husband is allowed to pay the arrears of maintenance, which, admittedly, stands at Rs. 11,904.00 only, in course of six months' time. Having regard to the fact that the husband has been regularly paying the current monthly maintenance to the wife in terms of the orders passed

by the Courts concerned; and regard being had to his monthly salary and the means disclosed by him, it seems to me that he should be allowed to pay the aforesaid arrears of maintenance at a monthly instalment of Rs. 2,000/- only so that the same could be liquidated in course of six months" time, in addition to current monthly maintenance, which would be reasonable, just, fair and modest to both the parties. In the aforesaid circumstances, I would feel inclined to allow the husband's belated prayer for instalment and direct him to pay to the wife the arrears of maintenance standing at Rs. 11,904.00 only at a monthly instalment of Rs. 2,000/- only per month for five months, and the balance on the sixth and last month. The first such instalment shall have to be paid by him by the 1st week of April next, and the remaining five instalments shall be payable by the seventh of each succeeding month. Failure to pay any one instalment (by him) would render the entire outstanding amount recoverable from him at once. The learned Magistrate concerned shall seek to recover the arrears of maintenance payable to the wife from the petitioner-husband in terms of this order.

The Revisional Application is, accordingly, disposed of. No order for costs.