

(2012) 07 CAL CK 0171

Calcutta High Court

Case No: CRR No. 67 of 2011

Sudeshna Bhaduri

APPELLANT

Vs

State

RESPONDENT

Date of Decision: July 6, 2012**Acts Referred:**

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

Hon'ble Judges: Dipak Saha Ray, J**Bench:** Single Bench**Advocate:** Achin Jana, Mr. Suman Chakraborty and Mr. Amal Kr. Datta, for the Appellant; Ayan Banerjee and Mr. Anirban Das, for the Respondent

Judgement

Dipak Saha Ray, J.

The present case arises out of an application u/s 401 of the Code of Criminal Procedure read with Section 482 of the Code of Criminal Procedure, 1973. It is directed against the judgment and order dated 30.11.2010 passed by the learned Chief Judicial Magistrate, Barasat, North 24 Parganas in Misc. Case No. 159 of 2009 u/s 125 of the Code of Criminal Procedure, 1973 rejecting the petitioner's prayer for maintenance.

2. The relevant facts of the present case are, in a nutshell, as follows:

The petitioner herein/wife initiated a proceeding u/s 125 of the Code of Criminal Procedure against her husband/O.P. No. 2 herein for maintenance of Rs. 15000/- p.m. In the said Misc. Case, the petitioner alleged inter alia that she was the legally married wife of the O.P. and one month after their marriage, the husband and his father without any rhyme or reason started inflicting torture on her both physically and mentally. They even tried to kill her and ultimately on 31.1.2009, the husband took the petitioner to her father's house and after keeping her there, he left the place. Subsequently, on 19.3.2009, the petitioner received summons from the court and came to know that her husband, the O.P. herein filed Matrimonial Suit against

her for dissolution of their marriage. Accordingly, the petitioner talked to her husband over telephone; but her husband threatened to kill her and for that reason she lodged G.D. with the Barasat P.S. on 20.3.2009. It was further alleged that the husband of the petitioner was a Doctor and he was posted at Haripal Rural Hospital and was getting Rs. 40,000/- p.m. The petitioner also contended that she had no independent source of income and was unable to maintain herself and her husband having sufficient means, refused and/or neglected to maintain her. Accordingly, the said Misc. Case was filed.

3. As against this, it appears from the impugned judgment that the husband/O.P. No. 2 contested the case by filing written objection wherein the material allegations made in the application u/s 125 of the Code of Criminal Procedure had been denied. It was the specific case of the husband that the petitioner/wife was a suspicious about his fidelity and she used to abuse him with filthy languages and used to pressurise him to purchase a flat at Barasat. In the said written objection, it was alleged that the petitioner earned Rs. 7,000/- to Rs. 8,000/- by doing private tuition and as such she is not entitled to get any maintenance.

4. In the said Misc. Case four points were considered by the learned Magistrate in arriving at his decision which are as follows:

1. Was the petitioner refused and neglected maintenance allowance by the OP?

2. Is the petitioner having no income of her own?

3. Is the petitioner entitled to relief as prayed for?

4. To what other relief the petitioner is entitled to?

5. It appears from the fact that the learned Magistrate discussed the evidence of the petitioner and the O.P. and arrived at a decision that the petitioner in her evidence has corroborated the contention of her application u/s 125 of the Code of Criminal Procedure. It is further observed by the learned Magistrate that the husband/O.P. No. 2 has failed to establish that the petitioner/wife had any independent income.

6. In the instant case, on perusal of the evidence of PW 1 and OPW 1, it appears that the petitioner stated that she had no independent source of income and was unable to maintain herself. It further appears that the husband/O.P. No. 2 though alleged in his evidence that the petitioner had some income but failed to establish the same by producing any documents. Now, it is well settled that unless the husband can show that his wife has some income, the wife's version about her nil income is to be accepted.

7. It is argued on behalf of O.P. No. 2 that the petitioner left her matrimonial home on her own accord and she refused to come back to her matrimonial home. Here, in this case, from the evidence on record, it appears that the in-laws of the petitioner used to torture her and ultimately she was taken to her father's house by her

husband and after keeping her there her husband left the place and he never attempted to bring her back to her matrimonial home.

8. It is also well settled that torture or ill-treatment, cruelty and/or inhuman behaviour to wife by the husband have been held to be sufficient reason for refusing to live with the husband.

9. The husband cannot keep away his liability to maintain his wife who has no independent source of income on th From the evidence of petitioner/wife, it further appears that she also lodged G.D. Entry with the Barasat P.S. that she was threatened by her husband. Moreover, the husband/O.P. No. 2 herein initiated matrimonial suit against the petitioner/wife for dissolution of their marriage. The said fact is enough for staying the wife separately from her husband.

10. The husband cannot keep away his liability to maintain his wife who has no independent source of income on the mere ground that she is living separately.

11. It has been held in a decision reported in 1995 SCC (Cri) 836 [Mannava Satyawati & Ors. vs. Mannava Malleswara Rao & Ors.] that "... we are of the view that the District Judge and the High Court fell into patent error in denying the maintenance to the appellants. The High Court fell into patent error in reaching the finding that since the wife and the children left the house on their own they were not entitled to the maintenance. In the facts and circumstances of this case the respondent was bound to maintain his wife and children.

12. Considering the said decision, it appears that living separately from the husband cannot be the ground for refusing the prayer of the petitioner/wife for her maintenance.

13. Having regard to the above facts and circumstances of this case and the discussions made above, I am of the opinion that the impugned order suffers from inherent illegality and impropriety and thus justifies interference by this court.

14. Accordingly, the instant revisional application succeeds.

15. CRR No. 67 of 2011 is allowed and in the nature and background of the case without cost.

16. The impugned order dated 30.11.2010 passed by the learned Chief Judicial Magistrate, Barasat, North 24 Parganas in Misc. Case No. 159 of 2009 u/s 125 of the Code of Criminal Procedure be set aside.

17. From the affidavit-in-opposition filed on behalf of the O.P., it is evident that the O.P. is a Medical Officer under Government of West Bengal and after all deductions his net salary is Rs. 35,000/- p.m. So, it may be reasonably presumed that his gross salary is around Rs. 50,000/- p.m.

18. From the discussions made above and also considering the income of the husband/O.P., status of the parties and considering also the high market price of essential commodities which is increasing day by day due to the fall of the value of money, it appears that the petitioner herein/wife is entitled to get maintenance of Rs. 12,000/- p.m.

19. Admittedly, the petitioner is getting Rs. 9,000/- p.m. as maintenance pendente lite in connection with Misc. Case No. 107 of 2009 arising out of Mat Suit No. 201 of 2009.

20. In view of the above facts and circumstances, the husband/O.P. is directed to pay Rs. 3,000/- p.m. to his wife/petitioner herein from July, 2012 in addition to what has already been allowed in the said Misc. Case No. 107 of 2009 as maintenance pendente lite.

21. The husband/O.P. is also directed to pay the maintenance for the month of July, 2012 by 15th August, 2012 and he shall go on paying the same month by month by 15th of the succeeding months.

22. Let a copy of this judgment be sent to the learned trial court for information and necessary action. Urgent Photostat certified copy of this judgment be supplied to the parties, if applied for, subject to compliance with all necessary formalities.