

**(2007) 12 CAL CK 0037**

**Calcutta High Court**

**Case No:** C.R.R. No. 3174 of 2004 and C.R.A.N. No. 2341 of 2005

Narayan Roy alias Lal

APPELLANT

Vs

Smt. Debjani Roy

RESPONDENT

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**Date of Decision:** Dec. 7, 2007

**Acts Referred:**

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

**Citation:** (2008) 1 CALLT 38

**Hon'ble Judges:** Kalidas Mukherjee, J

**Bench:** Single Bench

**Advocate:** Subhra Nag, for the Appellant; P.K. Roy, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

Kalidas Mukherjee, J.

This application has been filed at the instance of the petitioner/husband u/s 482 Cr PC praying for quashing of the order dated 18.10.2004 arising out of the MR 64 of 2000/TR 10 of 2000 passed by Shri S. Dey, Judicial Magistrate, 1st Court, Siliguri u/s 125 Cr. P.C. directing the husband to pay Rs. 1,200/- per month from the date of the order towards the maintenance allowance.

2. The case of the wife/petitioner as per averment made in the learned Court below in short, is that she is the legally married wife of the O.P./husband and the said marriage was solemnized on 19.11.1999 according to Hindu rites and ceremonies. After the said marriage, the O.P./husband took her to the matrimonial home at Deshbandhu para, Siliguri. In the night of "Boubhat" the wife/petitioner noticed that her husband did not participate in establishing matrimonial relations with her. On subsequent nights she found that her husband failed and refused to consummate the marriage by establishing sexual relationship with her. This refusal to have sexual relationship was the severe mental cruelty meted out to her for days together. Her husband also admitted his physical incapability to establish sexual relationship. Her

husband in view of such impotency, used to come late at night and leave home in the early morning. Her in-laws also started treating her with cruelty and because of such mental cruelty she could not stay in her matrimonial home. The O.P./husband did not pay any maintenance to her although he has business in press and printing earning more than Rs. 10,000/- per month. The wife/petitioner prayed for maintenance @ Rs. 1,500/- per month.

3. The O.P./husband contested the case before the learned Court below by filing a written objection contending, inter alia, that the alleged impotency was false and, in fact, the petitioner was physically unfit to establish sexual relationship. All other allegations have been denied by the husband.

4. The learned Magistrate upon consideration of the materials on record was pleased to allow the petition u/s 125 Cr. PC directing the O.P./husband to pay a sum of Rs. 1,200/- per month with effect from the date of passing the order. Being aggrieved by the said order passed by the learned Magistrate, the O.P./husband has preferred the instant application.

5. Learned Counsel appearing on behalf of the petitioner herein submits that the petitioner has not the financial capability to pay the maintenance as directed by the learned Magistrate and that there is no medical evidence to prove that the petitioner herein is impotent. It is contended that the wife/O.P. herein left the house of the husband out of her own volition and the O.P. was always willing to take her back, but she refused. It is further submitted that the petitioner herein is now jobless and the learned Magistrate did not consider the case of the husband/O.P. It is submitted that the telephone connection in the house of the husband was disconnected. The learned Counsel submits that the learned Magistrate was not justified not passing the impugned order.

6. The learned Counsel appearing on behalf of the O.P./wife has submitted that the husband on different occasions moved the Hon"ble Court to harass the wife. It is submitted that the husband maintains a telephone and when W/A was issued, immediately thereafter the husband came to the Hon"ble High Court with a prayer to stop the execution of the W/A and paid the amount of maintenance. It is contended that the husband suppressed his own income and the learned Magistrate after considering the evidence on record granted the maintenance @ Rs. 1,200/- per month and there is no ground to interfere with the said order passed by the learned Magistrate.

7. The marriage between the parties is an admitted fact. It is in the evidence of P.W. 1 that on the date of "Boubhat she did not have any physical relation with her husband and on being asked, her husband told that he was not physically fit for sexual relation and he was taking medicine to recover from that ailment. It is also in her evidence that so long she stayed in her matrimonial home she never had sexual relation with her husband. It is in her evidence that the O.P. never gave any

maintenance allowance to her and the O.P. used to tell her that he had an income of Rs. 10,000/- from the press. It is in her evidence that she has no source of income.

8. O.P. W1 Narayan Roy in his cross-examination stated that he did not provide money to his wife prior to the filing of this case. In his cross examination he has admitted the telephone bill of his residence for the period from 01.06.2004 to 31.07.2004 which has been marked Exhibit "A". He has alleged in his evidence that his wife did not allow him to cohabit with her after marriage and thereafter she left his house. It is in his evidence that he was working in the press and thereafter he lost the job and joined the East India Trading Co., but the company was closed due to some reason and since then he is unemployed. He has stated that he can provide Rs. 500/- per month to his wife as maintenance. It is, therefore, clear that the O.P./husband did not disclose his income and the learned Magistrate has rightly held that the O.P. is an able bodied man and liable to pay maintenance. Having regard to the evidence of both sides, the learned Magistrate has been pleased to grant Rs. 1200/- per month as maintenance allowance. Learned Magistrate considered all the aspects of the case and on perusal of the impugned Judgment and the evidence adduced by both sides, I find that no illegality or material irregularity was committed by the learned Magistrate in passing the impugned order. There is no ground to interfere with the impugned order passed by the learned Magistrate.

9. In the result, the application u/s 482 Cr. PC fails. The said application along with CRAN No. 2341 of 2005 are, therefore, dismissed. Interim order, if any, stands vacated.

Urgent xerox certified copy, if applied for, be handed over to the parties as early as possible.