

(2012) 03 CAL CK 0050**Calcutta High Court****Case No:** C.R.R. No. 1725 of 2011

Sri Atul Kumar Dutta

APPELLANT

Vs

Smt. Baby Dutta

RESPONDENT

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

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

Citation: (2012) 2 CALLT 630**Hon'ble Judges:** Prasenjit Mandal, J**Bench:** Single Bench**Advocate:** Sarbesh Pal, for the Appellant;**Final Decision:** Dismissed**Judgement**

Prasenjit Mandal, J.

This application is at the instance of the husband /opposite party and is directed against the order dated April 28, 2011 passed by the learned Judicial Magistrate, 5th Court, Paschim Medinipur in M.R. Case No. 88 of 2010 u/s 125 of the Cr.PC thereby granting maintenance at the rate of Rs.5,000/- per month from the date of the order. The wife/opposite party herein instituted a maintenance proceeding u/s 125 of the Cr.PC against her husband/petitioner herein contending, inter alia, that they were married in March 9, 2008 according to Hindu customs and rights and then, they lived together. The husband was a widower at the time of marriage and he has two daughters by his first wife and they were about 33 years and 18 years of age respectively at the time of marriage. They are thalassaemia patients. The husband is a Maintenance Officer of the Shipping Corporation of India and he earns Rs.45,000/- per month. Beside such income from service, the husband gets Rs. 15,000/- per month as house rent from the tenants. Thus, he has sufficient means to pay the maintenance. After marriage the husband went to the sea on voyage and the two daughters of the husband started torturing upon the wife/ opposite party herein. The wife informed the husband everything in vain. Even the husband assaulted her

and so under the compelling circumstances, she has been residing at her father's house. She has no income of her own. The husband did not pay her any maintenance and so she has claimed maintenance of Rs. 15,000/- per month.

2. The contention of the husband is that the marriage was held between them on negotiation and on knowing everything about the first marriage and the two daughters of the husband, the wife agreed to marry him. The allegation of torture is totally false. The husband never assaulted the wife at her father's house as alleged and the diary with the local Police Station was lodged falsely. So, the application should be dismissed.

3. Now the question is whether the learned Magistrate is justified in allowing the maintenance to the wife/opposite party herein.

4. Upon hearing the learned Advocate for the petitioner and on perusal of the materials on record. I find that the marriage between the two is not disputed at all. The wife has deposed on oath that she was subjected to torture and ill treatment by her stepdaughters and as such, she was compelled to leave from matrimonial home on June 18, 2009. Both the parties have adduced evidence in support of their respective contentions and upon analysis of the evidence on record, the learned Magistrate has recorded that there was no adjustment between the wife and her stepdaughters and the husband/petitioner herein remained a helpless mute spectator in the matter and under the circumstances, the wife was compelled to stay at her father's house to maintain her dignity and peace.

5. It may be recorded herein that the husband filed a suit for restitution of conjugal rights four months after the filing of the application for maintenance. The husband has not adduced any evidence that he ever paid any maintenance to the wife, since she was living separately. Of course, the learned Magistrate granted interim maintenance at the rate of Rs.2,000/-per month and the husband paid such amount to the wife.

6. So far as the income of the husband is concerned, the wife has clearly stated that her husband is a Maintenance Officer of the Shipping Corporation of India and earns Rs.45,000/- per month. The husband denied such contention, but he did not specifically say as to his earning from his service. Thus. I find that the husband has not only evaded to say his income but who withheld the best evidence which he could have produced from his office. He has also denied his income from the rent.

7. It may be noted herein that the wife stayed with the husband for sometime and so, she is the best person to say what are the sources of income of her husband. Since, the husband has not filed any document relating to his income from his employment, the statement of the wife in this regard cannot be disbelieved.

8. Moreover, I find that a nominal amount of maintenance of Rs.5,000/-only per month has been granted although, the husband is a Maintenance Officer of the

Shipping Corporation of India. There is no convincing material in support of the contention of the husband that he gets salary for six months only in a year. Therefore, the amount of maintenance as granted by the learned Judicial Magistrate cannot be said to be excessive at all. Rather it is on the lower side.

9. This being the position, I do not find that the impugned order suffers from illegality, incorrectness or impropriety and the learned Judicial Magistrate has made an elaborate discussion as to why the wife is entitled to get maintenance from the husband/petitioner herein and this finding is not perverse at all. As such, there is no scope of interference with the impugned order. Accordingly, the revisional application is devoid of merits and is dismissed.

Considering the circumstance, there will be no order as to costs.

Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocate for the parties on their usual undertaking.