

(1988) 03 CAL CK 0041**Calcutta High Court****Case No:** None

Gopal Chandra Karar

APPELLANT

Vs

Smt. Sadhana Karar and Another

RESPONDENT

Date of Decision: March 2, 1988**Acts Referred:**

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

Citation: (1988) CriLJ 1868**Hon'ble Judges:** Gobinda Chandra Chatterjee, J**Bench:** Single Bench**Judgement**

@JUDGMENTTAG-ORDER

Gobinda Chandra Chatterjee, J.

1. This revisional application is directed against the order dt. Dec. 12, 1984, passed by the Judicial Magistrate, Howrah in Misc. Case No. 1147 of 1980 whereby the learned Magistrate was pleased to allow an application u/s 125, Cr.P.C. preferred by Sadhana Karar as against her husband Gopal Chandra Karar.

2. Sadhana's case was that she was being ill-treated and assaulted by her husband Gopal and by Gopal's mother, that sometimes she used to be denied food at nights and that a climax arose when at last she was driven out from the house with the warning not to come back again. Her further case was that her husband has since married another woman named Abha. The case of the O.P. husband was that she was never assaulted and tortured in the way as alleged, that she has left his house on her own accord on the simple ground that her parents wanted the husband "to go domesticated".

3. Before the learned Magistrate as many as 12 P.Ws. were examined on the wife's side. The O.P. husband examined himself and none else. The learned Magistrate heard the witnesses and entered his judgment in favour of the wife and directed the

husband to go on paying a sum of Rs. 250/- (Rupees two hundred and fifty per month) by way of maintenance to his wife. Being aggrieved thereby the husband Gopal Chandra Karar has preferred this revisional application.

4. Mr. Roy, the learned Advocate appearing for the husband, takes me through the judgment of the learned Magistrate and contends that the judgment is a perverse one and that, therefore, the only alternative left to this Court is to set aside the judgment by way of allowing the application.

5. Put in a syllogistic form, the argument advanced by Mr. Roy assumes the following fashion:

The Judgment is completely silent about the deposition of the witnesses adduced on the side of the petitioner and the O.P. Therefore the judgment is perverse.

The perverse judgment is required to be set aside.

6. With respect to Mr. Roy I must say that the argument is fallacious because of the obvious reason that the judgment in question is not at all a perverse one. The attribute of perversity was taken for granted by Mr. Roy and hence the erroneous conclusion arrived at by him.

7. Mr. Basu appearing on the side of the wife makes a distinction between an improper judgment and a perverse judgment. It is true, contends Mr. Basu, that the Judgment in question is most unhappily worded, silent as it is on the oral testimony adduced by as many as 12 witnesses. Nevertheless, continues Mr. Basu, the Judgment cannot be characterised as a perverse one. A judgment may be improper or otherwise defective, but an improper judgment, according to Mr. Basu, need not necessarily be a perverse judgment. I fully concur in this view of the matter expressed by Mr. Basu. I agree with Mr. Basu when he says that a perverse judgment is one wherein findings arrived at by the Judge or Magistrate are against the weight of evidence on the record.

8. Applying the aforesaid test let us now see and examine for ourselves as to whether the judgment under consideration is or is not a perverse one. It would transpire from the record that the wife examined herself as P.W. 1. She made it clear in her deposition that she used to be ill-treated and assaulted by her husband now and then that her mother-in-law used to even deny her food at nights compelling her also to lie down and take her bed within cowsheds. In her evidence she also made it clear that she was one day driven out from the house and that she was carrying at that time. Mr. Roy has taken me through a portion of her deposition and has argued thereupon that it is not probable that the lady was driven out by her husband seeing that at least on some occasions the husband lived with her in her father's house.

9. I have considered the deposition adduced by the lady. It would appear from her evidence that the husband chose to spend with her on 3 rare nights which were

auspicious and which are styled as "Jamai Sasthi". The clear-cut evidence of the lady is that she was enjoyed in those nights by her husband and that a few days thereafter she came to know that she was pregnant. The probability of this version was believed by the learned Magistrate. The lady was corroborated in material particulars by two of her brothers examined as PW. 2 Amarendra and PW. 3 Satyendra. It is true that the learned Magistrate did not refer to any part of the evidence of these witnesses but then the learned Magistrate was sure that the husband had married again for the second time. This finding of the learned Magistrate has been most unhappily worded in the judgment. In the judgment it is said that the husband O.P. is now residing with another woman. The weighty evidence on record which stands unimpeached is that the husband has married for the second time on 30th Sravan 1386 B.S. On that night he married Abha, daughter of one Ananta Kumar Roy. About this second marriage the evidence on record is very reliable inasmuch as at least two local men, viz., P.W. 5 Gopal and P.W. 6 Nemai pledged their oath regarding this fact. They were also corroborated by the local barber P.W. 7 Bankim Das. As I have said repeatedly, the judgment is silent all about this but for that reason alone the judgment cannot be assailed as perverse. As Mr. Basu has put it, the conclusion arrived at by the learned Magistrate is right even though that is not backed by a good judgment.

10. From what has been said above it is clear that there is no good reason as to why the judgment under consideration should be set aside by denouncing it as perverse.

11. With regard to the quantum of maintenance at the rate of Rs. 250/- (Rupees two hundred and fifty) per month, I do not think that the learned Magistrate did any wrong because it requires no argument to convince a prudent man that in these hard days that poor sum of money is badly required for maintenance by a literate woman of our society.

12. In the result, the revisional application fails and it is dismissed. The Rule is discharged.