

Dilip Kumar Das Vs Tanusree Das and Another

Court: Calcutta High Court

Date of Decision: Aug. 5, 1994

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 125

Citation: 99 CWN 360

Hon'ble Judges: Nripendra Kumar Bhattacharyya, J

Bench: Single Bench

Advocate: Debaprasad Adhikari and Jiban Hari Mallick, for the Appellant; Subrata Kumar Dutt and None for the State, for the Respondent

Final Decision: Dismissed

Judgement

N.K. Bhattacharyya, J.

By this revision the husband petitioner has challenged the order dated 23rd November, 1993 passed in Misc.

Case No. 32 of 1993 by the learned Chief.Judicial Magistrate, How rah directing payment of interim maintenance allowance to the wife opposite

party. The short fact of this case is that the petitioner and the opposite party no. 1 herein are the husband and wife and their marriage was

solemnized on 24th November, 1990 according to the Hindu rites and customs. After the marriage they lived together as husband and wife. In the

application u/s 125 of the Code of Criminal Procedure the wife, opposite party no. 1 herein, stated that during the time of her marriage her father

gave gold ornaments, utensils, furniture, bedding etc. She alleged that she was not allowed by the members of the husband"s family to use the gold

ornaments. During her stay in her matrimonial home she was tortured continuously by her sister-in-law who has been deserted by her husband. She

further stated that her husband had taken her occasionally to her father"s house and she complained to her husband about the torture by her sister-

in-law but the husband could not find out any alternative for her.

2. Ultimately, the husband told her to reside in her father"s place for sometime so that he could make an alternative arrangement for living

separately from his family along with her. Accordingly, she started living with her father"s family. Till now, no arrangement was made for alternative

accommodation by her husband. During this period of her stay in her father"s house it is alleged, the husband failed and neglected to maintain her

and she has no independent income and or means to maintain herself. On such allegation the wife, opposite party no. 1 herein, filed an application

before the court of the learned Chief Judicial Magistrate, Howrah u/s 125 of the Code of Criminal Procedure, which was registered as Misc.

Case No. 32 of 1993. The husband, petitioner herein, was directed to show cause. But in the meantime the wife, opposite party no. 1 herein,

made another application in that proceeding for interim maintenance on the ground that during the continuance of the proceeding she has no means

to maintain herself. The husband opposite party (petitioner herein) in that proceeding made a written objection to that application for interim

maintenance. The learned magistrate after hearing the learned Advocates for the parties and considering the materials on record awarded

maintenance allowance to the wife, opposite party no. 1 herein, at the rate of Rs. 400/- per month from the date of the order. Against the said

order the petitioner husband has come up before this Court in revision.

3. Appearing for the petitioner husband learned. Advocates, Mr. Debaprasad Adhikari with Mr. Jiban Hari Mallick; submitted that there is no

allegation in the petition u/s 125 Cr.P.C. by the wife that the husband never tortured her or that she was driven out from her matrimonial home by

her husband, the petitioner herein. In such circumstances, according to the learned Advocates as aforesaid, the wife opposite party no. 1 herein is

not entitled to maintenance.

4. Mr. Subrata Kumar Dutt, learned Advocate appearing for the wife, opposite party no. 1 herein, on the other hand, contended that though there

is no allegation in the petition of opposite party no. 1 u/s 125 of the Code of Criminal Procedure that she was driven out by her husband from her

matrimonial home but it has been alleged by her in her petition u/s 125 of the Code of Criminal Procedure that as per the dictate of the husband

she went to reside in her paternal house on the assurance of the husband that he would find out an alternative arrangement for living separate with

her. Mr. Dutt further contended that there is no denial that since the days of her stay in her paternal house she was not being maintained by the

husband, the petitioner herein, and in a sense the petitioner husband failed and neglected to maintain her. Mr. Dutt further contended that an

application for ad-interim maintenance is in the nature of an interlocutory proceeding and the petitioner has not yet filed his show cause to the

petition u/s 125 of the Code of Criminal Procedure and the matter is pending for adjudication. Mr. Dutt also contended that that was the position

till the date of the order impugned but subsequently the petitioner husband filed his objection to the petitioner u/s 125 of Code of Criminal

Procedure. But the stage has not yet arrived for adjudication of the application u/s 125 of the Code of Criminal Procedure on its merit. On the

above submission Mr. Dutt contended that until and unless an ad-interim maintenance is awarded in favors of the wife, opposite party no. 1 herein,

she cannot sustain her maintenance as yet she has no independent income of her own. Mr. Dutt further contended that till date of the impugned

order there was nothing on record to show that the husband petitioner maintained the wife, opposite party no. 1 herein, since her stay in her

paternal house.

5. Mr. Adhikari learned Advocate pointed out that subsequent to the impugned order the husband petitioner filed his show-cause.

6. Heard the submissions of the learned Advocates for the parties and considered the materials on record.

7. It appears that till the date of the impugned order there was nothing on record before the trial court to show that the husband did not ask the

wife to stay in her paternal home with the assurance that he would find out an alternative accommodation for her to live separate with her from his

family. There is also nothing on record to counter the allegation of the wife opposite party no. 1 herein that she was continuously tortured by her

sister-in-law. There was also no material on record to disprove the allegation of the wife before the Court that she was not maintained by her

husband since her stay in her paternal home. The matter is awaiting final adjudication as the show-cause petition has already been filed. But till then

the wife shall have to be maintained by the husband in such circumstances. I find that the learned Magistrate did not commit any error in awarding

interim maintenance of Rs.400/- per month to the wife. In that view of the matter I find no merit in this revision application.

8. Mr. Adhikari submitted that the quantum of maintenance should be considered. The quantum has been fixed by the Court below on

consideration of the materials placed before him. Sitting in revision. I cannot interfere with the same.

9. The revision application is accordingly dismissed.

10. The learned Chief Judicial Magistrate is directed to dispose of the application u/s 125 of the Code of Criminal Procedure as expeditiously as

possible, preferably within a period of one month from the date of the order.

11. It is, however made clear that the money which has already been paid by the husband be adjusted against the payment to be made by the

husband to the wife.

12. The parties are given liberty to apply before the learned Magistrate for early hearing of the application u/s 125 Cr.P.C. with Xerox copies of

this order. Let Xerox copies of this order be made available to the learned Advocates on record for both parties on their usual undertakings and

upon compliance with necessary formalities.