

(1994) 08 CAL CK 0030

Calcutta High Court

Case No: Criminal Revision Case No. 547 of 1994

Dilip Kumar Das

APPELLANT

Vs

Tanusree Das and
Another

RESPONDENT

Date of Decision: Aug. 5, 1994

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - 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, Howrah 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.