

(1996) 07 CAL CK 0043

Calcutta High Court

Case No: Criminal Rev. No. 132 of 1995

Sambhu Nath Srimani

APPELLANT

Vs

Bulbul Srimani

RESPONDENT

Date of Decision: July 18, 1996**Acts Referred:**

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

Citation: 100 CWN 1021**Hon'ble Judges:** Asish Baran Mukherjee, J**Bench:** Single Bench**Advocate:** Sardar Amjad Ali, for the Appellant; Pinaki Ranjan Mitra, for the Respondent**Final Decision:** Dismissed

Judgement

Asish Baran Mukherjee, J.

The revisional application is directed against the Order dated 10th october 1994 passed by Judicial Magistrate, 4th Court. Howrah Misc. Case No. 24 of 1993 being u/s 125 Cr.P.C. The O.P. wife preferred an application u/s 125 Cr.P.C before the Chief Judicial Magistrate, Howrah with the averment of Marriage with the petitioner on 15th August, 1988 out of which a male child was also born on 25th June, 1990, She being a victim of torture and cruelty, she had to leave the matrimonial home on 5th November. 1990. The petitioner having sufficient means fails to maintain his wife and child, though they have got no independent source of income.

2. The husband contested the proceeding asserting that his wife left matrimonial home voluntarily on 5th November. 1990 along with the child with the promise of coming back within a week. She did not come back and all attempts to pursue her to do so proved ineffective. She also resorted to an application before, the West Bengal Social Welfare. Advisory Board with false allegations, in order to humiliate the petitioner who is required to maintain his widow mother, unemployed brother and unmarried sisters.

3. After conclusion of trial an award was made by Judicial Magistrate on 12-11 93 granting maintenance to the extent of lis. 800/- for the wife and Rs. 500/- for the minor son.

4. The petitioner preferred a revisional application before this Court and by order dated 3rd December, 1993 there was a stay with a direction to pay Rs. 500- per month as adhoc maintenance to the wife and child. Revisional application was exposed of on 10th August, 1994 when entitlement of maintenance on the part of the wife and child was affirmed but as far as the quantum of the arrear there being no proper scrutiny by the Lower Court, direction was given to consider the same.

5. By the impugned judgment and order dated 10th October. 1994 an award was passed by the Judicial Magistrate, granting maintenance at the rate of Rs. 509- to the wife and Rs. 300/- per month to the child w.e.f, 12 11 93 that is the date of disposal of the proceeding u/s 125 Cr.P.C. by his predecessor in Office.

6. It Is alleged by the petitioner that inspite of the direction given by the Court the evidence adduced relating to the quantum as also the date of starting of the award were not properly dealt with by the Ld judicial Magistrate. It has been argued for the petitioner that while (sic) the quantum for the second time the Trial Magistrate did not consider the evidence, as much as there is no evidence on record to show that the petitioner, husband is a draftsman- But a scrutiny of the evidence of the present petitioner himself which was examined as O.P.W. No. 1 in the Trial Court clearly shows that he admitted his earning as a draftsman. Therefore, the argument is without any substance, A scrutiny of the impugned judgment shows that the order is fortified with reasons for allowing the quantum and the Id. Judicial Magistrate "took it a consideration the income of the petitioner and also his coming capacity on the basis of evidence given by the present petitioner himself. So far as the petitioner"s husband case that he is required to maintain a large number of dependent including mother, brother, sisters, it appears from the judgment that inspite of assertion to that effect from the judgment that inspite of assertion to that effect from the judgment that inspite of assertion to that effect in the written objection filed by the present petitioner, there was no statement on oath given by the petitioner himself during trial. Therefore, the more averment on the written objection cannot prove the said story. So far as the starting point of the award the Id. Judicial Magistrate took a practical view of the matter when he directed the same to take effect from the date of disposal of this application u/s 125 Cr.P.C. for the first time for his predecessor in office and did not chose the date of filing of the application itself. The view taken by the Ld. Judicial Magistrate is practical. Accordingly. I do not find any, merit in the revisional application which is dismissed on contest.