

## Tandra Sil Sarkar Vs The State of West Bengal

**Court:** Calcutta High Court

**Date of Decision:** Aug. 29, 2014

**Acts Referred:** Criminal Procedure Code, 1973 (CrPC) â€” Section 125, 401, 482

**Hon'ble Judges:** Ranjit Kumar Bag, J

**Bench:** Single Bench

**Advocate:** Tapan Dutta Gupta, Advocate for the Appellant; Dilip Kumar Chatterjee, Advocate for the Respondent

**Final Decision:** Disposed Off

### Judgement

R.K. Bag, J.

The petitioner has preferred this criminal revision under Sections 401 and 482 of the Code of Criminal Procedure, 1973

challenging the judgment and order dated 19th November, 2013 passed by learned Additional District and Sessions Judge, Fast Track Court No.

4, Barasat, North 24-Parganas in Criminal Revision No. 210 of 2012, which arises out of order dated 25th September, 2012 passed by learned

Chief Judicial Magistrate, Barasat, North 24-Parganas in M. Case No. 522 of 2010 u/s 125 of the Code of Criminal Procedure, by which learned

Court below refused to grant interim maintenance to the petitioner-wife, but granted interim maintenance in favour of minor daughter of the

petitioner at the rate of Rs. 5,000/- per month with effect from 30th September, 2010.

2. Mr. Tapan Dutta Gupta, learned counsel appearing on behalf of the petitioner-wife submits that learned Additional Sessions Judge has acted

illegally by modifying the order of learned Magistrate who granted interim maintenance in favour of the petitioner-wife at the rate of Rs. 5,000/- per

month with effect from 30th September, 2010. Mr. Dutta Gupta also submits that learned Additional Sessions Judge cannot take into

consideration the income of the petitioner-wife as homeopathic doctor as no evidence in this regard is adduced before learned Magistrate. Mr.

Dutta Gupta has relied on the decision of our High Court in the case of ""Vinod Kumar Lodha V. Mrs. Reena Lodha (nee Jain)"" reported in (2009)

1 CCrLR (Cal) 473 and also the decision of the Apex Court in the case of Pyla Mutyalamma @ Satyavathi Vs. Pyla Suri Demudu and Another, in

support of his above contention.

3. On the other hand, Mr. Dilip Kumar Chatterjee, learned counsel appearing on behalf of the opposite party-husband submits that the petitioner-

wife left matrimonial home voluntarily and that she earns about Rs. 70,000/- per month as a homeopathic doctor and as such, learned Additional

Sessions Judge has rightly refused to grant interim maintenance in favour of the petitioner-wife.

4. On consideration of the decision of the Apex Court reported in Pyla Mutyalamma @ Satyavathi Vs. Pyla Suri Demudu and Another, I find that

the proposition of law laid down by the Supreme Court is that the High Court cannot reappreciate the evidence while exercising the power of

revisional jurisdiction. It is also laid down by the Supreme Court in paragraph 16 of the said decision that ""where finding is a negative one, the High

Court would entertain the revision, re-evaluate the evidence and come to a conclusion whether the findings or conclusions reached by the

Magistrate are legally sustainable or not as negative finding has evil consequences on the life of both the child and the woman"". In the instant case,

learned Magistrate passed the order of interim maintenance and the said order of interim maintenance was modified by learned Additional Sessions

Judge and as such, there is no scope for appreciation or reappreciation of the evidence, because no evidence is adduced before the Trial Court at

the time of granting interim maintenance. Moreover, learned Additional Sessions Judge has recorded negative finding by refusing to grant interim

maintenance to the petitioner-wife and as such, it is necessary to consider the materials on record and the submissions made by the learned

counsels of both parties in order to come to the conclusion whether the findings recorded by learned Additional Sessions Judge is sustainable in

law. The proposition of law laid down by our High Court in paragraph 16 of the decision of ""Vinod Kumar Lodha V. Mrs. Reena Lodha (nee

Jain)"" reported in (2009) 1 CCrLR (Cal) 473 is as follows:

The words "unable to maintain herself" would mean the means available to the deserted wife while she was living with her husband and would not

take within itself the efforts made by the wife after the desertion to survive somehow"".

According to this decision of our High Court, the Court should not take into consideration the income of the wife if any, which is earned by her

after leaving the matrimonial home. In the instant case the petitioner-wife used to practise as homeopathic doctor while she was staying in the

matrimonial home, though there is no evidence at this stage to infer about the specific income of the petitioner-wife as homeopathic doctor.

5. Without deciding the issue of income of the petitioner-wife in the light of the allegation and counter allegation made by both parties before the

Court of learned Magistrate, it will be wise and prudent on my part to leave the issue to be decided by learned Magistrate on the basis of the

evidence to be adduced by both parties during final hearing of the maintenance proceeding. Since it is undisputed fact that the petitioner-wife is a

homeopathic doctor and since it is established from the materials on record that the petitioner-wife used to earn by practising as a homeopathic

doctor while she was staying in the matrimonial home, I cannot persuade myself to interfere in the order passed by learned Additional Sessions

Judge, by which he refused to grant interim maintenance to the petitioner-wife. However, it is the discretion of learned Magistrate to decide the

issue of maintenance to be given to the petitioner and the daughter of the petitioner after consideration of the evidence to be adduced by the parties

before the Court of learned Magistrate.

Learned Magistrate is directed to expedite the hearing of the maintenance proceeding and to dispose of the same within a period of four months

from the date of communication of this order without granting unnecessary adjournment to either of the parties.

With the above observation the criminal revision is disposed of.

The department is directed to send down a copy of this judgment to the Court of learned Magistrate for favour of information and necessary

action.

Criminal Section is directed to supply urgent Photostat certified copies of this order to the parties, if applied for, after compliance with all necessary

formalities.