

In The Matter Of Mst. Laila Bibi @ Layla Bibi

Court: Calcutta High Court

Date of Decision: March 7, 2019

Acts Referred: Code Of Criminal Procedure, 1973 " Section 117, 117(2), 125, 138, 145, 147, 354(6), 401, 482

Hon'ble Judges: Subhasis Dasgupta, J

Bench: Single Bench

Advocate: Amal Kumar Samanta, Dilip Kr. Maity, Anima Maity

Final Decision: Disposed Off

Judgement

The impugned order dated 8.5.2018 passed by learned Additional District and Sessions Judge, Contai, Purba Medinipur in Criminal Revision No.2/2017

modifying the order of the learned Judicial Magistrate, 1st Court, Contai, Purba Medinipur granting maintenance at the rate of Rs.1,000/- per month

for the wife and Rs.750/- per month for each of the two daughters with effect from the date of order instead of date of application is the subject of

challenge in this revisional application under Sections 401 and 482 of the Code of Criminal Procedure.

Learned advocate for the opposite party-husband is present. The solitary contention raised in this revisional application is that learned Judge, while

exercising the power of revision in connection with Criminal Revision No. 2/2017 did not duly appreciate the facts and circumstances of the case, and

simply modified the maintenance order granted by the learned Magistrate with effect from the date of this order, what was initially granted by the

learned Magistrate with effect from the date of application.

In reply to the stand taken by the revisionist, the learned advocate for the o.p./husband submits that the learned Judge rightly interfered with the order

of learned Magistrate giving effect from the date of order instead of giving effect from date of application, as no sufficient reasons were mentioned in

the order itself, while granting maintenance by the learned Magistrate.

Admittedly, revisionist wife is legally wedded wife of o.p./husband. Paternity of the daughters born out of their wedlock went undisputed during the

trial of this case. Admittedly, the revisionist-wife has been staying apart from her husband after she was deserted by her husband.

Further admitted position is that the learned advocate for the o.p. does not dispute with the quantum of maintenance already granted by the learned

Magistrate as regards the wife and two daughters as well.

What is basically disputed in this case is that what should be the operative date for giving effect to the order of maintenance. Is it effective from the

date of order or it from the date of filing the application? From the order of the learned Magistrate, 1st Court, Contai, Purba Medinipur in connection

with Misc.Case.285 of 2010, it appears that learned Magistrate considered the fact that the revisionist-wife did not file any petition praying for interim

maintenance though the case was filed sometime in 2010. Upon considering such fact together with needs of wife and her economic status, the

learned Magistrate proceeded to fix quantum of maintenance with effect from the date of application.

Learned Judge in connection with Criminal Revision No.2/2017 observed that since the wife did not pray for any order of interim maintenance during

the trial of the case before learned court below in order to prevent her starvation, the wife could be reasonably construed that the wife had no

financial hardship, otherwise she would have initiated a prayer for interim maintenance. It is the moral obligation of the husband to provide

maintenance to his wife and daughters born out of their wedlock. The right to have maintenance from husband is also recognized in the statute itself.

The statutory right cannot be taken away merely on the premise that the wife did not file any application at the right point of time seeking interim

maintenance. What is necessary in this case is that while granting maintenance, the learned Magistrate has to assign reasons so as to make the order

expressive. The assigning of reasons would make an order lively and meaningful, the way in which legislature contemplated.

It would be profitable here to refer the provision sub-section (6) of Section 354 of the Code of Criminal Procedure, which runs as follows:

“354. Language and contents of judgment.- (6) Every order under Section 117 or sub-section (2) of section 138 and every final order made under

Section 125, section 145 or section 147 shall contain the point or points for determination, the decision thereon and the reasons for the decision.”

What is exactly necessary in the present context of this case is that while passing order under Section 125 Cr.P.C. granting or disallowing

maintenance, the learned Magistrate must assign reasons, possibly in order to make it expressive. No special reason is, however, necessary to be put

in, in order to give effect to the order of maintenance. Learned Magistrate in the given circumstances of the case proceeded to fix quantum of

maintenance giving effect from the date of the order upon consideration of the fact that the statutory right of the interim maintenance, though not

exercised, but same cannot be taken away. The reasons offered by the learned Judge in connection with revisional application in that view of the

matter appears to be not sufficient enough so as to make it sustainable. The findings thus reached by the learned Judge in connection with the

revisional application with regard to modification giving effect of maintenance allowance thus cannot go unaltered.

The impugned order dated 8th May, 2010 passed by the learned Additional District and Sessions Judge, Contai, Purba Medinipur in Criminal Revision

No.2/2017 modifying the maintenance with effect from the date of order is modified to the extent, mentioned hereinbelow.

The order granting maintenance, as passed by the learned Magistrate in connection with Misc.Case No.285 of 2010 under Sections 125 Cr.P.C. shall

be given effect from the date of application instead of date of the order. The other parts of the order pertaining to fixation of quantum of maintenance,

however, shall remain unchanged.

Liberty is given to o.p./husband to pray for installment before the learned Magistrate in connection with execution proceeding, if there be any.

In the event, if any application is filed for liquidation of arrear maintenance allowances by installments, learned Magistrate shall dispose of the same

providing installments in a manner so that the amount being the installment together with the monthly maintenance does not turn to be a repressive to

o.p./husband.

With this observation/direction, the impugned order stands modified to the extent shown hereinabove.

The revisional application stands disposed of.

Urgent certified photostat copy of this order, if applied for, be given to the parties as expeditiously as possible on compliance of all necessary

formalities.