

**HIGH COURT OF TRIPURA
AGARTALA**

CRL. REV. P. NO. 14 OF 2023

1. Shri Budhi Datta Barua,
S/O. Shri Samiran Barua,
Resident of Jamicherra,
P.S. Manu, Sub-Division: Longtharai Valley,
District- Dhalai, Tripura.

.....Petitioner(s)

Versus

1. Smt Usha Barua,
D/o. Lt Kaulu Barua,
Resident of Srirampur,
P.O. & P.S. Kanchanpur,
Dist: North Tripura.

.....Respondent(s)

For Petitioner(s)	:	Mr. P. Roy Barman, Sr. Adv. Ms. A. Debbarma, Adv.
For Respondent(s)	:	Ms. R. Purkayastha, Adv.
Date of Hearing & Judgment and Order	:	13.12.2023
Whether fit for Reporting	:	YES/NO

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order(Oral)

This is a revision petition under Section 397 of Cr.P.C. 1976 read with Section 401 of Cr.P.C. challenging the order dated 06.01.2023 passed by Learned Judicial Magistrate, First Class, Kanchanpur, North Tripura in connection with case No. Misc.(ALT) 32 of 2022 filed under Section 125(5) of Cr.P.C.

02. The main contention of the petitioner in this revision petition was that the petitioner and the respondent were legally married and after their marriage they started residing together at Manu. After 2/3 years of their marriage, the petitioner noticed that his wife i.e. the respondent was frequently leaving her matrimonial home, left for her paternal house without any intimation to the petitioner and his other family members and used to stay there in for months together and in all occasion the petitioner used to bring his wife back from her parental house. Resulting which their matrimonial life became disturbed. Being asked the respondent used to tell him that she was not happy with him and does not want to reside with him any furthermore and also used to tell him that she will marry another person with whom she had previous love affair.

03. The petitioner after knowing the fact enquired the matter from the locality of Kanchanpur where he could know that the respondent was maintaining illicit relation with one person namely Ananta Das of Kanchanpur and thereafter, in the month of March 2009 the respondent voluntarily left the house of the petitioner with her belongings in absence of the petitioner and other family members and started residing at her parental house.

04. That the respondent, thereafter, filed a Criminal Case against the petitioner under Section 498(A)/494 of I.P.C. in the Court of Learned SDJM, Kanchanpur, North Tripura and the said case was registered as PRC 42 of 2014 and the Court of Learned SDJM after trial of the case by a judgment dated 27.05.2016 acquitted the petitioner and one Madhabi Debbarma from the charges of that case.

05. That on the same day the respondent filed another case against the petitioner under Section 125 of Cr.P.C. claiming maintenance which was registered as Misc. (M) 25 of 2014 in the Court of Learned SDJM, Kanchanpur and the Learned SDJM by order dated 23.11.2015 disposed of that case directing the petitioner (respondent) to pay maintenance at the rate of Rs.3000 per month to the present respondent as maintenance w.e.f 07.12.2015. That, thereafter, the petitioner filed an application under Section 13(1)(i) of Hindu Marriage Act before the Learned District Judge, North Tripura, Dharmanagar for dissolution of marriage by a decree of divorce on the ground of adultery which was registered as T.S. (Divorce) 36 of 2016. After hearing Learned District Judge by a judgment dated 06.07.2017 granted decree of divorce in favour of the present petitioner on the ground of irretrievable break down of their marriage ignoring the ground of adultery. That, thereafter, the present petitioner preferred an appeal before

the Hon'ble High Court challenging the judgment dated 06.07.2017 passed by Learned District Judge, North Tripura, Dharmanagar and sought divorce on the ground of adultery against the respondent. But the Hon'ble High Court after hearing the matter delivered judgment and order on 09.12.2020 in F.A. No. 9 of 2017 and the Hon'ble High Court by the judgment was pleased to set aside the decree of divorce passed by Learned District Judge and allowed the decree of divorce on the ground of adultery.

06. That, thereafter, the respondent filed another application for enforcement of the order of maintenance passed by Learned SDJM, Kanchanpur, before the Court of Learned SDJM, Kanchanpur and those cases were registered as Misc. (Execution) 49 of 2018 and Misc. (Execution) 13 of 2019. The present petitioner after receipt of notice in both the cases appeared before the Court of Learned SDJM along with the copy of judgment of the Hon'ble High Court and prayed before Learned SDJM to drop the execution proceedings. But Learned SDJM after hearing rejected the claim of the petitioner on 11.02.2021 stating that it cannot review the order passed in Misc.(M) 25 of 2014 since it was an executing Court and advised the petitioner to approach before the competent Court for setting aside the impugned order of maintenance.

07. That the petitioner, thereafter, preferred another Criminal Revision Petition bearing No. 5/2021 under Section 399 of Cr.P.C. before the Court of Learned District and Sessions Judge, North Tripura, Dharmanagar for setting aside the order dated 23.11.2015 passed by Learned SDJM, Kanchanpur in connection with case No. Misc. (M) 25 of 2014 on the ground of adultery as held by the Hon'ble High Court. And after hearing the said petition was dismissed by Learned Addl. District & Sessions Judge, North Tripura, Dharmanagar vide judgment dated 30.03.2022 and the order passed by Learned SDJM was upheld. It was further asserted that the Learned Addl. District Judge by the said judgment ordered that the order shall not affect the right of the petitioner to file fresh application before Learned SDJM for cancellation of the order of monthly maintenance under Section 125(5) Cr.P.C. on the ground of adultery on the part of the present respondent.

08. That, thereafter, the present petitioner preferred a petition under Section 125(5) of Cr.P.C before the Learned Judicial Magistrate, 1st Class for cancellation of the order dated 23.11.2015 passed by Learned SDJM, Kanchanpur in connection with case No. Misc.(M) 25 of 2014 and the said case was registered as case No. Misc.(Alt) 32 of 2022 and after hearing Learned Judicial Magistrate, 1st Class, Kanchanpur by order dated 06.01.2023 has rejected the

petition filed by the petitioner and challenging that order the present petitioner has preferred this revision petition before this Court.

09. In course of hearing, Learned Senior Counsel, Mr. P. Roy Barman appearing on behalf of the petitioner submitted that the Learned Court below misconstrued the provision of Section 125 of Cr.P.C. as well as Section 125(5) of Cr.P.C. and passed the impugned order. Learned Senior Counsel at the very outset drawn the attention of this Court referring the judgment of the Hon'ble High Court passed in F.A. No. 9 of 2017 dated 09.12.2020 and also submitted that since the Hon'ble High Court granted decree of divorce on the ground of adultery and on and from that date no marriage existed between the present parties as such the present respondent is not entitled to get any maintenance from the petitioner. He also added that the order under Section 125(5) of Cr.P.C. can also be passed in a case when the marriage relation exists amongst the parties under dispute and since the marriage has dissolved by a decree of divorce on the ground of adultery by the Hon'ble High Court. So, the present respondent is not legally entitled to get any maintenance from the present petitioner of this case and as such submitted before the Court to quash/set aside the order dated 06.01.2023 passed by Learned Judicial Magistrate, 1st

Class, Kanchanpur in connection with case No. Misc.(Alt) 32 of 2023.

10. On the contrary, Learned Counsel for the respondent, Ms. Purkayastha vehemently opposed the submission made by Learned Senior Counsel and submitted that the term "adultery" and "living in adultery" are completely two different aspects and the Hon'ble High Court by the said judgment dated 09.12.2020 just granted decree of divorce on the ground of adultery for a single set of incident which cannot be treated as "living in adultery". She also stated that since the present petitioner has failed to satisfy the Court, the grounds for "living in adultery", so, the order passed by Learned Judicial Magistrate, 1st Class, Kanchanpur was very much reasonable and justified and supported by law and also drawn the attention of the Court to consider Para 14 and 15 of the judgment passed by Hon'ble High Court. Learned Counsel further submitted that in Section 125 of Cr.P.C. the definition of "wife" is clearly given in Para 1 [explanation(b)] and finally Learned Counsel Ms. R. Purkayastha fairly submitted that the submission of Learned Senior Counsel cannot be accepted in this case and submitted before the Court to dismiss the Revision Petition affirming the order passed by Learned Judicial Magistrate, 1st Class, Kanchanpur and relied upon few citations which would be discussed later on.

11. I have given anxious hearing of both the sides and also gone through the record of the Learned Court below. Section 125 of Cr.P.C. deals with "order for maintenance of wives, children and parents". In explanation(b) of Sub-section 1 of Section 125 the term wife described as **"wife" includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.**

12. For the sake of convenience, I would like to refer herein below the relevant provision of Section 125(4) and (5) of Cr.P.C which provides as under:

(4) No wife shall be entitled to receive an [allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be,] from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

(5) On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order.

13. Learned Senior Counsel, Mr. P. Roy Barman appearing on behalf of the petitioner, in course of hearing referred one citation in **Criminal Petition No. 2547 of 2016** in between **Sanjivani Ramchandra Kondalkar vs. Ramchandra Bhimrao Kondalkar & anr. and State of Maharashtra**, wherein the Hon'ble High Court of judicature at Bombay, Criminal Jurisdiction in para 6 to 11 observed as under:

6. He would draw support from the Judgments of the Apex Court in VANAMALA VS H.M.RANGANATHA BHATTA reported in 1995 DGLS (SC) 722 and ROHTAS SINGH VS RAMENDRI reported in 2000 DGLS (SC) 450 so as to support his aforesaid contentions. The sum and substance of the submission is even if there is a decree of divorce passed on the allegation of adultery, still bar under Sub-section (4) of [Section 125](#) of the Act, will not be attracted, as even after divorce, she ceases to have the status of a wife but, she continues to be a woman.

7. Per contra the aforesaid submissions, learned counsel for the Respondent submits that the divorce proceedings initiated by the Respondent-husband came to be allowed, as the allegation of adultery was proved against the Petitioner-wife. According to him, in view of RNG sr.23.wp2547.2546.16.doc the statutory embargo under Sub-section (4) of [Section 125](#) of the Act, the Court below has rightly held that the Petitioner is not entitled for maintenance.

8. Considered rival submissions.

9. Learned counsel for the Petitioner has tried to rely on the judgments of the Apex Court in VANAMALA and ROHTAS SINGH supra so as to claim the status of the Petitioner-wife as that of a woman continues, inspite of the divorce ordered on 27.4.2000. The fact remains that, there is an expressed embargo on the right of a woman to claim maintenance, pursuant to the provisions under Sub-section (4) of [section 125](#) of the Act. If the allegation of adultery are proved against such a women or inspite of the husband being ready to maintain her and she refuses to cohabit the women/wife can be refused payment of maintenance.

10. As far as factual matrix of the aforesaid case, namely VANAMALA and ROHTASH SINGH is concerned, both these cases are based on identifying and recognizing the right of a woman who was divorced not on the ground of proved adultery.

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11. In the aforesaid background, both these Judgments will be hardly of any assistance to the Petitioner. Considering the expressed embargo on the right of the Petitioner, to claim maintenance particularly, divorce was ordered on 27.4.2000 based on the allegation of adultery, the Court below has rightly held that the Petitioner-wife is not entitled for maintenance.

14. Learned Counsel for the respondent Ms. R. Purkayastha, in course of hearing relied upon few citations. In **Ashok vs. Smt. Anita @ Renu**, reported in **2011 SCC Online MP 2249 (Misc. Criminal Case No. 412 of 2011)** in Para No. 8 and 9 observed as under:

8. A perusal of the provisions of section 125(4) of Cr.P.C. makes it clear that a stray act of adultery on the part of the wife does not amount to adultery within the meaning of section 125(4) and further does not disentitle the wife to maintenance. The expression "living in adultery" connotes a course of adulterous conduct more or less continuous and not occasional.

9. In the case of *Alert Jagdeeshwari v. Aleti Bikshaparthi and M.P. Subramaniam v. T.T. Ponnakshiammaal*, it is observed:

"After careful consideration of the law on the point, we are of the opinion that it is not a stray act or two of adultery that dis-entitle a wife from claiming maintenance from her husband; but it is a course of continuous conduct on her part by which it can be called that she is living an adulterous life that takes away her right to claim the said maintenance. It is significant to note that the wording in section 488(4) of the Cr.P.C. is not 'if she commits adultery' but 'if she is living in adultery'. To our mind there is a certain amount of emphasis on the term 'living'. A mere lapse, whether it is one or two, and a return back to normal life cannot be said to be 'living in adultery'. If the lapse is continued and followed up by a further adulterous life, the woman can be said to be 'living in adultery'.

15. In Criminal Revision Application(for Maintenance) No. 537 with **Criminal Revision Application No. 728 of 2014** dated 04.08.2015, **Giraben Sandipbhai Jotangiya & Anr, vs. State of Gujarat & Anr.**, reported in **2016 1 GLR 856**, the following observations are made in Para Nos. 11, 11.8, 11.9 and 12a.

11. The Madhya Pradesh High Court in the case of *Ravendra Singh v. Kapsi Bai*, reported in 1990 Law Suit (MP) 70 while dealing with the issue of maintenance was required to answer the question as to whether the wife is dis-entitled to claim maintenance in absence of any proof that she is living in adultery. The Court has held that the proceedings under Section 125 of the Code cannot be described as a trial of an offence. However, the same also cannot be termed in the nature of civil proceeding, but can be said to be of quasi criminal in nature. Whether wife in fact had admitted alleged act of adultery, the Court has held that the same cannot be looked into being not in consonance with the words "living in adultery" appearing in Section 125 (4) of the Code. It is for the husband to prove that the wife is continuously committing violation of the marriage vows on indulging in adulterous life. The

Madhya Pradesh High Court, in paras 8 and 9, has held as under:

8. Besides this the words used 'living in adultery' in subsection (4) of Section 125 Cr.P.C. Of limited amplitude, inasmuch as it is for the husband to prove that the wife is continuously committing violation of the marriage bed, indulging in adulterous life, i.e. living in quasi permanent union with Jang Bahadur Sharma with whom according to Ravendra Singh she was caught red handed(sic.). To establish this, more than one instance of adultery has to be brought home to the knowledge of the wife, thereby constituting the term 'living in adultery' within the meaning of subsection(4) Section 125 Criminal 'Procedure Code. Admittedly, nothing of that sort is brought home to the knowledge of the wife, in the instant case.

9. The evidence relating to this aspect, if considered in its totality, barring the two instances of which Ravendra Singh condoned one and except the second one which now takes the place or isolated act of adultery, there is no other evidence to in far that Scot. Kapsi Bai is living in adultery."

12(a) Reference is made of the decision of the Madras High Court of Kasturi v. Ramasamy, reported in 1979 Cr.L.J 741, wherein it is held and observed that "living adultery" means outright adulterous conduct on the part of the wife and stray act of illicit relationship will not amount to "living in adultery".

16. In Criminal Revision Case No.706 of 1976 dated 28.11.1978, Kasthuri and Ors Vs. Ramasamy, reported in **1979 0 CrLJ 741**, Hon'ble the High Court of judicature at Madras in Para No. 8 further observed as under:

8. The next contention is that the petitioner is living in adultery with Varadarajan and therefore, the trial court was right in rejecting her application for maintenance. The term 'living in adultery' has engaged the attention of many courts. In Ramsaran v. Soman Wati 1964(1) CrLJ 483 (Punj), Tekchand, J. observes (at p. 486):

""Living in adultery' is living together as husband and wife and exercising sexual rights and duties implied by such relation when legally created. Proof of occasional acts of illicit intercourse may fall short of what is intended by the expression 'living in adultery'. It suggests a man and the wife of another living continually as husband and wife. An adulterous intercourse is a condition contemplating repetition of extra marital relationship when opportunity offers itself. It is a condition of cohabitation in contradistinction to occasional acts. The wife forfeits her right to be maintained on proof of repeated adulterous meetings." *

In Kista Pillai v. Amirthammal, Pandrang Raw J. laid down with specific reference to S. 488 CrI. P.C. (old Code) that the words 'living in adultery' are indicative of the principle that occasional lapses from virtue, are not sufficient and it must be shown that the wife was actually living in adultery with someone else, at or about the time of the application, which disentitles her to receive maintenance. The learned Judge observed - "Continued adulterous conduct is what is meant by living in adultery."

With respect, I agree with these observations. The term 'living in adultery' has now been consistently held to mean an outright adulterous conduct where the wife lives in a quasi-permanent union with the man with whom she is committing adultery. In this case, even the allegations do not furnish prima facie proof of conduct of what is within the contemplation of the law to derive the wife of her right to be maintained. The evidence aduced falls short of the requisite legal test.

17. As referred by the Learned Counsel for the respondent, Hon'ble the High Court at the time of delivering judgment and order dated 09.12.2020 in **FA 09 of 2017** in Para Nos.14, 15 and 16 gave the following observations:

14. We are constrained to observe that the ground taken by the appellant in the petition filed under Section 13(1)(i) is not adultery, even, that is akin to adultery. From a bare reading, it would come to the fore that the said ground requires specific instance of sexual intercourse. For purpose of reference, Section 13(1)(i) is reproduced hereunder :

13.(1)(i) Any marriage solemnized, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party has, after the solemnization of the marriage, had voluntary sexual

intercourse with any person other than his or her spouse.”

15. Sine qua non is the sexual intercourse. Sexual intercourse beyond the marriage is broadly called adultery, but the said provision does not require the proof of living in adultery or in adulterous life. It is the sexual intercourse, even a single sexual intercourse would be adequate to invoke that provision for dissolving a marriage. On appreciation of the evidence, we find no reason to maintain the finding of the District Judge as we understand that the District Judge has Page 7 of 7 implied „adultery” as the sexual intercourse as engrafted in Section 13(1)(i) of the Hindu Marriage Act, 1955. The evidence of PW-2 and the witnesses who arrived immediately or in the wake in the place of occurrence which took place on 05.04.2016 makes us believe that that incidence of sexual intercourse between the respondents No.1 and 2 really took place. Hence, the finding of the District Judge cannot be maintained and is set aside. We hold that the respondent No.1 had sexual intercourse with the respondent No.2 on 05.04.2009 in the evening around 7:30 p.m. in the house of the respondent No.2

16. Accordingly, we find and hold that the divorce should have been granted on the solitary ground as resorted to by the appellant. However, we maintain the decree of divorce on the said ground. The appeal which has been filed for limited purpose stands allowed.

18. After hearing Learned Counsel of both the sides and also after going through the LC record also after taking into consideration the principles laid down by the different High Courts in the aforesaid cases and on perusal of the judgment of the Hon’ble High Court of Tripura as aforesaid, it appears to me that the Hon’ble High Court on the basis of a single solitary ground granted decree of divorce in favour of the petitioner of this case.

19. Further it appears to me that, “living in adultery” means outright adulterous conduct on the part of the wife and stray act of illicit relation will not amount to “living in adultery”. To establish “living in adultery” in sub-Section 4 of Section 125 of Cr.P.C. of limited amplitude in as much as it is

for the husband to prove that the wife is continuously committing violation of marriage bed, indulging in adulterous life, i.e. living in quasi permanent union with another person. Here in the case at hand after hearing both the sides and also on perusal the judgment of the Hon'ble High Court as relied upon by both the parties of this Revision Petition, it appears to me that there was no evidence of "living in adultery" as envisaged in Section 125(4) of Cr.P.C. as alleged by the husband petitioner in the petition filed for cancellation of maintenance under Section 125(5) of Cr.P.C. before the Court of Learned Judicial Magistrate, 1st Class, Kanchanpur.

20. Learned Court below after considering all these things in my considered opinion came to the conclusion that the allegation of the petitioner husband does not come under the purview of Section 125(4) of Cr.P.C and by a reasoned order dated 06.01.2023 passed in connection with case No. Misc.(Alt) 32 of 2022 rejected the petition of the petitioner for cancellation of the order dated 23.11.2015 passed in connection with case No. Misc.(M) 25 of 2014. The principle of citations as referred by Learned Counsel for the petitioner is distinguishable, infact, as such, I find no scope to follow the said observation for just decision of this Criminal Revision Petition. Per contra the citations as referred by the Learned Counsel for the respondent are very much relevant

and appropriate for just decision of this case and accordingly, the principles of these aforesaid citations have applied in this present Revision Petition.

21. Hence, the Revision Petition filed by the revision petitioner is hereby stands dismissed on contest.

22. The order dated 06.01.2023 passed by Learned Judicial Magistrate, 1st Class, Kanchanpur, North Tripura in Misc.(Alt) 32 of 2022 is hereby affirmed confirming the order on 23.11.2015 passed in connection with case No. Misc.(M) 25 of 2014.

Send a copy of this order/judgment to the Learned Court below along with the LCR.



JUDGE

MOUMITA
A DATTA

Digitally signed by
MOUMITA DATTA
Date: 2023.12.16
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