

IN THE HIGH COURT OF TRIPURA
A G A R T A L A

CRL.REV.P. No.107 of 2010

Smt. Gopa Datta,
wife of Shri Bhaskar Datta,
daughter of Shri Chittaranjan Datta,
of Milan Chakra, Adarsha Palli,
P.O. A.D. Nagar, P.S. West Agartala,
District – West Tripura

..... Petitioner

- V e r s u s -

Shri Bhaskar Datta,
son of Shri Sitikanta Datta,
of Khilpara, Amtali, P.O. & P.S. R.K. Pur,
Udaipur, District – South Tripura

..... Respondent

BEFORE
THE HON'BLE MR. JUSTICE S. TALAPATRA

For the petitioner : None

For the respondent : None

Date of hearing & : **03.06.2015**
delivery of judgment
and order

Whether fit for reporting:

YES	NO
	√

JUDGMENT & ORDER (ORAL)

None appears for the parties, despite several opportunities are granted by this Court. Hence, this Court proceeds for disposal on examination of records.

[2] This petition under Section 397 read with Section 401 of the Cr.P.C has been filed questioning the judgment and order dated 27.07.2010 delivered in case No.Miscellaneous 425

of 2009 by the Judge, Family Court, Agartala, West Tripura by refusing maintenance to the petitioner.

[3] The petitioner herein instituted a petition under Section 125 of the Cr.P.C for maintenance for herself and for her minor daughter, in the court of the Judge, Family Court, Agartala, West Tripura and that petition was registered as case No. Miscellaneous 425 of 2009. Initially, the Family court granted the interim maintenance for the petitioner and her minor daughter a sum of Rs.4,000/- (Rupees Four thousand) per month by the order dated 13.11.2009. The petitioner has stated that the petitioner was mercilessly tortured on unlawful demand and failing to bear with such cruelty, she left the matrimonial home and took shelter in her parent's residence. Once she was also hospitalized for sometimes. The respondent never took care of her or their child. All such allegations have been squarely denied by the respondent by filing a written objection. Thereafter, the evidence was led by the parties and by the judgment and order dated 27.07.2010, the Family Court refused maintenance for the petitioner but granted maintenance for her minor daughter. Being aggrieved by that judgment and order, this revision petition under Section 19(4) of the Family Courts Act has been preferred. It appears from the judgment that the Family Court refused to grant maintenance to the petitioner by observing as under:

“On careful assessment of the evidences on record, it appears to be crystal clear that though the Petitioner No.1 alleged against the husband opposite party for torture in demand of dowry, she did not utter a single word against the husband for torture in demand of dowry while giving her deposition as PW-1, but she clearly stated that after 3 months, she shifted to Agartala along with the opposite party and stayed there as husband and wife. The mother of the petitioner No.1 (PW-2) also did not say anything about the demand of dowry made by the opposite party, though she stated that the Petitioner No.1 was misbehaved and tortured by the husband and other relatives. It also appears from the deposition deposed by the PW-2 that her daughter and the opposite party used to stay at Agartala as husband and wife and when the opposite party allegedly asked his wife i.e, the Petitioner No.1 whether her father gifted a constructed house to them for dwelling purpose, then the opposite party was abused and he had to assure them to go to a rented house, but ultimately being insulted, he came back to the house of her father at Udaipur. In fact, the younger brother of the Petitioner No.1 (PW-4) stated that there was demand of Rs. 50,000/- and when the said demand could not be fulfilled, the Petitioner No.1 was tortured. At the same time it would be very clear from the deposition deposed by the DWs that after the marriage, the Petitioner No.1 stayed for a very small period in the house of the father of the opposite party at Udaipur and within this period, she was found not interested to say there and she used to come to Agartala frequently even without the permission or knowledge of the husband and on this issue, there was dispute. It also appears that within some days both the Petitioner No.1 and the opposite party came to the house of the father of the Petitioner No.1 at Agartala and started living there as husband and wife for about 2 years and during this period, one daughter was born, but when in course of playing, the opposite party slapped his daughter, for which he was physically assaulted by his mother-in-law and also by his wife which had given him a great shock and thereafter, being insulted, he had to come back to the house of her father at Udaipur and after seeking apology, he had to come back to the house of his father at Udaipur. During this period, the Petitioner No.1 did not keep any contact with the husband, but one day she along with her mother came to the house of the father of the opposite party at Udaipur and at that time, the father of the opposite party had shown

required hospitality to them and on trifling matter of throwing some water on the body of the mother of the Petitioner No.1 by the minor daughter, she started abusing the daughter touching the character of the father and on this issue there was quarrel and within 2 days, the Petitioner No.1 and her mother came out from that house and on the way back, they lodged a criminal case against the opposite party and other family members u/s. 498-A of the IPC and thereafter, they came to Agartala and for the last 4 years, the Petitioner No.1 has been staying in the house of her parents and in the meantime when the opposite party filed a case in the Family Court of Udaipur for getting her back, she did not even care to attend to the Court and an ex-parte order was passed directing her to go back to her matrimonial home, but till date, the said order was not complied with and also she did not appeal to the higher forum and in the meantime, she filed the present case against the opposite party u/s. 125 of Cr.P.C, for getting a maintenance of Rs. 15,000/- per month stating that the opposite party has been earning Rs. 35,000/- to Rs. 40,000/- per month without any basis.

[Emphasis supplied]

[4]

It has been further observed that:

"The opposite party is willing to live with the wife provided she goes back to her matrimonial home at Udaipur. During hearing of the case, the Petitioner No.1 clearly stated that she cannot go back to the house of her husband at Udaipur and if this is the case, I find no justification on the part of the Petitioner No.1 to come back to her parental house. In fact, the Petitioner No. 1 has withdrawn herself from the society of the husband without any reasonable cause and so I am of the view that she is not entitled to get any maintenance from the husband, but the minor daughter being innocent should not be deprived of from getting a maintenance from the father and accordingly, I am of the view that the prayer made by the Petitioner No.1 for getting a suitable maintenance is rejected. However, the minor daughter living with the petitioner No.1 should be given some maintenance till the Petitioner No.1 returns to her matrimonial home and accordingly, the opposite party Sri Bhaskar Datta is directed to give a maintenance of Rs. 1,000/- per month to his minor daughter living with the Petitioner No.1 and the maintenance allowance of Rs. 1,000/- per month should be

sent to the petitioner No.1 by money order under the address noted below within 10th day of every English Calendar month and for sending the said amount by money order, the money order commission if any is also to be borne by the opposite party."

[5] After scrutinizing the records of evidence by this Court, two questions surfaced in this case are that:

(i) Whether the petitioner had left the matrimonial home without any sufficient cause or not? And

(ii) Whether the respondent has refused to maintain her or not?

[6] The Family Court has laid much emphasis on the subsequent decree of restitution of conjugal rights, but the trial court has not analyzed or given any reason when the petitioner left the matrimonial home whether she was compelled by the circumstances to leave matrimonial home or not. A decree of restitution of conjugal rights by itself cannot operate against the petitioner. There is no dispute at all that the respondent did not provide any maintenance to the petitioner. Even though this Court does not approve the conduct of the petitioner but considering the circumstances under which she was compelled to leave the matrimonial home is of the view that she is also entitled to get maintenance. It is to be observed that an *ex-parte* judgment of restitution of conjugal rights cannot per se purge the evidence led in the maintenance proceeding. Such judgment shall proffer consequential cause. It appears that the petitioner did not place any evidence on record as regards the income of the respondent. As this Court is of the considered

opinion that the petitioner is entitled to get maintenance, the respondent shall pay her maintenance at the rate of Rs.2,000/- (Rupees Two thousand) per month. Hence, he shall pay Rs.2,000/- (Rupees Two thousand) for the petitioner and Rs.1,000/- (Rupees One thousand) for her minor daughter i.e. total Rs.3,000/- (Rs.2000 + Rs.1,000/-). Hence, it is ordered that the said amount shall be remitted to her on her address within the 10th day of every English calendar month and the money order charge, if any, shall be borne by the respondent. It is made clear that this maintenance shall be entitled to the petitioner w.e.f. 01.06.2015 payable within 10th July, 2015 and the respondent shall continue to pay the maintenance in terms of this order. The petitioner will not get any arrears of maintenance in the peculiar circumstances of this case. For the change in the circumstances the respondent shall remain at liberty to approach the Family Court for alternation/cancellation of this order.

Accordingly, this petition stands allowed to the extent as indicated above.

Supply a copy of this order to the respondent by registered post with A.D. as expeditiously as possible as none has appeared for the respondent when the matter is taken up for disposal.

JUDGE

Sujay/Dipesh