

THE HIGH COURT OF TRIPURA
AGARTALA

F. A. No. 9 of 2013

Sri Arun Das,
son of Sri Haradhan Das,
of Bardowali, P.S. West Agartala,
District: West Tripura

.....Appellant

- V E R S U S -

Smti. Laxmi Rani Das,
wife of Sri Haradhan Das,
of Ranirgaon (Karaiban),
P.S. Jirania, Dist: West Tripura

.....Respondent.

B E F O R E
THE HON'BLE MR. JUSTICE U. B. SAHA
THE HON'BLE MR. JUSTICE S. TALAPATRA

For the petitioner	: Mr. N. Majumder, Advocate.
For the respondent	: Mr. S. Saha, Advocate
Date of hearing & delivery of judgment	: 26.08.2015
Whether fit for reporting	: No

Judgment and Order (Oral)

(Talapatra, J)

Heard, Mr. N. Majumder, learned counsel appearing
for the appellant as well as Mr. S. Saha, learned counsel appearing
for the respondent.

[2] This appeal on the face of it is not maintainable
inasmuch as any order passed under Chapter IX of the Code of the
Criminal Procedure, 1973 can only be challenged under Section

19(4) of the Family Courts Act 1984. However, Mr. Majumder, learned counsel appearing for the appellant has submitted that Section 19(1) of the Family Courts Act, 1984 has provided that as save and as provided in Sub-section 2 and notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908) or in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law, an appeal shall lie from every judgment or order, not being an interlocutory order, of a Family Court to the High Court both on facts and on law.

[3] According to Mr. Majumder, learned counsel appearing for the appellant, these provisions of Section 19(1) embrace all kinds of orders passed by the Family Court. We are not agreeable to such interpretation, inasmuch as it has been categorically provided that if any special provision is carved out in the Code of Criminal Procedure, 1973, or in any other law, that provision would govern the appeals/ or the other remedy. Since by way of the amendment Act, 1991, Sub-section 4 of Section 19 of the Family Courts Act, 1984 has been incorporated and it is a special provision, as it provides that the High Court may on its own motion or otherwise, call for and examine the records of any proceeding in which the Family Court within its jurisdiction passed an order under Chapter IX of the Code of Criminal Procedure, 1973 for the purpose of satisfying itself as to the correctness, legality or

propriety of the order, not being an interlocutory order, and, as to the regularity of such proceeding.

[4] Hence, in the considered opinion of this Court, the appeal under Section 19(1) of the Family Courts Act, is not maintainable against the order passed under Chapter IX of the Code of Criminal Procedure, 1973. The remedy would lie under Sub-section 4 of Section 19 of the Family Courts Act, 1984. Since this appeal directed against the order under Chapter IX of the Cr.P.C., 1973, cannot be maintained, this Court on its own motion is inclined to convert this appeal to a revision. Mr. Majumder, learned counsel for the petitioner has not expressed any reservation to this proposition. The Registry is directed to renumber this appeal as the criminal revision for proper maintenance of the records.

[5] This conversion has been made to enable us to examine the legality and propriety of the impugned judgment and order passed by the Judge, Family Court, Agartala, West Tripura.

[6] There is no dispute that by the judgment and order dated 12.06.2013 delivered in Miscellaneous case No. 458 of 2011, the Judge, Family Court, Agartala, West Tripura has directed both the appellant, now would be referred to as the petitioner, and one of her son, namely, Sri Barun Das to pay Rs. 2,000/- each per month w.e.f. 01.06.2012 to the respondent-mother namely, Smt. Laxmi

Rani Das. It has been further directed that the General Manager of the S.B.I. Agartala Branch, Agartala shall deduct a sum of Rs. 2,000/- from the salary of the petitioner and remit the same to the respondent-mother.

[7] Mr. Majumder, learned counsel appearing for the appellant has submitted that the appellant is not the only son but he has other 2 (two) brothers and 3 (three) sisters from the wedlock of his mother and father. Apart that, he has asserted that his father is still alive and he is actively earning.

[8] Mr. Majumder, learned counsel has continued to submit that primary duty to maintain his mother i.e. the sole respondent lies with his father. Moreover, by the impugned judgment and order, the Family Court, Agartala, West Tripura, has failed to observe the law as provided under Section 125(1) of the Cr. P.C.

[9] Section 125(1) of Cr.P.C. provides that for maintenance of wives, children and parents, if any person having sufficient means neglects or refuses to maintain his wife, unable to maintain herself or his legitimate or illegitimate minor child, whether married or not, unable to maintain itself or his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental

abnormality or injury unable to maintain itself, or his father or mother, unable to maintain himself or herself, a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct.

[10] No exception as provided for refusing maintenance has been as a recourse, taken by the petitioner or his another brother, namely, Barun Das. From a bare reading of the provisions of Section 125(1) of the Cr.P.C. it surfaces plainly that it is not always a relay of obligation or that the wife shall always be only maintained by her husband. Even if it is found that the husband is unable to maintain the wife, the obligation shifts to the able son.

[11] Thus, we do not find any substance in the assertion of the petitioner. In the finding, the Judge, Family Court, has correctly held the obligation of the two sons for maintenance as the sole respondent is living with the third son and looking after her. As such on the face of the fact, transpired from the records, there cannot be any allegation of refusal of maintenance against the son with whom the sole respondent is living.

[12] The petitioner who filed the written objection for resisting the prayer for monthly maintenance to his mother did not place any materials to enable the Court to reach to a conclusion that the three daughters have sufficient means to maintain or share maintenance of their mother, the sole respondent.

[13] The petitioner has categorically admitted in his statement as recorded that his gross monthly salary is Rs. 20,000/-. The petitioner has examined himself as DW-1 in the proceeding under Section 125 of the Cr.P.C and to support his contention, whom he examined as DW-2, namely, Babul Das has categorically stated that the petitioner owes obligation to maintain his old mother.

[14] After scrutiny of the evidence on record in the context of the pleadings of the petitioner and the sole respondent, we do not find any infirmity in the impugned judgment and order.

[15] However, if it is placed on records by the petitioner that the petitioner's father, namely, Haradhan Das has sufficient means or his other brother or sisters have sufficient means, the petitioner may place those materials before the Judge, Family Court, Agartala, West Tripura, by means of an application under Section 127 of the Cr.P.C. and if from the records it emerged

satisfying to the Judge, Family Court, Agartala, West Tripura, he would be at liberty to alter the order of maintenance.

[16] In the result, this petition stands dismissed. Send down the LCRs forthwith.

JUDGE

JUDGE

A.Ghosh.