

IN THE HIGH COURT OF TRIPURA
AGARTALA

Crl.Rev.P.No. 90 of 2011

1. Smt. Rinku Malakar,
wife of Sri Dipen Das,
daughter of late Sonatan Malakar,
resident of Vill. Usha Bazar,
P.S. Airport, District: West Tripura
2. Miss Priti Das,
daughter of Sri Dipen Das
resident of Vill. Usha Bazar,
P.O. Airport, District: West Tripura
(the petitioner No. 2 being minor is represented by her
mother i.e. the petitioner No. 1)

..... Petitioners

- V E R S U S -

Sri Dipen Das,
son of Sri Mahesh Das,
resident of Vill. Lake Chowmuhani,
laundry shop (near Lake Chowmuhani Bazar)
P.S. West Agartala Dist. West Tripura

..... Respondent

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

For the petitioners	: None
For the respondent	: Mr. S. Sarkar, Advocate
Date of hearing & judgment & order	: 24.06.2015
Whether fit for reporting	: No.

JUDGMENT & ORDER (ORAL)

None appears for the petitioners when the matter is called out.

[2] It is really unfortunate that despite the petitioners have the engaged counsel, the counsel has preferred not to represent their case by the repeated absence, however, Mr. S. Sarkar, learned counsel has appeared for the respondent.

[3] This is a petition filed under Section 19(4) of the Family Courts Act 1984, questioning the legality and propriety of the order dated 01.11.11 passed by the Family Court, Agartala, West Tripura, in Miscellaneous Case No. 15/4, which was instituted by the petitioners claiming maintenance under Section 125 of the Cr.P.C. from the respondent.

[4] There is no dispute that the petitioner No. 1 is the legally married wife of the respondent whereas the petitioner No. 2 is the only child who has been born in their wedlock. The petitioner No. 1 levelled volley of allegations against the respondent, even she had filed a criminal case against him on allegation of torture on unlawful demand and thereafter, she started living in her parental house at Usha Bazar.

[5] According to the petitioner, the petitioner has cloth business and he has monthly income of Rs. 50 to 60 thousand.

The respondent by filing the written objection has denied all the allegations and stated that he has no earning and he is an unemployed youth having no source of income.

[6] After recording the evidence made by the parties, by the impugned judgment and order dated 1.11.2011 the Family Court, West Tripura, Agartala, denied maintenance to both the petitioners. What has surprised this Court most is that the maintenance has been denied even to the child. Hence, this order has been challenged in this revision petition.

[7] This Court after perusing the records and also hearing the submission of Mr. S. Sarkar, learned counsel appearing for the respondent, is unable to sustain the impugned judgment and order.

[8] The fundamental principle that underpins Section 125 of the Cr.P.C. is that there should be no denial of maintenance if the person seeking maintenance has no income to maintain him/her. The public policy under which this provision has been incorporated in the Code of Civil Procedure 1973 is that vagrancy of the helpless woman or the dependent parents or the child has to be deterred at any cost. The exceptions under which such maintenance can be denied have been carved out under Sub-section 4 of Section 125 of the Cr.P.C.

[9] On perusal of the records, this Court does find that these exceptions can be applied in this case even though in the impugned judgment, the finding has been returned that the petitioner No. 1 had been behaving in such a manner that caused agony and mental disturbance to the respondent. Those findings may be good ground for granting the respondent a decree of judicial separation or for that a matter of decree of divorce if the standard of proof required for that purpose is satisfied. But this cannot be utilized for denying maintenance to the petitioner No. 1 and the petitioner No. 2. In the impugned judgment, no reason whatsoever has been assigned why the family court has denied to grant maintenance to the daughter of the petitioner No. 1 and the respondent.

[10] Hence, this impugned judgment and order is set aside. The respondent is directed to pay maintenance for the petitioner No. 1 @ Rs. 1,500/- and maintenance @ Rs. 1,500/- for the petitioner No. 2 w.e.f. 1.06.2015.

[11] It is further directed that the maintenance shall be paid within the 10th day of each English Calendar month to the petitioner No. 1. The maintenance allowance as directed to be paid to the petitioner No. 2 shall also be sent to the petitioner No. 1 by the same money order. Thus, the respondent shall pay total sum of Rs. 3,000/- as maintenance allowance to the petitioner No. 1 by money order within the stipulated date. The money order charges shall be borne by the respondent.

[12] It is made clear that failure of paying maintenance allowance to the petitioners would invite stringent action against the respondent.

[13] Having regard to the peculiar situation, attached in this case and non representation for the petitioners, this Court is not inclined to grant any arrear maintenance at all.

[14] The respondent shall be at liberty to approach the Family Court for alteration of the maintenance in the change of circumstances.

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

[16] Copies of this order shall be sent by the Registry to the petitioner No. 1 and the respondent free of cost.

JUDGE

A. Ghosh.