

IN THE CIRCUIT BENCH OF CALCUTTA HIGH COURT AT JALPAIGURI
CRIMINAL REVISIONAL JURISDICTON

Present:- The Hon'ble Justice Manojit Mandal

C.R.R. No. 40 of 2019

Smt. Piyali Saha (Paul)

V

The State of West Bengal & another.

For the petitioner	: None appears.
For the State	: Mr. Aditi Shankar Chakraborty, Adv. Mr. Arun Kr. Sarkar, Adv.
For the Opposite party No. 2	: Mr. Sandip Majumder, Adv. Mr. Shubhajit Bhattacharjee, Adv.
Heard on	: 21.08.2019
Judgment on	: 26.08.2019

Manojit Mandal, J.:- This criminal revisional application is directed against the Order No. 06 dated 12.03.2019 passed by the Additional Chief Judicial Magistrate, Mekhliganj in Misc. Execution Case No. 60 of 2018 whereby the learned Magistrate was pleased to drop the said execution case.

2. Being aggrieved by the said impugned Order No. 06 dated 12.03.2019, the petitioner has preferred this revisional application on the ground that the order passed

by the learned Additional Chief Judicial Magistrate, Mekhliganj is bad in law and it should be set aside by this Court in the interest of justice.

Point for Consideration

Whether the Opposite party No. 2 was entitled to any adjustment of the amount of maintenance *pendente lite* awarded by the matrimonial Court against the maintenance allowance by the Criminal Court under Section 125 of the Code of Criminal Procedure?

Decision with Reasons

3. In the instant revisional application none appears on behalf of the petitioner. In the circumstances, heard argument of the learned Additional Public Prosecutor appearing for the State. Also heard argument of the learned advocate who appears on behalf of the Opposite party No. 2.

4. Learned Additional Public Prosecutor submits that the order passed by the learned Additional Chief Judicial Magistrate, Mekhliganj is quite justified and it should not be set aside by this Court.

5. Learned advocate appearing for the Opposite party No. 2 submits that learned Additional Chief Judicial Magistrate, Meghliganj has rightly dropped the execution proceeding filed by the petitioner as because the Opposite party No. 2 had paid the maintenance allowance to the petitioner for her minor son as per order passed by the learned Additional District Judge, Siliguri.

6. I have gone through the impugned order and the materials on record, it appears that the Opposite party No. 2 is the husband of the petitioner and their marriage was

solemnized according to the Hindu Rites and Customs on 24.11.2008. After the marriage, they lived together in the matrimonial home for some time and out of the wedlock, one son was born to them on 11.05.2011. On 23.07.2012 the Opposite party No. 2 and his parents dropped the petitioner away from the matrimonial home and since then the petitioner and her minor son are living in her father's house.

7. The petitioner filed an application under Section 125 of the Code of Criminal Procedure being Misc. Case No. 57 of 2012 praying for interim maintenance for her son as well as for herself before the learned Additional Chief Judicial Magistrate, Mekhliganj. The learned Additional Chief Judicial Magistrate allowed the application for interim maintenance and direct the Opposite party No. 2 to pay Rs.5000/- per month to the petitioner for her minor son. Subsequently, Opposite party No. 2 filed an application under Section 13 of the Hindu Marriage Act praying for dissolution of marriage before the learned Additional District Judge, 1st Court, at Siliguri. The petitioner filed an application under Section 24 of the Hindu Marriage Act in the said matrimonial suit and the said application under Section 24 of the Hindu Marriage Act filed by the petitioner was allowed and the learned Additional District Judge, 2nd Court, Siliguri by an order being No. 94 dated 06.02.2018 was pleased to grant Rs.6000/- towards alimony for her minor son. Thereafter, the petitioner filed an application before the Court of learned Additional Chief Judicial Magistrate, Mekhliganj for execution of the maintenance allowance being Case No. 60 of 2018. The Opposite party No. 2 appeared in the said execution case and filed written objection. After hearing,

both sides, the learned Additional Chief Judicial Magistrate, Mekhliganj passed the impugned order.

8. Our High Court in a case reported in 96 CWN 861, (*Gossai Ch. Das v. Beauty Das*) has observed that:-

“the amount paid as alimony pendente lite in the matrimonial suit by the husband to the wife may be adjusted against the maintenance payable under Section 125 of the Code of Criminal Procedure.”

9. Our High Court in another case reported in AIR 1988 Cal 83, (*Geeta Chatterjee v. Probhat Kr. Chatterjee*) has observed that:-

“the respondent wife in the appeal before the High Court filed an application under Section 24 of the Hindu Marriage Act for maintenance pendente lite and the expenses of the appeal against the appellant husband. In the court below, the husband did not contest the wife’s application for maintenance pendente lite and the Court passed an order directing the husband to pay to the wife Rs.350/- as maintenance during the trial. Before the High Court in the appeal, however, the application by the wife for maintenance pendente lite and also for expenses for the appeal was seriously opposed by the husband appellant on the ground that he has come to learn that the wife owns valuable lands in Calcutta and could not be regarded as one who “has no independent income sufficient for her support” within the meaning of Section 24 of the Hindu Marriage Act so as to be entitled to invoke that section. The question arose as to whether in ordering maintenance pendente lite under Section 24, the court shall have regard only to the income of the applicant and

not to her or his asset or property. The High Court answered the question in the affirmative. It was of the view that the amount of Rs.350/- ordered by the Court below, was quite reasonable. The High Court was also of the view that the husband should pay to the wife a sum of Rs.500/- as expenses of the proceedings before the High Court. It was brought to the notice of the High Court during the hearing of the appeal that the wife obtained an order in her favour under Section 125 from the criminal court directing the husband to pay the wife Rs.200/- per month and the High Court allowed the adjustment of the said sum of Rs.200/- against the sum of Rs.350/-. It directed the husband to pay to the wife a sum of Rs.350/- after deducting therefrom the amount that he would be paying in compliance with the order of the criminal court. It is, thus, clear that the Division Bench allowed adjustment of the lower amount (Rs.200/-) awarded by the Magistrate against the higher amount (Rs.350/-) awarded by the matrimonial court."

10. Hon'ble Allahabad High Court in a case reported in 1 (1990) DMC 38 (Khem Chand v. State) has observed that:-

"husband revisionist shall be liable to pay maintenance only from the date of application of the wife and further if any payment or deposit has been made in civil proceedings between the parties towards payment of maintenance to the wife, the same shall be adjusted in the maintenance payable to the wife under Section 125 of the Code of Criminal Procedure."

11. The Hon'ble Apex Court in a case reported in (1997) SCC 286 (Sudip Chaudhury v. Radha Chaudhury) has observed that:-

“the amount awarded under Section 125 of the Cr.P.C for maintenance was adjustable against the amount awarded in the matrimonial proceedings.”

12. Thus, following the two decisions of our High Court referred to above, namely, **96 CWN 861, (Gossai Ch. Das v. Beauty Das)** and **AIR 1988 Cal 83, (Geeta Chatterjee v. Probhat Kr. Chatterjee)** and the decision of the Allahabad High Court (supra) and decision of the Apex Court (supra) it can be safely held that the plea of adjustment is quite maintainable.

13. The Opposite party No. 2 had deposited Rs.1,22,000/- in the account of petitioner in view of the order passed in Misc. Case No. 6(A) of 2014. The petitioner did not dispute such fact i.e. non-receipt of the said amount paid by the Opposite party No. 2 through her bank account. As such, the learned lower Court passed the impugned order.

14. In fact, the order passed by the learned Additional Chief Judicial Magistrate, Mekhliganj is legal and justified and it does not call for interference by this Court.

15. In the circumstances, I find no merit in the criminal revisional application and it should be dismissed. The criminal revisional application is, therefore, dismissed.

16. Let a copy of this judgment be sent down to the learned court below immediately.

17. Urgent photostat certified copy of this judgment be given to the parties, if applied for, upon compliance with requisite formalities.

(Manojit Mandal, J.)