HIGH COURT OF TRIPURA
AGARTALA

Crl. Rev. P. 3 of 2020

Happy Begam,
Wife of Rasel Miah
resident of Bagabannagar
PS: Kailashahar,
District-Unakoti Tripura

---- Petitioner(s)

Versus

1. Rasel Miah
   Son of Samsu Miah
   Vill-Kalerkandi, P.S-Irani
   District-Unakoti Tripura
2. The State of Tripura

---- Respondent(s)

For Petitioner(s) : Mr. A. Acharjee, Adv.

For Respondent(s) : Mr. S. Ghosh, Addl. P.P.
Mr. A.K. Pal, Adv.

Date of hearing : 03.12.2020

Date of pronouncement : 11.12.2020

Whether fit for reporting :

Yes	No
	√

B E F O R E

HON'BLE MR. JUSTICE S.G. CHATTOPADHYAY

J u d g m e n t & O r d e r

1. By means of this criminal revision petition, the petitioner wife has challenged the legality of the order dated 21.08.2019 passed by the Family Court, Kailashahar in case No.

Crl. Misc. (125)-15 of 2019 refusing to grant maintenance allowance to her under section 125 of the Code of Criminal Procedure, 1973 (Cr.P.C here under).

2. The facts of the case are as follows:

Marriage between the petitioner and her husband was solemnized on 28.01.2018 in accordance with the customs of Mohammedan marriage. In order to authenticate the marriage, they also executed a Kabinnama before the Notary at Kailashahar. Allegedly, they did not have a happy marital life because the petitioner wife was subjected to torture for dowry at her matrimonial home and few months after marriage her husband drove her out of his home. As a result of the initiative taken by a local mediation centre, her husband brought her back. Even, thereafter, their relationship did not improve. Allegedly, subsequent torture of her husband resulted in her miscarriage and ultimately her father rescued her and brought her back on 28.09.2018. She has been living at her parental home since then.

3. Unable to maintain herself, petitioner moved Family Court at Kailashahar seeking maintenance allowance @ Rs.5,000/- per month under section 125 Cr.P.C. Her husband filed objection against her claim wherein he pleaded that she used to leave her matrimonial home for going to her parental

home very frequently and she also used to harass him in many other ways. Apart from it, during marriage with the respondent she concealed that she had a child from her divorced husband which resulted in a friction in their relationship. Consequently, she left his company on her own volition. The respondent husband further pleaded that he was also maintaining his parents with his meager income as a day labourer and as such he denied to maintain his wife who was living separately without any justifiable reason.

4. In view of their pleadings, the learned Family Court framed the following 3 (three) issues in the case:

> **"I. Whether the petitioner being the legally married wife of the opposite party is justified in living apart from her husband and is unable to maintain herself?**
>
> **II. Whether the opposite party being an able bodied man and the husband of the petitioner has refused or neglected to maintain her?**
>
> **III. Whether the petitioner is entitled to get maintenance from the opposite party and if so, what should be the quantum?"**

5. The petitioner besides adducing her own evidence as PW-1 also brought her mother as PW-2 to support her case. Her husband on the other hand did not bring any other witness except examining himself as OPW-1. He further relied on a document marked as Exbt.A which contained a declaration of

the petitioner to the effect that she was leaving the company of her husband on her own volition.

6. Vide a detailed order dated 21.08.2019, the learned Judge, Family Court held that the petitioner having denied to cohabit with her husband without any reasonable cause was not entitled to any maintenance allowance from her husband under section 125 Cr.P.C. Paragraph 10 & 11 of his judgment contains the crux of the decision which is as under:

"10. Marriage in this case is not denied. There is no dispute that the petitioner has married the opposite party after obtaining divorce from her earlier husband. It is apparent that the petitioner did not disclose the fact that she has a son from her earlier marriage. As alleged by the opposite party the maintenance, care and custody of the step-son of the opposite party seems to be the real cause of dispute between the parties. This was admitted without any hesitation by PW-2, mother of the petitioner and also to some extent by the PW-1. On her own admission the petitioner had voluntarily left the matrimonial home as is evident from Exbt.A. In the scheme of section 125 Cr.P.C a person is bound to maintain his wife but not his step-son. The petitioner has voluntarily left the matrimonial home as the husband has refused to maintain the step-son. Thus, the opposite party being the husband has prima facie discharged the obligation that he did not neglect or refused to maintain his wife. The allegations of torture, demand for dowry appears to be an after thought, part of the chain of events that unfolds once the matrimonial dispute reaches the threshold of the advocate and advocate clerks.

11. In view of the above discussion, I am of the considered opinion that the petitioner having voluntarily left the matrimonial home and refusing to cohabit with the opposite party without any reasonable cause is not entitled to maintenance per se from the opposite party husband. Her prayer for maintenance is therefore dismissed."

7. Question is whether the impugned order of the learned Judge, Family Court calls for any interference in revision.

8. Heard Mr. A. Acharjee, learned counsel appearing for the petitioner as well as Mr. A.K. Pal, learned counsel appearing for the respondent and Mr. S. Ghosh, learned Addl. P.P. appearing for the State respondent.

9. Submission on behalf of the petitioner is that since marriage is admitted by the respondent husband, it is his statutory duty to maintain his wife who is unable to support herself. According to Mr. A. Acharjee, learned counsel of the petitioner, the Family Court arrived at an erroneous conclusion without considering this fact. Further argument on behalf of the petitioner is that despite proof of torture at her matrimonial home, the learned Family Court by the impugned order erroneously held that the petitioner denied to cohabit with her husband without any reasonable cause. Mr. A. Acharjee, learned counsel appearing for the petitioner has further contended that her husband forced the hapless petitioner to sign the declaration (Exbt.A) which was later used by him against the petitioner. According to learned counsel, the document does not have any evidentiary value. On the grounds

aforesaid, learned counsel of the petitioner urges for allowing the petition.

10. Appearing for the respondent husband, Mr. A.K. Pal, learned counsel submits that the impugned order does not warrant interference in revision because by this reasoned order, the Family Court rightly held that the petitioner voluntarily left her husband and she denied to live with her husband without any sufficient reason. According to Mr. Pal, learned counsel of the respondent husband, the petitioner concealed to the respondent during their marriage that she had a child from her divorced husband. After the marriage, when her husband came to know about this fact he refused to maintain the child as a result of which the petitioner left his home and started living with her parents. Learned counsel, therefore, urges for dismissal of the petition.

11. Notably, the learned Judge, Family Court in the impugned order passed by him held that the real cause of dispute between the parties was the care and custody and the maintenance of the son of the petitioner from her divorced husband and the allegations of demand for dowry and torture resulting therefrom were all after thought. It is true that petitioner PW-1 also supported this fact in her cross examination wherein she stated that at the time of her

marriage, the respondent promised to take care of her son but after marriage he refused. Her mother (PW-2) categorically stated that actual cause of dispute was with regard to the custody, care and maintenance of the son of the petitioner from her divorced husband. Her husband (OPW-1) has also made a very categorical statement in this regard in his examination in chief which is as under:

"I am willing to maintain the petitioner on condition that she stays with me but not her son."

12. Therefore, the finding of the learned Judge, Family Court that the maintenance, care and custody of the son of the petitioner from her divorced husband was in the centre of dispute between the petitioner and the respondent is absolutely correct. There is no doubt that the petitioner left her matrimonial home because her husband did not allow her son to stay with her there. The question is whether it can be a lawful excuse for the husband to deny maintenance allowance to his wife when it is proved that the wife is unable to maintain herself and the husband has sufficient means to maintain his wife.

13. The Apex Court in **Badshah Vs. Urmila Badshah Godse & Anr.** reported in **(2014) 1 SCC 188** has succinctly held that adversarial approach should be avoided in the cases involving social justice legislations for special protection and

benefit of vulnerable groups in the society. In Paragraph 14 & 15 of the judgment the Apex Court has held as under:

"14. Of late, in this very direction, it is emphasized that the Courts have to adopt different approaches in "social justice adjudication", which is also known as "social context adjudication" as mere "adversarial approach" may not be very appropriate. There are number of social justice legislations giving special protection and benefits to vulnerable groups in the society. Prof. Madhava Menon describes it eloquently:

"It is, therefore, respectfully submitted that 'social context judging' is essentially the application of equality jurisprudence as evolved by Parliament and the Supreme Court in myriad situations presented before courts where unequal parties are pitted in adversarial proceedings and where courts are called upon to dispense equal justice. Apart from the social- economic inequalities accentuating the disabilities of the poor in an unequal fight, the adversarial process itself operates to the disadvantage of the weaker party. In such a situation, the judge has to be not only sensitive to the inequalities of parties involved but also positively inclined to the weaker party if the imbalance were not to result in miscarriage of justice. This result is achieved by what we call social context judging or social justice adjudication.

15. The provision of maintenance would definitely fall in this category which aims at empowering the destitute and achieving social justice or equality and dignity of the individual. While dealing with cases under this provision, drift in the approach from "adversarial" litigation to social context adjudication is the need of the hour."

14. The Apex Court in the recent decision dated 04.11.2020 in **Rajnesh Vs. Neha & Ors.** reported in **MANU/SC/0833/2020** also observed that since it is the sacrosanct duty of the husband to provide financial support to

his wife and minor children he is required to earn money even by physical labour if he is able bodied and cannot avoid his obligation except on any legally permissible ground mentioned in the statute.

15. Here in this case the court has found that the only reason of respondents' denying maintenance allowance to his petitioner wife is that she refused to part with her son from her previous marriage in order to live with her present husband. Admittedly, the petitioner did not agree to part with her son from her previous marriage in order to live with her husband. The learned Judge, Family Court held that it was not a sufficient cause for the petitioner to refuse to live with her husband and accordingly the learned Judge, Family Court refused to grant maintenance allowance to the petitioner.

16. The decision taken by the learned Judge, Family Court is not correct because admittedly the respondent refused to allow the petitioner to stay with him unless she parted with her son from her previous marriage. For argument's sake even if it is assumed that the petitioner concealed the fact that she had a child from her previous marriage she cannot be denied maintenance allowance by her present husband when it is proved that she is his legally married wife who is unable to maintain herself and he has sufficient means to maintain her. It

was no wrong on the part of the petitioner to refuse to part with her son from her previous marriage for living with her present husband. Any mother would do it.

17. It is apparent that petitioner wanted to live with her husband. But she denied to accept his condition that she had to leave her son for living with him. As a result, her respondent husband did not allow her to stay with him and the petitioner started living separately along with her minor son. The learned Family Court should not have held that the petitioner was living separately from her husband without sufficient cause and therefore she was not entitled to maintenance and the Court should not have decided the case against her refusing to grant maintenance allowance to her.

18. Resultantly, the revision petition is allowed. Having considered the occupation and income of the respondent, his dependency and the status and needs of the petitioner and all other relevant factors, this Court is of the considered view that monthly maintenance allowance of Rs.3000/-(Rupees three thousand) would be just and appropriate in this case. Such allowance shall be paid with effect from 14.01.2020 i.e. the date of filling of her petition in the Family Court, Kailashahar. The arrears from January to November shall be paid in installments at Rs.500/-(Rupees five hundred) per month along

with the monthly maintenance of Rs.3,000/- (Rupees three thousand). Therefore, the respondent will be paying Rs.3,500/- (Rupees three thousand five hundred) per month to his petitioner wife until the whole arrear is paid and thereafter he will be paying Rs.3,000/- (Rupees three thousand) per month. The Judge, Family Court, will decide the mode of payment as per convenience of the parties after calling them to Court. If the respondent fails to pay the maintenance allowance to his wife in terms of this order, the Judge, Family Court will enforce its payment in accordance with law.

19. The case stands disposed of. Supply a copy of this order to the parties free of cost.

Send back the LC record immediately along with a copy of order.

JUDGE

HIGH COURT OF TRIPURA
सत्यमेव जयते

Rudradeep