HIGH COURT OF TRIPURA
AGARTALA

Crl. Rev. P. 72 of 2019

Shri Indrajit Debnath
son of late Arobinda Debnath
of Ranirgaon(Karoiban)
P.S: Ranirbazar: Agartala
District:West Tripura

---- Petitioner(s)

Versus

Smt. Ankita Bhowmik
wife of Shri Indrajit Debnath
Daughter of Sudhangshu Kumar Bhowmik
North Shalgoraha: Udaipur
P.S:R.K.Pur: Gomati Tripura

---- Respondent(s)

For Petitioner(s) : Ms. A. Banik, Adv.
For Respondent(s) : Mr. B.N.Majumder, Adv.

Date of hearing : 10.12.2020
Date of pronouncement : 18.12.20

Whether fit for reporting :

Yes	No
	√

B E F O R E

HON'BLE MR. JUSTICE S.G. CHATTOPADHYAY

Judgment & Order

[**1**] By means of this criminal revision petition, the petitioner husband has challenged the legality of the order dated 14.06.2019 passed by the Family Court, Udaipur in case No. Crl. Misc. No.104 of 2018, whereby the petitioner has been directed to pay Rs.3,000/- per month to his

respondent wife as maintenance allowance 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 his respondent wife was solemnized on 01.03.2018 in accordance with the customs of Hindu marriage. Allegedly, their marital life lasted only for 3 months because the respondent wife was ill treated at her matrimonial home and she was beaten up by her husband when she raised voice against his conduct. He also demanded dowry and tortured the respondent for fulfillment of his demand. The hapless wife then called her father who came and tried for settlement. His efforts did not work and ultimately the petitioner drove his respondent wife out of his home on 04.06.2018. She has been living at her parental home since then.

[**3**] Unable to maintain herself, respondent wife being petitioner moved the Family Court at Udaipur seeking maintenance allowance @ Rs.10,000/- per month under section 125 Cr.P.C. Her husband filed objection

against her claim wherein he admitted the marriage and pleaded that after marriage they lived together only for 96 days. According to the husband, right from the beginning of their marital life, his wife ill treated him. Initially, she told her husband that she had physical difficulties in having sexual intercourse. Thereafter, both of them came to a gynecologist for her treatment. After a few days she started accusing her husband that actually he was incapable of having physical relationship with her. A dispute developed between the couple over this issue and the neighbours intervened in order to settle the dispute. Following their advice, the husband consulted a doctor who advised him to undergo some clinical tests and accordingly the tests were done. According to the husband, few days thereafter, his wife left his house and before leaving the house she made all these false allegations of dowry demand and torture. According to him, his dependent mother has been suffering from liver cirrhosis. Moreover, his monthly income does not exceed 7/8 thousand. In such a situation, he is unable to provide monthly maintenance allowance to his wife. But he was ready to live with her and maintain her if she came back to him. It is also

pleaded by the husband that his wife is an educated lady having sufficient income to support herself. On these grounds he urged the Family Court to dismiss the petition of his wife.

[**4**] In view of their pleadings, the learned Family Court framed the following 2 (two) issues in the case:

> **"I. Has the OP being the husband of the petitioner, neglected or refused to maintain the petitioner having sufficient means?**
>
> **II. Is the petitioner entitled to any maintenance allowance?"**

[**5**] The respondent wife who was the petitioner in the Family Court, besides adducing her own evidence as PW-1, also brought her mother Smt. Lilu Bhowmik as PW-3 and aunt Smt. Lakhi Debnath as PW-2 to support her case. Her husband on the other hand examined himself as OPW-1, his friend Haripada Kar as OPW-2 and match maker of their marriage namely, Smt. Namita Bhowmik as OPW-3.

[**6**] Vide a detailed order dated 14.06.2018, the learned Judge, Family Court directed the husband to pay monthly maintenance allowance of Rs.3,000/- to his wife

w.e.f 01.06.2019 on the ground that the marriage was admitted by him and it was proved that the wife had sufficient ground for not living with him. Relevant extract of the order containing the crux of the decision is as under:

> **".....After weighing the evidence of both sides it appears that the eye of the dispute between the parties is related to their physical relation mainly though the petitioner and her witnesses in chorous alleged that the petitioner was tortured by the O.P.**
>
> **So far Section 125 Cr. P.C. is concerned only under three circumstances a wife cannot get maintenance from her husband i.e.**
>
> **(i)If they are living separately on mutual consent.**
>
> **(ii) If the wife without any reasonable cause and excuse refuses to live with her husband.**
>
> **(iii)If the wife leads adulterous life.**
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> **From the evidence discussed above, it is obvious that point no 1 and 3 are not applicable in the instant case. So far point no. 2 is concerned, in view of the evidence discussed above, I am of the view that the Petitioner has sufficient ground for not living with the O.P. Hence, the Petitioner is entitled to get maintenance allowance from the O.P.**
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> **Admittedly, the O.P. works in an NGO. Though the petitioner claimed that the O.P. earns Rs.30,000/- per month yet in support of her claim she could not adduce any convincing evidence.**
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> **Hence, considering the minimum need of the petitioner and the income of the O.P., I think it would meet the ends of justice if the O.P pays Rs.3000/- (rupees three thousand) per month to the petitioner w.e.f. 01.06.2019 within the first week of every English**

calendar month through money order and the money order commission will be borne by the O.P. …..”

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

[**8**] Heard Ms. A. Banik, learned counsel appearing for the petitioner as well as Mr. B.N.Majumder, learned counsel appearing for the respondent.

[**9**] Appearing for the petitioner husband, Ms. A.Banik, learned counsel submits that the impugned order calls for interference in revision because the learned Family Court without considering the objections of the petitioner and the evidence adduced by him erroneously held that his wife was tortured by the petitioner and she had sufficient reason not to live with her husband. Further submission on behalf of the petitioner is that his monthly income and the dependency were not also considered by the learned family court when the amount of monthly maintenance allowance was determined. According to Ms. Banik, learned counsel of the petitioner husband, the monthly income of the petitioner is not enough even for maintaining himself and his dependent mother who has

been suffering from critical ailment. It is contended that the petitioner husband is quite unable to provide any maintenance allowance to his wife, if she lives in a separate mess. Moreover, she is not entitled to such maintenance allowance under Section 125 Cr.P.C since she has failed to establish sufficient cause for her separate living. Learned counsel, therefore, urges for dismissal of the petition.

[**10**] Submission on behalf of the respondent wife is that since marriage is admitted by the petitioner husband, it is his statutory duty to maintain his wife who is unable to support herself. According to Mr. B.N.Majumder, learned counsel of the respondent wife, the Family Court after proper appreciation of evidence, arrived at a right conclusion with regard to the entitlement of the petitioner to maintenance allowance under Section 125 Cr.P.C. Further argument on behalf of the respondent is that there is sufficient proof of torture at her matrimonial home which compelled the respondent wife to take shelter at her parental home. According to learned counsel, it has been established that the respondent has been living separately

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under compelling circumstances and as such she is very much entitled to maintenance allowance under Section 125 Cr.P.C. According to learned counsel admittedly the petitioner is having a monthly income of Rs.8,000/- and moreover, he is an able bodied person and capable of earning more. Therefore, he cannot deny maintenance of his wife. On the grounds aforesaid, learned counsel of the respondent urges for dismissing the revision petition.

[**11**] Notably, the learned Judge, Family Court by the impugned order held that though the petitioner wife brought several allegations of torture and cruelty, the genesis of their dispute was rooted in their troubled physical relationship. However, the learned Judge, Family Court after appreciation of evidence found that the petitioner wife had sufficient cause for not living with her respondent husband and since the marriage was admitted and it was proved that the husband had income and the petitioner was unable to maintain herself, direction was given to the respondent husband to provide maintenance allowance as above.

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[**12**] As noted by this court, petitioner brought her mother and her aunt to court to support her case. In her examination-in-chief the petitioner [**PW-1**] affirmed that after marriage she lived with her husband for 3 months only and thereafter she was ousted from her matrimonial home by her husband. She also asserted that she had no income of her own to support herself whereas her husband who worked in an NGO used to carry home a monthly income of Rs.30,000/-.

In her cross examination she admitted that she obtained B.A. degree in English honours and prior to her marriage she had a private job in Samsung service centre. It was also stated by her in her cross examination that she did not have a perfect physical relationship with her husband for which she attributed the fault to her husband. She, however, denied the suggestion of her husband that she married him only for getting maintenance allowance.

[**13**] Her mother PW-3 supported her daughter's case. According to her, after marriage her daughter was tortured by her husband who demanded a motor bike. Later her daughter was driven out by her son-in-law from

his home. When her daughter left her matrimonial home, meeting was held in their house for settlement of their dispute. But her son-in-law did not come to take back his wife.

In her cross examination she also affirmed that prior to her marriage her daughter had a private job. But now she has no income to maintain herself.

[**14**] **PW-2** Smt. Lakhi Debnath who is the aunt of the petitioner wife also asserted that the petitioner was tortured by her husband who demanded a motor bike from her parents and ultimately she was ousted by her husband from his home. The hapless petitioner came back to her parents.

[**15**] The substance of the examination in chief of the respondent husband is that his wife was not found happy after marriage. One day her aunt came and took back his wife to her parents. Thereafter, he met her several times to bring her back. But she did not agree to be back to him to restore the conjugal life. About the allegation of his wife with regard to his incapacity of having physical relationship with her, it was stated by him that when such allegation

was brought against him, he agreed to undergo medical test. But his mother-in-law said that even if he was found medically fit, she would not allow her daughter to live with him. The disappointed husband approached the State Commission for Women to mitigate their dispute. But his wife never appeared before the Commission. According to him his wife is still working in a Samsung service centre at Udaipur and quite able to maintain herself whereas, he is a social worker and he does not have any fixed income.

[**16**] **OPW-2** Himangshu Kar supported the case of the respondent husband before the Family Court. According to him the respondent was sincere in resolving his dispute with his wife. When they developed the dispute owing to their troubled physical relationship, both of them were advised to undergo medical test. The respondent had got his tests done, but his wife declined to undergo such medical tests. **OPW-3**, Smt. Manika Bhowmik, who negotiated and settled their marriage categorically told that the respondent husband did not claim anything in consideration of his marriage with the petitioner. She did not say anything more about the case.

[**17**] It is true that the petitioner could not adduce trustworthy evidence in the Family Court with regard to the torture allegedly committed on her by her respondent husband. But the fact that after marriage she accompanied her husband to her matrimonial home to live with him is not denied. Admittedly they lived together for about 3 months. From a critical analysis of their evidence it has surfaced on record that the matrimonial dispute cropped up due to their troubled physical relationship. Learned Judge of the Family Court has recorded a correct finding in this regard. But, it could not be ascertained actually who was at fault. The wife pleaded in the Family Court that she had no income and she was unable to maintain herself. Her witnesses also supported her case. Her husband could not prove the contrary. Husband on the other hand admitted that he had monthly income though according to him it was not a fixed income. In these circumstances the learned Family Judge asked him to pay monthly allowance of Rs.3000/- to his wife.

[**18**] The purpose of Section 125 Cr.P.C. has been illustrated by the Apex Court in ***K.Vimal vs.***

K.Veeraswammy, (1991) 2 SCC 375 in the following words:

> ***"Section 125 of the Code of Criminal Procedure is meant to achieve a social purpose. The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife."***

[**19**] Further, in **Badshah Vs. Urmila Badshah Godse & Anr.** reported in **(2014) 1 SCC 188** the Apex Court 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, observation of the Apex Court in this regard is 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. 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."**

[**20**] The Apex Court in the recent decision dated 04.11.2020 in **Rajnesh Vs. Neha & Ors.** reported in **MANU/SC/0833/2020** held that since it is the sacrosanct duty of the husband to provide financial support to his wife and minor children ***the plea of the husband that he does not possess any source of income ipso facto does not absolve him of his moral duty to maintain his wife if he is able bodied and has educational qualifications***.

[**21**] Here in this case the Family Court after appreciation of evidence found that the wife petitioner had sufficient cause for not living with her husband. It was also proved before the Family Court that the wife was unable to maintain herself whereas the husband had a monthly income to provide maintenance to her. Accordingly, the learned Family Court allowed the petition of the wife and

directed the husband to pay maintenance allowance to his wife Rs.3,000/-(rupees three thousand)only.

[**22**] In view of what is stated above, there is no reason to interfere with the impugned order of the learned Judge, Family Court, Udaipur.

[**23**] Consequently the revision petition stands dismissed and the case is disposed of on contest.

Send back the LC record.

JUDGE

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Saikat Sarma