

28.07.2021
Item no.17
Ct. No.34
CHC

C.R.R. No.3714 of 2012

(Physical Hearing)

In Re: An application under Article 227 of the Constitution of India.

AND

In the matter of:-

Smt. Seema Singh
... petitioner

Mr. Sambhu Nath Roy,
Mr. Surojit Roychowdhury,
Ms. Sharmistha Roychowdhury
...for the petitioner

The revisional application has been preferred against the order dated 12.09.2012, passed by the learned District Judge, Hooghly, in connection with Criminal Motion No.254 of 2011, wherein the learned Sessions Judge was pleased to affirm the judgement and order dated 28.09.2011 passed by the learned Judicial Magistrate, 5th Court, Hooghly, Sadar.

I have considered the judgement which was delivered by the learned Magistrate on 28.09.2011 and the yardstick which has been fixed for proving a case under Section 125 of the Code of Criminal Procedure. Learned court at one breath has recorded that the husband used to assault the wife frequently and drove her out of the matrimonial home, at the same breath the court expected complaints and medical certificates for assessing whether there was any neglect or refusal to maintain the wife. It is surprising that the learned court ignored the case under Section

498A of the Indian Penal Code so filed at the instance of the wife and on misappreciation of the evidence came to the conclusion that the wife failed to prove the factum of neglect or refusal. The learned Sessions Court while exercising its revisional jurisdiction ignored the observations, reasons assigned by the learned Magistrate for arriving at a finding so far as refusal of maintenance in the instant proceedings are concerned. I am of the view that judgement dated 28.09.2011 passed by the learned Judicial Magistrate, 5th Court, Hooghly and affirmed by the learned District Judge, Hooghly, by its judgement and order dated 12.09.2012 in Criminal Motion No.254 of 2011 suffers from perversity and as such requires interference of this Court.

Needless to state that only drafting in the judgement regarding the object of the legislature for incorporation of the provisions of Section 125 of the Code of Criminal Procedure is not enough but what is expected from the courts are to give a flesh and blood and life to the provisions. The order so passed by the learned Magistrate on 28.09.2011 and the learned Sessions Court on 12.09.2012 as such is set aside.

Learned Magistrate is directed to issue notice upon the parties and consider the quantum of maintenance to be granted to the present petitioner/wife. The learned Magistrate while considering the quantum of maintenance would take into account the sufferings of the lady as also the earning of the husband and the period for which the lady has suffered.

Records reflect that the application under Section 125 of the Code of Criminal Procedure was decided after six years she was

driven out from the house and this revisional application is finally disposed of almost after ten years of the order passed by the learned Magistrate. If the learned Magistrate come to a conclusion regarding the quantum to be allotted to the wife, in that case the learned Magistrate will also assign reasons while fixing the date from which such maintenance should be granted.

With the aforesaid observations, C.R.R.3714 of 2012 is allowed.

Pending application, if any, is consequently disposed of.

Interim order, if any, is hereby vacated.

Department is directed to communicate this order to the learned Judicial Magistrate, 5th Court, Hooghly (Sadar), within a period of seven days.

Learned Magistrate is directed to dispose of regarding the fixation of quantum of maintenance and date from which it is to be paid within a period of sixty days from date of communication of this order.

All parties shall act in terms of copy of this order downloaded from the official website of this Court.

(Tirthankar Ghosh, J.)