

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE JUSTICE TIRTHANKAR GHOSH

CRR 1480 of 2020

Kanhaiya Dusad alias Kanailal Dusad

-vs.-

Smt. Babita Devi Dusad & Anr.

For the Petitioner : Mr. Kollol Kumar Basu,
Mr. Debapriya Samanta,
Mr. S. Mukherjee,
Mr. Jannat Ul Firdous.

For the opposite party
No. 1/wife : Mr. Kunal Ganguly.

For the State : Ms. Manisha Sharma

Heard on : 14.09.2021 & 01.10.2021

Judgment on : 07.10.2021

Tirthankar Ghosh, J:-

The revisional application has been preferred challenging the order dated 14.01.2020 passed in Criminal Motion No. 32 of 2019 by the Learned Additional Sessions Judge, 1st Court, Durgapur wherein the Learned Sessions Judge was pleased to affirm the judgment and order dated

10.04.2019 passed by the Learned Judicial Magistrate, 1st Court, Durgapur in Misc. Case No. 2 of 2015 (T.R. No. 7 of 2015).

The order dated 10.04.2019 passed by the Learned Judicial Magistrate, 1st Court, Durgapur reflects that in an application under Section 125 of the Code of Criminal Procedure the Learned Magistrate after the evidence was adduced by both the parties was pleased to award maintenance of Rs. 10,000/- per month to the wife with effect from 01.04.2019.

The contentions advanced in the application under Section 125 of the Code of Criminal Procedure is extracted below :-

One Babita Devi Dusad contended that she was the legally married wife of Kanhaiya Dusad and their marriage was solemnized on 03.12.1992 according to Hindu rites and customs in presence of members of both families. After marriage she went to her in-laws home and as per demand her family members gave a sum of Rs. 2,00,000/- cash, 10 bhoris gold ornaments, 30 bhoris silver ornaments and other gift items as demanded by her husband and his family members. She further contended that out of the said wedlock two children were born one Bandana Kumari, aged about 13 years and other Prem Paswan, aged about 15 years.

After the marriage, her husband started inflicting torture upon her without any cogent reason and with passage of time the intensity of torture, both physically and mentally, increased. It was further stated that her husband was addicted to wine and also maintained extra marital

relationship with a lady of easy virtue and used to return late night in a drunken condition and regularly assaulted the petitioner with fists and blows in presence of their children.

With the hope that the situation would improve, the petitioner tolerated such torture being inflicted upon her. That on or about October, 2010 her husband attempted to kill her by pouring kerosene oil over her body after physically assaulting her with fists and blows. Lastly, in the month of September, 2014 her husband drove her out of the house and since then she was residing at her father's house.

It has been contended that the petitioner earlier filed a criminal case in Andal Police Station being Andal Police Station Case No. 426/2014 dated 18.11.2014 under Section 498A/323/406/506/120B of I.P.C. which was pending before the Learned A.C.J.M. Court at Durgapur

According to her, her husband is a permanent employee of Eastern Coal-fields Ltd., which is situated at Kenda Area and earns Rs. 30,000/- per month from his salary. On the other hand, petitioner is a destitute lady having no income of her to maintain herself and had been passing days on the charity of others. There is willful refusal and neglect by the husband, who has sufficient means to maintain her and as such she claimed maintenance allowance of Rs. 6,000/- per month for herself and Rs. 5,000/- each for her two minor children. In addition to the application under Section 125 of the Code of Criminal Procedure, the lady also preferred an

application for interim maintenance of Rs. 16,000/- for herself and Rs. 5,000/- each for two minor children.

On receipt of the notice issued by the Court, the present petitioner/husband appeared and filed show-cause to the notice so issued.

Record reflects that the Learned Magistrate was pleased to direct the husband to pay interim maintenance of Rs. 1200/- per month from the date of the order i.e. 04.02.2016. The wife in order to prove her case under Section 125 of the Code of Criminal Procedure, tendered herself as the only witness being PW1. On the other hand, the opposite party/husband cited 3 witnesses which includes OPW1, Kanhaiya Dusad (husband); OPW2, Prem @ Anuj Dusad; OPW3, Bablu Baitha. The husband also relied upon number of documents which included

Exhibit A: Order Sheet, formal FIR and information in form of written complaint to Officer-in-charge of Andal Police Station pertaining to GR Case No. 1159 of 2017, collectively.

Exhibit B: Certified copy of FIR No. 394 of 2014 dated 22.12.2014.

Exhibit C: Certified copy of the complaint of facts filed before the Court of Ld. Addl. Chief Judicial Magistrate, Durgapur, by the opposite party registered as MP Case No. 329 of 2014.

Exhibit D: Certified copy of the order sheets of Ld. Addl. Chief Judicial Magistrate, Durgapur pertaining to GR Case No. 1844 of 2014.

Exhibit E: Certified copy off the formal FIR No. 426 of 2014 dated 18.11.2014 drawn up by Officer in Charge of Andal Police Station, on the basis of the complaint filed by Babita Devi Dusad.

Exhibit F: Certified copy of the complaint of the facts lodged by Babita Devi Dusad against the opposite party Kanhaiyalal Dusad;

Exhibit G: Certified copy of the chargesheet No. 359 of 2014 dated 04.12.2014 pertaining to FIR No. 426 of 2014 dated 18.11.2014 lodged at Andal Police Station.

Exhibit H: Certified copy of the list of seized articles dated 18.11.2014 in connection with the investigation into Andal Police Station Case No. 426 of 2014 dated 18.11.2014.

Exhibit I: Certified copy of the depositions of the witnesses in connection with GR Case No. 2004 of 2014.

Exhibit J: Certified copy of the judgment in connection with GR Case No. 2004 of 2014.

Exhibit K: Certified copy of the charge sheet No. 174 of 2017 in connection with FIR No. 426 of 2014 dated 18.11.2014 lodged at Andal Police Station.

The Learned Magistrate after considering the evidence on record and the purpose for which the provisions have been incorporated in the Code of Criminal Procedure and also after relying upon the decisions of the Hon'ble Apex Court as also this Court was of the opinion that the wife was entitled

to maintenance and accordingly awarded a sum of Rs. 10,000/- as monthly allowance from 01.04.2019.

The reasons which were considered by the Learned Magistrate while apprising the evidence are as follows:-

- a. The wife Babita Devi Dusad has asserted in her application, she is the legally married wife of the opposite party and their marriage was solemnized on 03.12.1992, coupled with the fact that out of the wedlock two children were born and such facts were not disputed by the husband.
- b. There is an averment by Babita Devi Dusad that her husband is a permanent employee of Eastern Coal-field Ltd. with a monthly salary of Rs. 30,000/-. The husband, on the other hand, in his objection has admitted the fact of his employment, however, he has expressed the expenses he has to incur on different accounts. The husband, thereafter, justified expenses by deposing that he got his employment by way of VRS of his father and as such he had to part with half of his salary with his brother.
- c. The husband has withhold the documents in respect of his salary as a permanent employee of ECL and in the month of November, 2017 he got salary of Rs. 42,330/-.

The different documents relating to all the criminal cases, which were marked as exhibits in this case were analyzed and thereafter, the Learned

Magistrate arrived at its finding by holding that as the husband himself has stated that his income is Rs. 42,330/-, the wife is entitled to maintenance of Rs. 10,000/- and gave effect from 1st April, 2019.

The said order was challenged before the Revisional Court in Criminal Motion No. 32 of 2019 and the Learned Additional Sessions Judge, 1st Court, Durgapur and the Learned Revisional Court on an appreciation of the evidence so adduced before the Learned Magistrate was of the view that the main contention which was advanced regarding the factum of adultery was never proved by the husband and as such the issue of interference with the order of the learned Judicial Magistrate, 3rd Court, Durgapur do not arise. Thus, Criminal Motion No. 32 of 2019 was dismissed and the order dated 10.04.2019 passed by the Learned Judicial Magistrate, 3rd Court was affirmed.

Mr. Kollol Kumar Basu, learned Advocate appearing for the husband/petitioner in the instant revisional application, has tried to draw the attention of this Court regarding the evidence which was adduced by the parties before the Court. In fact a supplementary affidavit was filed which included the evidence of the petitioner as well as the opposite party. I find that in an application under Section 125 of the Code of Criminal Procedure both for the petitioner as well as the opposite party, the examination-in-chief has been filed by way of affidavit-in-chief. The procedure do not incorporate such a provision similar to the provisions of Negotiable Instruments Act and the Learned Court should not allow this practice to be continued. This is much disturbing as the affidavit-in-chief is filed by way of a notarial

affidavit, the contents of which are usually drafted by the Learned Advocates and the witnesses are unable to understand the intricacy thereof, although on oath at the concluding paragraphs a reference is made regarding the knowledge of the contentions. I find that the examination-in-chief and the cross-examination of some of the witnesses are so contradictory that I am of the firm opinion that the witnesses did not understand what was drafted and placed before the Court by way of notarial affidavit-in-chief.

There has been factual appreciation by the Learned Trial Court as well as the Revisional Court. The finding of the both the Courts are based on the evidence which were appearing on records, the analysis of the same in the background of the facts of the case and their specific observations and finding regarding the issue of adultery which also has been canvassed before this Court by the Learned Advocate appearing for the petitioner. I have considered the manner in which the Learned Court below have appreciated the said evidence and disbelieved the factum of adultery. There has been no manifest error in the conclusion which was arrived at.

In view of the same, I have no hesitation to hold that there is no illegality in the order passed by the Learned Magistrate in its judgment and order dated 10.04.2019 in Misc Case No. 2 of 2015 (T.R. No. 7 of 2015) and the judgment and order dated 14.01.2020 in Criminal Motion No. 32 of 2019.

Accordingly, CRR 1480 of 2020 is dismissed.

Pending application, if any, is consequently disposed of.

Interim order, if any, is hereby vacated.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Tirthankar Ghosh, J.)