

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 12 of 2020

Chinmoy Banerjee

Vs

Soma Banerjee

For the Petitioner : Mr. Dhananjay Banerjee.

For the O. P. : Mr. Apalok Basu.

Heard on : 28.11.2022

Judgment on : 15.12.2022

Shampa Dutt (Paul), J.:

The present revision has been preferred by the petitioner/husband against the opposite party/wife praying for setting aside of the judgment and order dated 25.09.2019 passed by the Court of the learned Additional Sessions Judge, 1st Court at Barrackpore in Criminal Revision no. 307 of 2019 challenging Order dated 25.09.2019 passed by the court of the learned Judicial Magistrate, 5th Court at Barrackpore in M Case no. 579 of 2018.

The petitioner's case in short is that the opposite party/wife filed an application under Section 125 of the Code of Criminal Procedure before the learned Additional Chief Judicial Magistrate, Barrackpore (M Case no. 579 of 2018). The petitioner/husband filed his written objection by stating that the opposite party/wife had left her matrimonial home only to go and see her paternal inmates, but subsequently filed the application under Section 125 of the Cr.P.C. She also took the ATM card in respect of the joint account in the name of the petitioner and opposite party and regularly withdrew money from the said account. The petitioner's case is that he is regularly depositing money in the said account and is also maintaining his wife till date. It is submitted that the statement of account will support the said contention.

The learned Judicial Magistrate, 5th Court, Barrackpore on 15.06.2019 initially passed an interim order of maintenance directing the petitioner/husband/father to pay a sum of Rs. 3000 per month each for his wife and minor child.

Being aggrieved the wife/opposite party preferred a revision before the Court of Additional District Judge, 1st Court, Barrackpore (Criminal Revision No. 307 of 2019).

The learned Sessions Judge modified the said order of interim maintenance passed by the learned Magistrate and directed the petitioner/husband/father to pay a sum of Rs. 7000 each to their wife and the minor child with cost of Rs. 5000.

It is submitted that there has been no laches on the part of the husband/petitioner and that the petitioner's wife left her matrimonial home without any just and sufficient cause. The petitioner filed an application under Section 9 of the Hindu Marriage Act, 1955 (Matrimonial Suit no. 1254 of 2018) in which the effort for reconciliation by the Court failed due to the unwillingness of the opposite party/wife.

Mr. Dhananjay Banerjee learned Counsel for the petitioner submits that the learned Sessions Judge ought to have considered the salary of the petitioner on the basis of which the maintenance amount has been directed to be paid. It is further submitted that the conduct of the petitioner/husband regarding maintenance of his wife and his

minor child is good as he is bearing all expenses by sending money through bank account and the opposite party/wife is taking money from the bank joint account by using the ATM card. The petitioner very fairly filed the statement relating to his salary account to show his actual earning but the learned Sessions Court failed to consider the financial hardship of the petitioner/husband and passed the order under challenge in a mechanical manner and as such the said order under revision is thus liable to be set aside in the interest of justice.

Mr. Apalok Basu, the Counsel for the Opposite Party has argued that the statement of salary account filed by the husband/petitioner before the Trial Court shows that he earns a sum of Rs. 48,295 per month and as such the order passed by the learned Sessions Judge has been passed by taking into consideration the income of the petitioner and the said order is in accordance with law and as such the revisional application is liable to be dismissed.

Heard learned Counsel for both sides. Considered.

The statement of salary account of the petitioner shows **only one entry** as Rs. 48,295 for the month of February, 2019. The salary for the months prior to February, 2019 and subsequent to February, 2019 are at the rate of Rs. 31,765/Rs. 31,804. From the said statement of account it can be presumed that the petitioner's monthly salary amounts to Rs. 31,000 plus.

A total amount of Rs. 14,000 has been granted as interim maintenance to the wife and child by the learned Sessions Court. The said order has been passed in a criminal revision challenging the order of the learned Magistrate who had passed an order granting maintenance of Rs. 3000 for the wife and Rs. 3000 for the minor child total Rs. 6000.

The revision is limited to the quantum of maintenance. The case of the petitioner/husband is that the wife/opposite party is regularly withdrawing money from their joint account by using the ATM card. It is the case of the petitioner/husband that the opposite party/wife left her matrimonial home without any just and sufficient reason and has expressed her unwillingness to live with the petitioner before the learned Additional District Judge, Fast Track Court, Barrackpore while a reconciliation was being attempted in a proceedings initiated by the petitioner/husband under Section 9 of the Hindu Marriage Act, 1955.

The Supreme Court in ***Rajnish vs. Neha (Criminal Appeal No. 730 of 2020)*** laid down the guidelines for the courts to follow while considering the quantum or amount of maintenance to be granted. The Court also held:-

Section 23 of HAMA provides that while awarding maintenance, the Court shall have due regard to the criteria mentioned therein:-

“23. Amount of maintenance. – (1) It shall be in the discretion of the court to determine whether any, and if so what, maintenance shall be awarded under the provisions of this Act, and in doing so, the court shall have due regard to the consideration set out in sub-section (2) or sub-section (3), as the case may be, so far as they are applicable.

(2) In determining the amount of maintenance, if any, to be awarded to a wife, children or aged or infirm parents under this Act, regard shall be had to—

(a) the position and status of the parties;

(b) the reasonable wants of the claimant;

(c) if the claimant is living separately, whether the claimant is justified in doing so;

(d) the value of the claimant's property and any income derived from such property, or from the claimant's own earning or from any other source;

(e) the number of persons entitled to maintenance under this Act.

(3) In determining the amount of maintenance, if any, to be awarded to a dependant under this Act, regard shall be had to—

(a) the net value of the estate of the deceased after providing for the payment of his debts;

(b) the provision, if any, made under a will of the deceased in respect, of the dependant;

(c) the degree of relationship between the two;

(d) the reasonable wants of the dependant;

(e) the past relations between the dependant and the deceased;

(f) the value of the property of the dependant and any income derived from such property, or from his or her earnings or from any other course;

(g) the number of dependants entitled to maintenance under this Act.”

(d) Section 125 of the Cr.P.C.

Chapter IX of Code of Criminal Procedure, 1973 provides for maintenance of wife, children and parents in a summary proceeding. Maintenance under Section 125 of the Cr.P.C. may be claimed by a person irrespective of the religious community to which they belong. The purpose and object of Section 125 Cr.P.C. is to provide immediate relief to an applicant. An application under Section 125 Cr.P.C. is predicated on two conditions : (i) the husband has sufficient means; and (ii) “neglects” to maintain his wife, who is unable to maintain herself. In such a case, the husband may be directed by the Magistrate to pay such monthly sum to the wife, as deemed fit. Maintenance is awarded on the basis of the financial capacity of the husband and other relevant factors.

The remedy provided by Section 125 is summary in nature, and the substantive disputes with respect to dissolution of marriage can be determined by a civil court / family court in an appropriate proceeding, such as the Hindu Marriage Act, 1956.

In Bhagwan Dutt v Kamla Devi (1975 AIR 83) the Supreme Court held that under Section 125(1) Cr.P.C. only a wife who is “unable to maintain herself” is entitled to seek maintenance. The Court held :

“19. The object of these provisions being to prevent vagrancy and destitution, the Magistrate has to find out as to what is required by the wife to maintain a standard of living which is neither luxurious nor penurious, but is modestly consistent with the status of the family.....”

It was further held:-

“Proceedings under Section 125 of the Cr.P.C. are summary in nature. In Bhuwan Mohan Singh v Meena & Ors., AIR 2014 (Supreme Court) 2875, this

Court held that Section 125 of the Cr.P.C. was conceived to ameliorate the agony, anguish, financial suffering of a woman who had left her matrimonial home, so that some suitable arrangements could be made to enable her to sustain herself and the children. Since it is the sacrosanct duty of the husband to provide financial support to the wife and minor children, the husband was required to earn money even by physical labour, if he is able-bodied, and could not avoid his obligation, except on any legally permissible ground mentioned in the statute.”

The Supreme Court in ***Rajnesh vs. Neha (supra)*** further observed:-

“77. The objective of granting interim/permanent alimony is to ensure that the dependent spouse is not reduced to destitution or vagrancy on account of the failure of the marriage, and not as a punishment to the other spouse. There is no straitjacket formula for fixing the quantum of maintenance to be awarded.”

Herein the opposite party/wife along with her minor child lives in her parental home. The opposite party/wife before the Trial Court has stated that she is facing hardship being unable to bear the cost of even vaccine for her child. It is the case of the opposite party/wife before the Court of the learned Magistrate that the husband and his relatives use to not behave well with her and quarrel with her. The mother-in-law of the opposite party/wife at the instigation of the husband drove the opposite party/wife and her minor child from her matrimonial home on 17.03.2018. The husband/petitioner countered the said case of the opposite party/wife before the Magistrate by stating

that when he returned on leave from his office (being in the Army), he was pressurized by his wife to stay in a separate mess. As he did not agree, the petitioner left her matrimonial home voluntarily with her minor child (without just and sufficient cause).

The marriage between the parties is admitted and so also the birth of their daughter. The learned Magistrate considering only the primary issue granted interim maintenance with a prima facie finding that the petitioner (wife) staying separately from him (husband) established a strong prima facie case to proceed with against the opposite party (husband). The learned Magistrate did not consider at the interim stage as to whether the wife had any just and sufficient reason to stay away from the petitioner/husband herein nor is there any prima facie finding that admittedly the wife and her child were driven out from the matrimonial home.

But as the said order was passed at an interim stage, there is scope for the parties to prove their respective case before the learned Magistrate at the time of final disposal of the application under Section 125 Cr.P.C.

The learned Magistrate at that stage (final hearing) shall also consider whether the wife's claim for maintenance can be permitted in the light of the contention of the opposite party that the petitioner left her matrimonial home with her minor child without any just and

sufficient reason. The learned Magistrate shall also consider the fact that the husband filed an application under Section 9 of the Hindu Marriage Act, 1955 praying for restitution of conjugal rights.

Admittedly no criminal case has been initiated by the wife against the husband till date. The learned Sessions Judge by granting enhanced maintenance to the wife and child held that the husband earns not less than Rs. 40,000 per month and as such he cannot shy away from his legal obligation to maintain his wife and child.

The learned Sessions Judge passed the said order while considering the order of the learned Magistrate granting **interim maintenance**.

The rituals and ceremonies surrounding a marriage in most cultures validate the importance of marriage for the continuation of a clan, people, or society. They also assert a familial or communal sanction of the mutual choice and an understanding of the difficulties and sacrifices involved in making what is considered, in most cases, **to be a lifelong commitment to and responsibility for the welfare of spouse and children**.

Bhaat-Kapor (Food-Clothing)

In this ritual, in a **Bengali Hindu Marriage** ceremony, the groom hands over a plate of rice along with many other delicacies and a sari to

the bride. He then says, “Aaj theke aami tomaar bhaat-kapor er daiyitto nilam” **meaning thereby that the husband takes the responsibility of the wife from the time of marriage (rituals).**

The said responsibility thus also include the duty to see that the wife does not face starvation due to desertion.

The responsibility of a husband towards his wife is in existence since time immemorial, through customs and rituals and the law too has recognized such right.

Admittedly the petitioner/husband is in the Army and is thus capable of taking the responsibility of his family. From the statement of salary account as discussed earlier herein, it is clear that the husband earns a sum of Rs. 31,000 plus and not Rs. 40,000 as held by the learned Sessions Judge. The Sessions Judge did not record his findings as to the basis of his arriving at the conclusion that the petitioner earns Rs. 40,000 per month.

Thus considering, the dispute, the status and the financial condition of the parties in this case, the order dated 25.09.2019 passed by the learned Additional Sessions Judge, 1st Court, Barrackpore in Criminal Revision no. 307 of 2019 and the order dated 25.09.2019 passed by the learned Judicial Magistrate, 5th Court, Barrackpore in M Case No. 579 of 2018 **are modified** to the extent that the petitioner/husband shall pay a sum of Rs. 6000 each to his wife and

child, total Rs. 12,000 per month by the 10th day of each month, subject to the final order in respect of application under Section 125 of the Cr.P.C. (M Case No. 579 of 2018). The cost of Rs. 5000 granted by the learned Sessions Judge is hereby set aside considering the fact that the petitioner before him is the wife/woman who is entitled to get the services of the respective Legal Services Authority.

CRR 12 of 2020 is accordingly disposed of.

Let a copy of the judgment along with the lower court records (if any) be sent to the Trial Court at once.

All connected applications stand disposed of interim order if any stands vacated.

No order as to costs.

Urgent Photostat Certified copy of this Judgment, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

(Shampa Dutt (Paul), J.)

