

IN THE HIGH COURT AT CALCUTTA**Criminal Revisional Jurisdiction****Present: - Hon'ble Mr. Justice Subhendu Samanta.****C.R.R. No. – 1189 of 2018****IN THE MATTER OF****Laxmi Kanta Mudi****Vs.****Rina Mudi**

**For the petitioner : Mr. Malay Bhattacharyya, Adv.,
Mr. Subhrojyoti Ghosh, Adv.**

**For the Opposite Party : Mr. Samiran Mandal, Adv,
Mr. Abhinaba Dan Adv.**

Judgment on : 12.12.2022

Subhendu Samanta, J.

This is an application U/s 482 read with 401 of the Code of Criminal Procedure preferred against order dated 20nd February, 2018 passed by the Additional Secessions Judge, 3rd Court Bankura in Criminal Revisions No. 6 of 2017 U/s 397/399 of the Code of Criminal Procedure.

In a nutshell the brief fact of the case is that the present petitioner is the husband and private opposite party is the wife. The opposite party preferred an application before the Learned Jurisdictional Magistrate U/s

125 Cr.P.C. claiming maintenance from the present petitioner. The prayer of the wife opposite party was turned down by the Learned Magistrate. The wife preferred the criminal revision before the Learned Sessions Judge, Bankura. Learned Additional Sessions Judge, 3rd court Bankura after hearing the parties set aside the order of Learned Magistrate and directed the petitioner to pay Rs. 5000/- (Five thousand) as maintenance to the wife opposite party. Against the order of the Learned Additional Sessions Judge, the instant revisional application has been preferred.

Learned Advocate appearing on behalf of the petitioner/husband submitted before this court that the learned Sessions Judge has failed to appreciate the facts and circumstances of this case and came to an erroneous finding. He further pointed out that the Learned Sessions Judge, has not considered the reasoning of Learned Magistrate for refusing the prayer of maintenance of the wife. He further argued that the impugned order passed by the Learned Sessions Judge, is palpable illegal in the eye of law and it is liable to be set aside. It is the argument of the present petitioner that the opposite party wife has failed to prove that she has ever been neglected by the husband. Thus she is not entitled to get any compensation.

Ld. Advocate appearing on behalf of the opposite party wife submitted that the impugned order passed by the learned Sessions Judge, suffers illegality. The order of the Sessions Judge is a speaking order and it is well founded on the principle of law. He again argued that the finding of Learned Magistrate is not at all proper regarding the attending facts and circumstances of this case. He again argued that the ex- parte decree of divorce obtained by the husband cannot preclude the wife to get maintenance according to the provisions of Section 125 of Cr.P.C.. So, he prayed for rejection of the instant Criminal revision.

Heard, the Learned Advocates perused the impugned order passed by the Learned Magistrate. Learned Judicial Magistrate has formulated some points for decision to decide the case before him. In considering points No. 1

and 2 Learned Magistrate is of opinion that-while the wife pleaded that she was not taken entry to her matrimonial house; she did not inform the same to local Panchayat or to the local Police Station. Learned Magistrate is also a view that the wife did not contest the matrimonial suit filed by the husband for divorce in spite of getting the summons of this suit. Learned Magistrate on the basis of the above observation is of view that wife could not prove the fact of neglect by the husband. So, Learned Magistrate disbelieved the fact of the wife and rejected her prayer.

Leaner Sessions Judge is of view that the evidence of wife before the learned magistrate is sufficient to prove the neglect and torture by the husband and her in- laws. Learned Sessions Judge, is also a view that the wife was not allowed to lead conjugal life with her husband but she was left alone with her parents- in-law. Learned sessions Judge, is also of opinion that though, the wife did not challenge the divorce suit of the husband but this cannot disentitle her from getting maintenance.

It is the admitted fact in this case that the marriage between the parties is admitted. It is also the fact that the wife is residing separately from the husband. It is also an admitted fact that the wife has no independent income of her own.

Section 125 of Cr.P.C. defined wife as follows:

‘wife’ “includes woman who has been divorced by or as obtained a divorce from, her husband and has not re-marriage”.

Sub-section 4 and Sub-section 5 of Section 125 of the Cr.P.C. has enumerated such circumstances where the wife is not entitled to get maintenance from her husband. Sub-section 4 and Sub-section 5 is not applicable here.

In the attending facts and circumstances of this case it appears to me that the wife opposite party is living separately. The decree of divorce of MAT Suit has no connection for claiming maintenance of the wife from her husband. A wife may not contest a divorce suit filed by the husband but

such non appearance before the court in a divorce suit shall not presume to be an apathy by the wife for getting maintenance from her husband.

Section 125 Cr.P.C.is codified by the legislature for the purpose of beneficial to the destitute married wives who are not capable of maintain herself. In this case considering the entire facts and circumstances I am of view that the opinion of Learned Magistrate regarding proof to neglect by her husband is not quite justified.

The term “neglect” can only be ascertained through the facts and circumstances of the particular case. The husband did not pay a farthing to the wife; no fact suggests that the husband has ever tried to get back the wife or tried to minimise the dispute between them. The unchallenged ex-parte testimony in the Divorce Suit cannot operate as proved fact. The pleadings of husband in Divorce Suit and this proceedings are surprisingly different. The glaring facts of neglect by the husband has sufficiently proved. There are no circumstances by which it can be presumed that the wife left her matrimonial home in some other reasons but the neglect. Thus, the view of Learned Sessions Judge, appears to me more co-related to the facts and circumstances of this case. Considering the same this revisional court finds no justification to enter into findings of Learned sessions Judge. Thus I find no merit to entertain the Criminal revision and it is liable to be dismissed.

In the result thereof the C.R.R. 1189 of 2018 is dismissed. The impugned order passed by the Additional Sessions Judge, 3rd Court Bankura, In Criminal Revision No.- 6 of 2017 is hereby affirmed.

Pending CRAN applications If any, and also disposed of.

Order of stay if any, passed by this court during the pendency of this instant criminal revision is also vacated.

(Subhendu Samanta, J.)