

CRR 2498 of 2010

In the matter of : Doldol Let

Mr. Prosenjit Mukherjee
... for the petitioner

Challenge in this proceeding is to the judgement and order passed by the learned Additional Session Judge, Birbhum at Rampurhat on 29.3.2010 in a Criminal Revision No. 14 of 2008 in connection with Misc. Case No. 373 of 2005 filed under Section 125 of the Code of Criminal Procedure.

Briefly stated, the opposite party no. 2 Fulon Let filed an application under Section 125 of the Code of Criminal Procedure seeking maintenance for herself and for her minor son before the learned Magistrate depicting herself as legally married wife of Doldol Let the petitioner before this Court. It is contended that the petitioner in the proceeding under Section 125 of the Code of Criminal Procedure indulged in sexual relationship with the opposite party on a promise to marry her from January 2003 to June 2004 and she became pregnant. She has been staying with her parents with minor baby. Doldol Let is a man of means who earns Rs.5,000/- to 6,000/- a month. The petition was contested by Doldol Let. In his written objection he stated that the petitioner used to work as domestic help in the house of the opposite party and to cover up her bad character she has filed this application for

maintenance. He disowned his responsibility to maintain the petitioner, before the learned Trial Court.

Learned Trial Court after considering the evidence adduced by the parties was pleased to allow the petition under Section 125 of the Code of Criminal Procedure granting thereby a sum of Rs.300/- towards the maintenance of minor son of the petitioner per month. The said order was challenged before the learned Additional District Judge, Rampurhat by filing Criminal Revision No. 14 of 2008 which was dismissed on contest and order of learned Trial Court was affirmed.

Mr. Mukherjee, learned counsel representing the petitioner submits that at the behest of the father of the opposite party no. 2 a case was registered under Sections 493 / 376 of the Indian Penal Code against the petitioner, and he was found not guilty to the charges. In course of evidence, it transpires before the learned Sessions Judge, that the opposite party no. 2 joined as domestic help while she was carrying for two months. According to Mr. Mukherjee, by no stretch of imagination it can be said that the petitioner was responsible for the pregnancy as well as birth of the child to the opposite party.

I have perused the photocopy of the judgement which has been annexed to the petition passed in S.T. No. 1(6)/05 and find that it was the father of the victim girl who told that the opposite party no. 2 the victim, was pregnant when she was engaged as domestic help in the house of the petitioner while the evidence of victim was otherwise. In course of evidence it appears that the victim was twenty three years old and not sixteen as claimed by

her and in her testimony before learned Trial Court she claimed to have become pregnant because of her sexual union with the petitioner of this case. So was her statement under Section 164 of Cr.P.C. True it is charges under Section 493 / 376 I.P.C. have not been proved, but that does not absolve him of the responsibility to maintain the baby born out of such sexual union. Failure to prove a charge of penal offence within the meaning of Section 376 I.P.C. beyond reasonable doubt cannot throw the petitioner of a proceeding under Section 125 Cr.P.C. seeking maintenance for the Child born out of such union, overboard, particularly when access of the man to the girl is established which gives birth to presumption in absence of rebuttal evidence by way of D.N.A. test, the petitioner fathered the child. From the photocopy of Judgement of the Sessions Case No. 7 of 2005, it appears that a salish was held over the issue when Doldol Let refused to marry the girl but there was no denial that the lady was not impregnated by him.

Much is said about the statement of the victim in Sessions Case to deny the paternity of the child as she stated that she joined the work while she was carrying the baby. But a statement of that nature from a rustic illiterate girl cannot make her assertion regarding the sexual intercourse with Doldol Let false and fabricated. If she is disbelieved, it would leave an indelible mark on the child as illegitimate in birth for no fault on his part and would dent his dignity as human being.

Under such circumstances, it appears prima facie that the petitioner of this case has access to the opposite party, I do not

find any reason to interfere with the order passed by the learned Additional Sessions Judge, in Criminal Revision No. 14 of 2008.

The criminal revision merit no further consideration and accordingly dismissed without any order as to costs.

The copy of the order be sent down to the learned Trial Court for information and necessary action.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties, upon completion of requisite formalities.

(Siddhartha Roy Chowdhury, J.)