

10.11.2022
Item No.01
BR

CRR 3195 of 2010

Nirmal Das
Vs.
Gita Rani Das

The petitioner is found absent on call. This is an application under Section 401 of the Criminal Procedure Code which cannot be disposed of otherwise than on merit

Under such circumstances , I am inclined to dispose of the matter on merit based on materials available on record.

Challenge in this revisional application is to the judgment passed by learned Judicial Magistrate, Dantan in proceeding under Section 125 of Cr P C initiated at the instance of the Smt. Gita Rani Das , the opposite party herein.

Briefly stated, depicting herself as a neglected wife of Shri Nirmal Chandra Das , Smt. Gita Das filed an application under Section 125 of Cr P C stating, inter alia after her marriage with Nirmal Chandra Das on 24th Magh, 1409 B.S. according to Hindu Rites and Customs , Smt. Das started leaving with him as man and wife in her matrimonial home. As she failed to fetch a sum of Rs. 10,000/- from her father to satisfy the demand of her husband she was fallen a prey to the wrath of her husband , she was physically assaulted and was compelled to leave her matrimonial home in 14th January, 2004 . It was further contended that Smt. Das did not have any independent source of income to sustain herself while her

husband despite having means failed and neglected to maintain her. Shri Nirmal Das husband of Smt.Das entered into appearance and opposed the prayer of his wife by filing written objection stating , inter alia, that his wife voluntarily left matrimonial home and their marital knot was dissolved on mutual consent.

Learned trial Court taking into consideration the evidence adduced by the parties was pleased to award a sum of Rs. 900/- to Smt. Gita Das towards her maintenance to be paid by her husband month by month with effect from 31st March, 2009. Challenging the said order of learned Judicial Magistrate Shri Nirmal Das has preferred this application contending , inter alia that the relationship between the parties , since is not subsisting by virtue of decree of divorce , the learned trial Court had no reason to pass the order of maintenance. It is further pointed out that while leaving her matrimonial home Smt. Das relinquished her right of maintenance in writing , therefore, it should be presumed that parties have staying apart on mutual consent which is an impediment towards granting maintenance in view of Sub-section 4 of Section 125 of the Cr P C and the learned trial Court failed to appreciate the provisions of law.

From the attending facts of the case it is admitted that the parties to the proceeding got married at one point of time, there is nothing to indicate that the marriage has been dissolved. Be that as it may, even after divorce the lady is entitled to maintenance. In absence of any averment that Smt. Das, opposite party herein has income sufficient to maintain herself, the petitioner Nirmal Das has the obligation to maintain her which he has incurred from the factum of marriage. Therefore, in my humble opinion this revisional application

is devoid of merit and should be dismissed which I according to do, however, without any costs.

Let a copy of the judgment be send down to learned trial Court for information and necessary action.

(Siddhartha Roy Chowdhury, J.)