

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
Appellate Side**

Present:

The Hon'ble Justice Jay Sengupta

CRR 3673 of 2017

Sankar Kumar Maji

Versus

The State of West Bengal & Ors.

For the petitioner : Mr. Himanshu De
Mr. Subhas Chandra Basu
Mr. Sanjib Seth
Mr. Subhrajit Dey
..... Advocates

For the opposite party no. 2 : Ms. Manjuli Chaudhuri
Ms. Mekhala Sinha
..... Advocates

Lastly heard on : 22.06.2022

Judgment on : 11.07.2022

Jay Sengupta, J.:

1. This is an application challenging an order dated 31.07.2017 passed by the learned Additional Sessions Judge, 2nd Court, Uluberia, Howrah in Criminal Revision No. 6 of 2016/12 of 2016 arising out of order dated 19.10.

2015 passed by the learned Judicial Magistrate, 1st Court, Uluberia, Howrah in Misc. Case No. 158 of 2018 (T.R. No. 174 of 2012).

2. The marriage between the petitioner and the opposite party no. 2 was solemnized in 1995. A child was born to the couple who is aged about 24 years now. On March 10, 2007 the said marriage was dissolved by way of a divorce on mutual consent. An amount of Rs. 90,000/- was purportedly agreed to be the full and final settlement of the claims of the wife. However, in 2012, a wife filed an application under Section 125 of the Code in Misc. Case No. 158 of 2012 seeking maintenance allowance at the rate of Rs. 20,000/- per month for herself and her minor son. On October 19, 2015 the learned Magistrate directed payment of maintenance allowance at the rate of Rs 1000/- from the date of order for the wife while maintenance for the son was rejected as he had become a major by then. The petitioner filed a revision before the learned Sessions Court challenging the said order. The learned revisional Court directed the husband to pay maintenance allowance at the rate of Rs. 5,000/- per month from the date of the impugned order in favour of the wife.

3. Learned Senior counsel appearing on behalf of the petitioner/husband submitted as follows. Although the opposite party no. 2 had waived her right to future maintenance from her husband by accepting a sum of Rs. 90,000/- as a full and final settlement in 2007, in 2012 she again filed an application under Section 125 of the Code claiming maintenance for herself and her minor son. The amount was received by the wife by way of full and final settlement with an affidavit made before the learned Judge, Lok Adalat

in Howrah in MAT Suit No. 116 of 2007. The claim of the son was rejected in 2015 as he had become an adult by then. But, a sum was erroneously granted by the learned Trial Court as maintenance allowance for the former wife and was subsequently affirmed and enhanced by the learned Revisional Court. Reliance was placed on a decision of this Court in Sri Subhankar Majumder vs. Smt. Banani Majumder, 2016 SCC OnLine Cal 8937, of the Punjab and Haryana High Court in Puran Chand vs. Smt. Palo, 1986 (2) Crimes 177 and on a Division Bench of the Hon'ble Bombay High Court in Shrawan vs. Sau Durga & Ors., 1988 (3) BomCR 343.

4. Learned counsel appearing on behalf of the opposite party no. 2 submitted as follows. An agreement to waive right to future maintenance is against public policy and could not be sustained in the eye of law. Reliance was placed on a decision of this Court in Joydel Kumar Biswas vs. Maduri Biswas, 1994 SCC OnLine Cal 307.

5. The issue at hand relates to Clause (c) of Sub-Section (3) of Section 127 of the Code. The same may be quoted as under:-

“127. Alteration in allowance.-

.....

(3) Where any order has been made under section 125 in favour of a woman who has been divorced by, or has obtained a divorce from, her husband, the Magistrate shall, if he is satisfied that-

.....

(c) the woman has obtained a divorce from her husband and that she had voluntarily surrendered her rights to maintenance

or interim maintenance, as the case may be, after her divorce, cancel the order from the date thereof.

.....”

6. In *Shri Subhankar Majumder Versus Banani Majumder* (supra), an Hon’ble Single Bench of this Court took a view that if the wife voluntarily surrendered her right to maintenance or interim maintenance at the time or after her divorce obtained from her husband, then she could not again claim maintenance under Section 125 of the Code. This is in keeping with what is laid down in clause (c) of sub-section (3) of Section 127 of the Code.

7. Earlier, although an Hon’ble Single Judge in *Joydel Kumar Biswas* (supra) referred to a decision of the Punjab and Haryana High Court, in the case of *Ranjit Kaur*, 1992 CrLJ 62, whose ratio ran contrary to the subsequent one laid down by this Court in *Shri Subhankar Majumder* (supra), it itself did not propound any ratio that can be said to run contrary to *Shri Subhankar Majumder* (supra). In *Joydel Kumar Biswas* (supra), there was an agreement or a compromise upon which the first application under Section 127 of the Code was disposed of. Therefore, the provision of Section 127 (3) (c) strictly did not apply in the said case.

8. There is no denying that in view of Section 127 (3) (c), if a woman who obtains a divorce from her husband and voluntarily surrenders her right to maintenance or interim maintenance, as the case may be, after her divorce, a Magistrate can cancel the order of maintenance granted earlier under Section 125 of the Code.

9. However, it has to be seen whether the amount fixed as full and final settlement was a sufficient amount or was only an illusory quantum foisted up to deny the right of a woman to a just and fair maintenance allowance in terms of Section 125 of the Code.

10. In *Hanamant Basappa vs. Smt. Laxmawwa & Anr.*, 2002 SCC Online Kar 420, it was held that the acceptance by a wife of a sum of Rs. 9,000/- for herself and her minor child to forego maintenance was an amount which was illusory.

11. In *Bai Tahira's Case*, AIR 1972 SC 362, the Hon'ble Apex Court held that payment of illusory amounts by way of customary or personal law will be considered in reduction of the rate of maintenance allowance, but cannot annihilate the rate unless it is a reasonable substitute. Although, in the said case the Hon'ble Apex Court was dealing with clause (b) and not clause (c) of Section 127(3) of the Code, the spirit of the decision enures to the benefit of the wife.

12. One also has to remember that the provisions contained in Chapter IX of the Code relating to payment of maintenance to women and children come within the sweep of Article 15 (3) of the Constitution of India. Therefore, interpretation of the provisions and the inferences drawn have to be in consonance with the same.

13. In the present case where the petitioner is supposedly an established lawyer and earns a sufficient amount, a sum of Rs. 90,000/- cannot be treated just and fair sum that could be fixed as compensation in lieu of future maintenance of the wife for her entire life, even in the year 2012.

14. The learned Trial Court had passed a reasoned order for granting maintenance allowance. However, the quantum was indeed a meagre one. The learned revisional Court rightly corrected the same by enhancing the sum to Rs. 5,000/- per month.

15. In view of the above discussions, I do not find any reason to interfere with the impugned order.

16. Accordingly, the revisional application is dismissed.

17. However, there shall be no order as to costs.

18. Urgent photostat certified copies of this judgment may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

(Jay Sengupta, J.)

P. Adak