

CRR 479 of 2006

In the matter of : Sakuntala Roy

None is appearing on behalf of either of the parties.

Office report indicates that administrative notice could not be served upon the parties.

Under such circumstances, I am not inclined to adjourn the matter *suo moto*. I am inclined to dispose of the matter on merit based on materials available with the record.

This criminal revision was filed on 14.2.2006 challenging the order dated 07.12.2005 in Criminal Motion No. 549 of 2004 passed by the learned Additional Sessions Judge, 3rd Court, Alipore, 24 Parganas (South).

Briefly stated, Smt. Sakuntala Roy depicting herself as neglected wife of Sri Mrinal Kanti Roy filed an application under Section 125 of Cr.P.C. before the learned Jurisdictional Magistrate, seeking maintenance from her husband, stating *inter alia* that her husband since after marriage did not take care of her, she was treated with cruelty, and despite having sufficient income to the tune of Rs.9,000/- per month and 22 bighas of agricultural land, her husband refused to maintain his wife. On the contrary he filed a suit for divorce and obtained *ex parte* order on the ground of cruelty and desertion against the petitioner. The opposite party husband contested the petition by filing written objection stating *inter alia* that his wife indulged in an illicit relationship with one Satyaranjan Halder, he filed an application for divorce on that score that the marital tie between the parties stood dissolved.

Learned Judicial Magistrate, 1st Court, Alipore, after considering the evidence of the parties was pleased to allow the application granting a sum of Rs.1,000/- per month to the petitioner towards her maintenance. The order was challenged in Criminal Motion No. 549 of 2004 and the learned Additional Sessions Judge, 3rd Court, Alipore relied upon the document Exhibit B observed that when the marital tie was dissolved by a decree of divorce though *ex parte*, a petition under Section 25 of Hindu Marriage Act was filed and it was dismissed on the ground that as the wife was living in adultery she could not claim maintenance. Sub-Section 4 of Section 125 of Cr.P.C. also says that the wife who is living in adultery is not entitled to any maintenance. The finding of the learned Additional District Judge, 4th Court, Alipore inspired the learned 3rd Court of Additional Sessions Judge, Alipore to set aside the order passed by the learned Trial Court and in the facts and circumstances of the case, I do not find any reason to interfere with the impugned judgement and order.

The revisional application is dismissed along with application if any.

This order, however, shall not preclude the petitioner wife to exercise her right of maintenance under the law in a changed circumstances i.e. the reversal of the finding of the learned Sessions Judge, 4th Court, Alipore.

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

(Siddhartha Roy Chowdhury, J.)