

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 603 of 2019

Smt. Payel Debnath

Vs

State of West Bengal & Anr.

For the Petitioner : Mr. Shyamal Kumar Das,
Ms. Samita Pal.

For the State : None.

For the Opposite Party No. 2 : Mr. Sourav Chatterjee,
Mr. Aniruddha Bhattacharya.

Heard on : 03.02.2023

Judgment on : 23.02.2023

Shampa Dutt (Paul), J.:

The present revision has been preferred against a judgment dated 28.12.2018 passed by the learned Judicial Magistrate, 1st Court, Barrackpore in M. Case No. 631 of 2013 granting maintenance allowance of rupees 1,000 to the petitioner and rupees 6,000 for the minor child per month.

Petitioner's case is that she is the legally married wife of the opposite party no. 2 and their marriage was solemnized on 02.12.2010.

Being mentally and physically tortured in her matrimonial home for dowry the petitioner was driven out of her matrimonial home and she was compelled to file a case with Titagarh Police Station on 08.08.2011.

Subsequently she withdrew the case on the assurance of the opposite party no. 2 and his family hoping to lead a peaceful conjugal life but the torture started again.

When the petitioner became pregnant the opposite party and his family tried to force her for abortion. Finally the petitioner was driven out from her matrimonial home on 13th February, 2013 in pregnant condition. A male child was born on 12th April, 2013 in Barrackpore.

Subsequently the petitioner filed an application under Section 125 of the Cr.P.C. claiming maintenance to the tune of rupees 9,000 for herself and Rs. 5,000 for her minor son. The learned Magistrate disposed of the application granting rupees 1,000 as maintenance to the petitioner and rupees 6,000 per month as maintenance for the minor son.

Being aggrieved with the said amount of maintenance the present revision has been preferred praying for enhancement to the tune of rupees 10,000 for herself and rupees 20,000 for the minor child.

Mr. Shyamal Kumar Das learned Counsel for the petitioner has submitted that the impugned judgment suffers from material irregularity and same is liable to be set aside/modified.

The learned Court has failed to consider the evidence adduced by the parties and appreciate that wife/petitioner can get minimum maintenance even if she earns meager amount from a Private Firm.

The learned Court has failed to appreciate the basic need of a married wife and a minor child.

That the order impugned is otherwise bad in law and liable to be set aside and the petitioner has thus prayed for enhancement of the said maintenance amount to rupees 10,000 for the wife/petitioner and Rs. 20,000 for the minor child.

Mr. Sourav Chatterjee, learned Counsel for the opposite party no. 2 has submitted that the petitioner's application is not maintainable as the enhancement prayed for herein was not the prayer before the learned Magistrate. The nature of relief as prayed for by the petitioner is provided under a separate Section/provision of the Act.

The Supreme Court **in Sanjeev Kapoor vs Chandana Kapoor, Criminal Appeal Nos. 286 of 2020, on 19 February, 2020** held:-

“23. The closer look of Section 125 Cr.P.C. itself indicates that the Court after passing judgment or final order in the proceeding under Section 125 Cr.P.C. does not become functus officio. The Section itself contains express provisions where order passed under Section 125 Cr.P.C. can be cancelled or altered which is noticeable from Section 125(1), Section 125(5) and Section 127 of Cr.P.C., which are to the following effect: -

“125(1). Order for maintenance of wives, children and parents. - (1) if any person having sufficient means neglects or refuses to maintain-

(a) his wife, unable to maintain herself, or

(b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or

(c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or

(d) his father or mother, unable to maintain himself or herself, a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate, as such Magistrate thinks fit, and to

pay the same to such person as the Magistrate may from time to time direct:

Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means:

[Provided that the Magistrate may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this sub-section, order such person to make a monthly allowance for the interim maintenance of his wife or such child, father or mother, and the expenses of such proceeding which the Magistrate considers reasonable, and to pay the same to such person as the Magistrate may from time to time direct:

Provided also that an application for monthly allowance for the interim maintenance and expenses of proceeding under the second proviso shall, as far as possible, be disposed of within sixty days from the date of the service of notice of the application to such person.] Explanation. – For the purposes of this Chapter, -

(a) “minor” means a person who, under the provisions of the Indian Majority Act, 1875(9 of 1875) is deemed not to have attained his majority;

(b) “wife” includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.

125(5). On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order.

127. Alteration in allowance. – [(1) On proof of a change in the circumstances of any person, receiving, under section 125 a monthly allowance for the maintenance or interim maintenance, or

ordered under the same section to pay a monthly allowance for the maintenance, or interim maintenance, to his wife, child, father or mother, as the case may be, the Magistrate may make such alteration, as he thinks fit, in the allowance for the maintenance or the interim maintenance, as the case may be.] (2) Where it appears to the Magistrate that, in consequence of any decision of a competent Civil Court, any order made under section 125 should be cancelled or varied, he shall cancel the order or, as the case may be, vary the same accordingly. (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 –

(a) the woman has, after the date of such divorce, remarried, cancel such order as from the date of her remarriage.

(b) the woman has been divorced by her husband and that she has received, whether before or after the date of the said order, the whole of the sum which, under any customary or personal law applicable to the parties, was payable on such divorce, cancel such order –

i) in the case where such sum was paid before such order, from the date on which such order was made,

ii) in any other case, from the date of expiry of the period, if any, for which maintenance has been actually paid by the husband to the woman;

(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.

(4) At the time of making any decree for the recovery of any maintenance or dowry by any person, to whom [monthly allowance for the maintenance and interim maintenance or any of

them has been ordered] to be paid under section 125, the Civil Court shall take into account that sum which has been paid to, or recovered by, such person [as monthly allowance for the maintenance and interim maintenance or any of them, as the case may be, in pursuance of] the said.”

26. *Section 127 Cr.P.C. also discloses the legislative intendment where the Magistrate is empowered to alter an order passed under Section 125 Cr.P.C. Sub-Section (2) of Section 127 Cr.P.C. also empower the Magistrate to cancel or vary an order under Section 125. The Legislative Scheme as delineated by Sections 125 and 127 Cr.P.C. as noted above clearly enumerated the circumstances and incidents provided in the Code of Criminal Procedure where Court passing a judgment or final order disposing the case can alter or review the same. The embargo as contained in Section 362 is, thus, clearly relaxed in proceeding under Section 125 Cr.P.C. as indicated above.”*

Thus considering the materials on record, the judgment under revision and on hearing both sides, this Court is of the view that the petitioners relief lies before the Trial Court under appropriate provision of the act. Further the enhancement prayed for before this Court has also not been prayed for before the Trial Court.

CRR 603 of 2019 is accordingly dismissed.

There will be no order as to costs.

All connected Application stand disposed of.

Interim order if any stands vacated.

Copy of this judgment be sent to the learned Trial Court forthwith for necessary compliance.

Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)