

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 854 of 2020

Sankar Singh

Vs.

Pratima Singh

For the Petitioner : Mr. Shivaji Kumar Das,
Ms. Rupsa Sreemani.

For the Opposite Party : None.

Heard on : 31.07.2023

Judgment on : 23.08.2023

Shampa Dutt (Paul), J.:

- 1.** The present revision has been preferred against an order dated 13th November, 2019 passed by the Court of the Learned Judicial Magistrate, 1st Court, Barrackpore, District-North 24 Parganas in connection with M. Case No. 639 of 2009 (Pratima Singh vs. Sankar Singh) being a proceeding under Section 125 of the Code of Criminal Procedure, 1973.
- 2.** The petitioner's case is that the petitioner is a Driver by occupation and through his meagre earnings he somehow maintains his livelihood.

3. The opposite party herein allegedly claiming herself to be his wife had filed a petition under Section 125 of the Code of Criminal Procedure, 1973 against him in the Court of the Learned Additional Chief Judicial Magistrate, Barrackpore, District-North 24 Parganas which was registered as M. Case No. 639 of 2009 (Pratima Singh vs. Sankar Singh) inter alia praying for interim maintenance and final maintenance for herself and her minor daughter and minor son which after being registered was later transferred to the Court of the Learned Judicial Magistrate, 1st Court at Barrackpore, District-North 24 Parganas for trial and disposal.
4. In the said Maintenance Petition it was alleged by the opposite party herein that she was married with the petitioner in the month of April, 1991 and thereafter she moved to his house. It was further alleged that the marriage was consummated and a female child and a male child were born out of the said wedlock. It was further alleged that during her stay at the matrimonial home she was subjected to physical and mental torture by the petitioner. On 30th November, 2009 she along with her son and daughter were driven out by the petitioner from her matrimonial home and having no other option she took shelter in her paternal home. It is further alleged that even after having sufficient means and capability the petitioner herein deliberately neglected to maintain her and her children. Their daughter is studying in Class-IX at St. Paul's Shyambazar and their son is studying in Class-III in Central Model School, Bon Hooghly, at the time of filing of the case and she has to bear all their expenses including educational expenses. She is thus passing her days through great difficulties and in order to save herself from the financial hardships and to make the

petitioner herein discharge his duties, she filed this instant application. The petitioner has sufficient income in the form of pension to the tune of Rs.17,500/- per month and is a broker in the share market and is also a Driver by profession. On the other hand the opposite party herein has no means to maintain herself and hence prayed for interim maintenance of Rs.5,000/- per month for herself, Rs.3,000/- per month for her daughter and Rs.2,500/- per month for her son from the petitioner.

5. The specific case of the petitioner/husband is that no marriage took place between him and the opposite party and no child was born out of the alleged wedlock. It is further stated by him that the daughter of the opposite party eloped and now is married to one Bhombal Das. That the opposite party herein never resided at the address given in the cause title. She resided at 33, Meghnad Saha Road, Police Station-Dumdum with one Sanjay Agarwal as husband and wife. It was further stated by him that in the year 1990, the opposite party had fled away from her home with one Partha Sen of 72/8, D.B. Road (East), Kolkata-700 035. And so far as his income is concerned, he has a Driving License for Driving a Taxi Cab, but denied that he is a broker in the Share Market. On the other hand, the opposite party herein works as a Superintendent in the office at 1525, Madurdaha, Hassainpur, Kalikapur and earns Rs.25,000/- per month.
6. Vide order dated 8th March, 2013, the trial Court was inter alia pleased to dispose of on contest the petition for interim maintenance and the petitioner herein was directed to pay Rs.2,500/- as monthly maintenance to his wife, Rs.2,000/- per month for the daughter and Rs.1,500/- per month for the minor daughter with effect from the date of the order. It was

further ordered that the petitioner herein shall pay the entire sum of Rs.6,000/- for the month of March within next 10 days to the opposite party herein and thereafter shall pay the same within 7th day of each current month when it falls due. It was further inter alia directed that the order shall remain effective till the disposal of the application under Section 125 of the Code of Criminal Procedure, 1973 and liberty was granted to the opposite party herein to put the order into execution if the petitioner fails to comply with the same. By passing the said order the Learned Magistrate was inter alia pleased to fix the dates for evidence of the opposite party herein.

7. That in compliance with the order dated 8th March, 2013 passed by the learned Magistrate, the petitioner herein was regularly making payment of maintenance in favour of the opposite party.
8. On 13th November, 2019 the petitioner herein as OPW filed a petition before the Learned trial Court stating that the male child namely Karan Singh who was born at Jeevan Deep Nursing Home on 9th January, 2001 has already attained majority and now he is aged about 18 years and 9 months and has also started earning by himself and thus not dependent upon the petitioner. Hence, a prayer was made before the Learned Trial Court to pass an order to stop the payment of maintenance allowance in favour of the said Karan Singh.
9. On 13th November, 2019 the learned Magistrate was pleased to observe that Section 127 of the Code of Criminal Procedure, 1973 provides that maintenance allowed can be altered by proof of change of circumstances for which a separate petition is to be made on the basis of the petition filed

by either of the party and a separate Misc. Case is to be initiated. Accordingly, the learned Court was pleased to pass orders that the petitioner is to file a proper petition as per law for any kind of modification of maintenance order and the petition was rejected.

- 10. Mr. Shivaji Kumar Das, learned counsel for the petitioner** has submitted that the Learned Trial Court while passing the impugned order erred both in law and in facts in rejecting the petition dated 13th November, 2019 filed by the petitioner.
- 11.** That the impugned order passed by the Learned Trial Court is otherwise bad both in law and in facts and the same is liable to be set aside in the interest of justice.
- 12. In spite of due service there is no representation on behalf of the opposite party.**
- 13.** Misc. Case 639 of 2009 is still pending. The revision is against an order rejecting an application under Section 127 Cr.P.C.
- 14.** On 13.11.2019 the petitioner filed a petition for modification of the order of maintenance as the son had become a major.
- 15.** The learned Magistrate on the same day rejected the petition on the ground that:-

*“It is provided by S.127 of Cr.P.C. that maintenance allowed can be altered on proof of change of circumstances. Separate petition is to be made on basis of petition filed by either party. Separate misc. case is to be initiated. Accordingly, the o.p. is to file proper petition as per law for any kind of modification of maintenance order.
This petition is rejected.
To 17.06.20 for O.P.W.”*

16. Section 127 Cr.P.C. reads as follows:-

“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 by 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 a [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 the sum which has been paid to, or recovered by, such person [as monthly allowance for the maintenance and interim maintenance and expenses of proceeding, as the case may be,] the said order.”

- 17. The power under Section 127 Cr.P.C. flows from Section 125 Cr.P.C. itself, any person who receives, a monthly allowance under section 125 of Cr.P.C. for the maintenance or interim maintenance, such as wife, child, father or mother, the Magistrate can make such alteration in monthly allowance depends on proof of a change in the circumstances of the appropriate case.**
- 18. Thus, the learned Magistrate, instead of rejecting the petition for modification of the order of maintenance, should have directed for the same to be registered as a miscellaneous case connected to the miscellaneous case under Section 125 Cr.P.C.**
- 19. Accordingly, the order dated 13th November, 2019 passed by the Court of the Learned Judicial Magistrate, 1st Court, Barrackpore, District-North 24 Parganas rejecting the petition under Section 127 Cr.P.C., in M. Case No. 639 of 2009 (Pratima Singh vs. Sankar Singh) being a proceeding under Section 125 of the Code of Criminal Procedure, 1973, is set aside.**
- 20. The application dated 13.11.2019 under Section 127 Cr.P.C. is restored and shall be registered as a Misc. case and the learned Magistrate shall dispose of the same in accordance with law, on hearing both sides, within two months from the date of the communication of this order, keeping with the guidelines of the Supreme Court in *Rajnesh vs***

Neha (2021) 2 SCC 324 and ***Abhilasha vs Prakash (2020 SCC OnLine SC 736)***.

- 21. The revisional application being CRR 854 of 2020 is accordingly allowed.**
- 22.** All connected applications, if any, stands disposed of.
- 23.** Interim order, if any, stands vacated.
- 24.** Copy of this judgment be sent to the learned Trial Court for necessary compliance.
- 25.** Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)