

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

Appellate Side

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 2389 of 2019

Fatema Bibi

Vs.

Sk Noor Hossain.

For the Petitioner : Mr. Aniket Mitra.

For the Opposite Party No.1 : Mr. Shekhar Barman.
Mr. Rohit Prasad.

Heard on : 01.05.2023

Judgment on : 06.06.2023

Shampa Dutt (Paul), J.:

1. The present revision has been preferred against an order dated 22.9.2014 passed by the learned Additional District Judge, Fast Track Court-4, Barasat in Criminal Motion No.152/2012, affirming the order dated 21.07.2012 passed by the learned Chief Judicial Magistrate, Barasat in Misc. Case No.455/2011, dismissing the application filed by the petitioner under Section 126(2) of the Code of Criminal Procedure.

2. The petitioner's case is that the opposite party no.2 is the legally married husband of the petitioner.

3. On or about 26.08.1998, the petitioner filed an application under Section 125 of the Code of Criminal Procedure in the court of the learned Chief Judicial Magistrate, Barasat praying for maintenance from her husband the opposite party no.2 herein which was registered as Misc. Case No.455 of 1998. In the said application, it was stated that the petitioner has no income of her own and the husband earns Rs.5,000/- per month and is an able bodied person. After considering the ex parte evidence of the petitioner, the learned Chief Judicial Magistrate, Barasat was pleased to dispose of the application ex parte against the opposite party herein and directed the husband to pay a sum of Rs.500/- per month from the date of filing of the application vide order dated 15.01.2000.

4. Being aggrieved by the order dated 15.01.2000, the husband/opposite party herein filed an application under Section 127 of the Act of 1973 read with Sections 3, 4 and 7 of the Muslim Women Right on Divorce Act, 1986 before the same court praying for cancellation of the order dated 15.01.2000 which was registered as Misc. Case No.684 of 2001 primarily on the ground that the petitioner was given "Talak".

5. After hearing the submissions made by the husband/opposite party herein, the learned Chief Judicial Magistrate, Barasat was pleased to cancel the order of maintenance dated 15.01.2000 vide order dated 6.1.2003 observing inter alia, that the husband has already divorced the petitioner which was duly communicated to her by service of notice and that the order of maintenance stands cancelled from the date of the order.

6. Being dissatisfied with the order dated 6.1.2003 passed by the learned Chief Judicial Magistrate, Barasat, the petitioner filed an application under

Section 126(2) of the Code of Criminal Procedure in Misc. Case No.455 of 2011. **The learned Chief Judicial Magistrate, Barasat was pleased to dismiss the application ex parte primarily on the ground that the notice of “Talak” was properly served upon the petitioner and also that there has been suppression of material fact that after the cancellation of the order of maintenance, the petitioner filed another maintenance case being Misc. Case No.271 of 2006 and obtained an order of maintenance of Rs.800/- per month from the opposite party/husband.**

7. Being further aggrieved, the petitioner/wife filed an application under Sections 397/399 of the Code of Criminal Procedure in the court of the learned Additional Sessions Judge, Fast Track-4, Barasat on the grounds stated in the application being Criminal Revision No.152/2012. The learned Additional Sessions Judge, Fast Track court-4, Barasat was pleased to dismiss the Criminal Revision vide order dated 22.09.2014 and uphold the order passed by the learned Chief Judicial Magistrate at Barasat.

8. It is submitted by the petitioner that the learned Judge erred in law in not considering the fact that the order of maintenance awarded in favour of the petitioner was cancelled on the ground of non receipt of notice by the petitioner which is not correct since the husband could not produce any document to substantiate that the summons sent to the petitioner by registered post reached her and that the same was duly delivered.

9. It is further stated that the petitioner is an illiterate ‘pardanasin’ woman who does not have any knowledge about law and is totally guided by the advice of her legal counsels for which she inadvertently filed another

application under Section 125 of the Cr.P.C being Misc. 271 of 2006 without mentioning about the earlier application filed by her.

10. **Mr. Aniket Mitra, learned counsel for the petitioner** has submitted that the learned Judge erred in law in not considering the fact that the order of maintenance awarded in favour of the petitioner was cancelled on the ground of non-receipt of notice by the petitioner which is not correct since the husband could not produce any document to substantiate that the summons sent to the petitioner by registered post reached her and that the same was duly delivered.

11. **That the petitioner is an illiterate pardanasin woman who does not have any knowledge about law and is totally guided by the advice of her lawyer for which she inadvertently filed another application under Section 125 of the Cr.P.C. without mentioning about the filing of the earlier application in the petition.**

12. That the petitioner is a very poor lady having no income of her own and has to depend upon her relatives and well wishers for her livelihood and she was almost starving after her prayer for revival of the order of maintenance was turned down by the learned court.

13. That the impugned order is otherwise bad in law and is liable to be set aside.

14. **Mr. Shekhar Barman, learned counsel for the opposite party no.1** has submitted that the order under revision is in accordance with law and needs no interference.

15. **From the materials on record** it is before this court that, it is the case of the opposite party/husband that the parties are divorced. On the other hand, the petitioner/wife's case is that she has no notice of the 'talak'.

16. Admittedly, two cases for maintenance are on record. Order of maintenance in **Misc. Case No.455 of 1998** has been vacated on a prayer by the opposite party/husband under Section 126(2) Cr. P. C. in **Misc. Case No.684 of 2001**. On revision by the petitioner, the said order has been affirmed by the Sessions Court. Hence, the present revision.

17. From the order of the Magistrate dated 21.7.2012, it appears that the petitioner has filed a second case for maintenance being **Misc. Case No.271/2006, in which she has been granted maintenance of Rs.800/- per month. The said order is still in force.**

18. The findings of the learned Magistrate that if the order in Misc. 684 of 2001 is set aside, then there will be two cases for maintenance under the same provision of law (admittedly filed by the petitioner), is in accordance with law and the Sessions court has rightly affirmed the said order.

19. **Thus, the order under revision calls for no interference. Relief under the beneficial legislation is still available to the petitioner in Misc. Case No.271 of 2006, orders in which are still in force.**

20. **The revisional application being CRR 2389 of 2019 is dismissed.**

21. No order as to costs.

22. All connected applications stand disposed of.

23. Interim order, if any, stands vacated.

24. Copy of this judgment be sent to the learned Trial Court forthwith 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.)