

**IN THE HIGH COURT AT CALCUTTA
(Criminal Revisional Jurisdiction)
Appellate Side**

Present:

The Hon'ble Justice Rai Chattopadhyay

CRR 2893 of 2016

Monira Khatun (Bibi)

Vs.

Rabiul Sk.

For the Petitioner

: Mr. Chittapriya Ghosh,
Mr. Kuntal Ray,
Ms. Priyanka Saha,
Mr. Komal Singh.

Hearing on : 16/01/2023

Judgment in court on : 16/01/2023

Rai Chattopadhyay, J.

1. Affidavit-of-service filed in Court today is taken on record.
2. Petitioner is the wife, who is also the petitioner in a proceeding under Section 125 of the Code of Criminal Procedure in the Trial Court. She is aggrieved with the impugned judgment and order of the Trial Court dated 16th May, 2016 passed in Criminal Revision No. 23 of 2015 and prefers the present case to be filed under provisions of Section 482 of the Code of Criminal Procedure, with the prayer for setting aside the impugned judgment and order and passing necessary directions as regards the case.

3. In the said impugned judgment and order the Sessions Judge has dealt with the question of legality and propriety of the judgment and order of the Magistrate dated 18th February, 2015 passed in the said case filed by the present petitioner before it under Section 125 of the Code of Criminal Procedure.

4. The facts briefly stated would be that the petitioner was married to the opposite party on 29th December, 2011, led conjugal life as husband and wife and ultimately allegedly was driven out from the house by the opposite party on Bengali 28th Bhadra, 1419 B.S. (English calendar date is not available).

5. This severance of relationship between the parties resulted into filing of a suit for restitution of conjugal life by the opposite party in the Civil Court and present case under Section 125 of the Code of Criminal Procedure by the present petitioner in the Magistrate's Court.

6. It is submitted by Mr. Ghosh, learned Advocate appearing for the petitioner that the impugned order is liable to be set aside. In view of various infirmities embodied in the same. Firstly, he has submitted that the Court, while dealing with the facts of the case and the evidence before it has accepted the fact of marriage to have been solemnized between the parties, as proved.

7. It is further submitted that the Court has also taken note of the fact that the husband has already preferred a civil suit for restitution of conjugal life

against the present petitioner and that the parties having led a conjugal life previously has not been disputed.

8. It is further submitted on behalf of the petitioner that in spite of recording finding regarding no room to be available for any doubt as to the solemnization of marriage between the parties, the Court has errently held the said marriage to be void and improperly and illegally denied maintenance to the present petitioner.

9. It is submitted ultimately that in passing the impugned judgment, the Court has not exercised jurisdiction vested in by law, was improper in finding that there was no legal sanctity of marriage of the petitioner with the present opposite party and also did not apply judicious mind to the fact that propriety of the marriage if any was not a relevant question before it while sitting in a jurisdiction under Section 125 of the Code of Criminal Procedure.

10. Thus, according to Mr. Ghosh, the impugned order grossly suffers from impropriety and illegality and is liable to be set aside.

11. During his arguments Mr. Ghosh has relied on a judgment of this Court of a coordinate Bench reported in **(2004) 1 CHN 233 (Uttam Numala vs. State & Ors.)**.

12. No one is appearing on behalf of the opposite party in spite of service of notice.

13. Law is well-settled to govern the field that while sitting in jurisdiction under Section 125 of the Code of Criminal Procedure, the Trial Court has not to go into the question of legality and validity or nullity of the marriage between the parties, that is a question to be dealt with by a civil court and not a Court exercising jurisdiction under Section 125 of the Code of Criminal Procedure.

14. The judgment relied on by Mr. Ghosh in this case propounds the said law. In the said judgment, the Hon'ble Court has relied on some precedents also which may beneficially be relied on in this case.

15. Firstly that reported in **1987 Cri.L.J. 677 (Rudramma vs. H.R. Puttaveerabhadrapa)** wherein the Hon'ble Supreme Court held that a Magistrate is not competent to decide validity of marriage in a proceeding under Section 125 of the Code where challenge as to validity of marriage on ground of nullity was raised. It was ordered by the High Court that proper course is to grant maintenance, leaving husband to establish invalidity in competent Civil Court.

16. Next is the case of **Gabriel Antony vs. Threwssya Gracy** reported in **1987 Cri.L.J.688**. It was held that in an application under Section 125 of the Code a Magistrate is not competent to refuse maintenance holding that marriage is null and void. In this case the High Court interpreted as to how a language of a statute is to be interpreted and referred to the decision of **State of Madhya Pradesh vs. Ram Ragubir Prasad Agarwal**, reported in **A.I.R.**

199 SC 888 and ***State of Kerala vs. Varghese***, reported in **1987 Cri.L.J. 308** and observed that, “The Supreme Court emphasized the need for giving purposeful interpretation so as to effectuate the intention of the legislature and not a purposeless one in order to defeat the intention of the legislatures wholly or in part. It is not the literal meaning of the words but that meaning which is warranted from the context is the one to be preferred”.

17. The Trial Court in the judgment has exercised jurisdiction not vested in by law in traversing to decide the fact that the marriage between the parties was void for whatever reason being noted therein. The Trial Court would only have taken care of the fact as to whether the evidence on record explicits a consummated marriage between the parties or not, which is yes in this case, along with other considerable and relatable points. The invalidity of marriage, if at all, is for the Civil Court to declare and not a Court hearing maintenance plea.

18. Under such circumstances, the impugned order may not stand, to the extent that denied maintenance to the petitioner.

19. The impugned judgment and order dated 16th May, 2016 is set aside to the said extent.

20. On perusal of the record and consideration of the submissions made on behalf of the petitioner, it is found that opposite party has been earning sufficiently to provide maintenance to the petitioner @ Rs.2,500/- per month.

Accordingly, the impugned judgment and order dated 16th May, 2016 is modified to the extent that the opposite party shall be paying the petitioner a monthly maintenance @ Rs. 2,500/- along with that directed to be paid for the minor child with effect from the date of this order, to be payable in terms of the directions passed by the Trial Court in case of the minor child.

21. Accordingly, the revision succeeds. The impugned judgment and order dated 16th May, 2016 is set aside to the extent as mentioned above. Rest of the judgment and directions thereof remain as it is.

22. CRR 2893 of 2016 is disposed of.

23. Nothing held in this order shall prevent the petitioner to move an application for enhancement of the maintenance granted to herself or the minor child, if at all, in accordance with the statutory provisions and the price index of the present period of time.

24. All pending applications, if any, are consequently disposed of.

25. Certified website copies of this order, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

(Rai Chattopadhyay, J.)