

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

Appellate Side

Present:

The Hon'ble Justice Bibhas Ranjan De

C.R.R. 2911 of 2018

Smt. Subhra Dey

Vs.

Sri Subhas Dey

For the Petitioner : Mr. Sourabh Sengupta, Adv.

For the State opposite party : Mr. Sanjib Seth, Adv,

Heard on : June 28, 2023

Judgment on : July 25, 2023

Bibhas Ranjan De, J.

1. Judgement and order dated 25.07.2018 passed by Ld. Additional District Judge, Fast Track Court No. 1, Howrah in Criminal Revision No. 100 of 2017 arising out of judgement and order passed by Ld. Judicial Magistrate, 6th

Court, Howrah in connection with Misc Case No. 150 of 2014, is challenged.

2. Ld. Magistrate in disposing the application, under Section 125 of the Code of Criminal Procedure (hereinafter referred to as CrPC) returned his findings in favour of the petitioner by allowing maintenance to the tune of Rs. 5,000/- per months to the petitioner and Rs. 4,000/-per months for her minor daughter. Ld. Magistrate took the averments of the application under Section 125 CrPC into consideration in terms of evidence adduced on behalf of the petitioner. Ld. Magistrate relied on the averments of the application regarding torture caused upon the petitioner by her in laws after four months of her marriage on demand of Rs. 2,000,00/-

3. Ld. Additional Sessions Judge, Fast Track Court, shaped the contentious issue from a different angel. Ld. Judge, by referring to the evidence on record, returned his finding that petitioner voluntarily left her matrimonial home after taking into the fact of no complaint either before police or before any forum as well as affidavit sworn by the petitioner herself in a MAT Suit under Section 9 of the Hindu Marriage Act, filed at the instance of opposite party/husband. Ld. Judge,

returned his findings against the petitioner after evaluating the evidence adduced in the case.

4. In exercising revisional jurisdiction this court is only to find out whether the order impugned suffered from any illegality of impropriety.

Background in Brief

5. Admittedly, marriage between the parties was solemnized on 23.11.1999 and a girl child was born on 02.11.2004 out of wed-lock. From the application under Section 125 of the CrPC it is found that after four months of her marriage she was subjected to torture on demand of 2,000,00/-which could not be satisfied and as a result she along with her minor daughter were driven out on 10.3.2014. Respondent/opposite party filed one application for restoration of conjugal rights under section 9 of the Hindu Marriage Act on 14.03.2014 which was pending before Ld. Additional District Judge, 5th Court, Alipore under MAT Suit No. 37 of 2014. The Mat suit being no. 37 of 2014 was withdrawn by the opposite party/respondent in view of submission of one affidavit filed by the petitioner/wife stating *inter alia* as follows:-

“2. That due to some misunderstanding and different taste and habit, that is opinion, your petitioner went to her parental house along with her minor daughter. That effect the petitioner hereinabove started the above suit for restitution of conjugal right against the petitioner i.e. against the respondent.”

6. Thereafter, petitioner filed the application under Section 125 of the CrPC which as registered as Misc. Case No. 150 of 2014 as well as one application under domestic violence act, registered as Misc Case No. 158 of 2014. The case under the domestic violence was withdrawn at the instance of both the parties. On 07.07.2014 petitioner went to the matrimonial home. Subsequently on 25.07.2014 respondent went to the petitioners fathers house along with the petitioner but she failed to return to matrimonial house due to sickness of daughter.

7. Ld. Advocate, Mr. Sourabh Sengupta, appearing on behalf of the petitioner has referred to evidence on record and tried to impress this court that after the petitioner was driven out in the year 2014 she returned back to her matrimonial home on 07.07.2014. Mr. Sengupta has referred to evidence of the petitioner (PW1) and his father (PW2) and contended that

petitioner succeeded to prove the factum of torture on demand of dowry and that torture was duly reported to his father. It is further submitted that on behalf of the petitioner several efforts were made to patch up the differences. Accordingly Mr. Sengupta assailed the judgement impugned.

8. In opposition to that, Ld. Advocate, Mr. Sanjiv Seth, appearing on behalf of the opposite party has referred to the evidence of the witnesses and submitted that petitioner failed to prove the torture on demand of money for construction of 2nd floor of her in laws house. In this regard, he has referred to evidence of Petitioner (PW1). By referring to the evidence of PW2 (father of the petitioner) Mr. Seth has contended that no steps were taken by the petitioner to return to her in laws house in spite of proposal made by the petitioner/husband. Mr. Seth also referred to the affidavit sworn in by the petitioner in the Matrimonial Suit under Section 9 of the Hindu Marriage Act, filed at the instance of the petitioner/husband. Accordingly, Mr. Seth supported the judgment impugned.

9. Admittedly, from 23.11.1999 (date of marriage) till 10.03.2014 (date of leaving her matrimonial home) i.e.

during for about 14 years no complaint was made either before police or before any competent authority while she was subjected to torture on demand of money since marriage . It is not explained in this case that what prevented the petitioner and her relatives including parents to make any complaint either before the police or before any authority. The reason of torture assigned by the petitioner in the application in paragraph 3 of the application under Section 125 of CrPC was for construction of 1st floor of the in laws house but in her evidence petitioner has stated as follows:-

“After my marriage I saw that my matrimonial house is an incomplete two storied building. Two rooms on first floor, two rooms on the ground floor. After marriage, I used to stay at first floor”

10. Therefore, allegation of the reason of torture has become doubtful.

11. From the evidence of petitioner/wife (PW1), it appears that after filing the affidavit they did not stay together as her husband did not come to bring her. She also admitted that after withdrawal of cases her husband came to her parental

house and stayed there for four/five days and during that period her husband asked her to come to his house.

12. PW2 (father of the petitioner) testified as follows:-

“My daughter is now residing at my house along with her daughter since March 2014.”

13. PW2 has further deposed as below: - “my daughter was not taken back to her matrimonial home. I made preparation to send my daughter to her matrimonial home. I did not take my daughter to her matrimonial home. My younger daughter and her husband pursued over this matter.”

14. PW2 has further deposed as follows:-:

“My daughter did not take any steps to return back to the matrimonial home.”

15. Aforesaid evaluation of evidence and other facts revealed from the record boil down to the following decisive factors:-

15.1. Allegation of torture and driving her out of matrimonial home was never reported to any authority let alone jurisdictional police station.

15.2. Opposite party/wife filed one affidavit in the MAT Suit under Section 9 of the Hindu Marriage Act, filed by the

petitioner/husband, admitting the reason of separate leaving due to misunderstanding.

15.3. In the evidence, opposite party/wife admitted that the petitioner/husband had been to her father's house for taking her back.

15.4. PW2 (father of the petitioner) testified that his daughter did not take any steps to return back to the matrimonial home.

15.5 PW2 testified that petitioner had been residing in his house since March, 2014. Therefore, question of returning back to her matrimonial home does not arise.

15.6. PW1 (petitioner/wife) specially testified that after marriage she used to reside in the 1st floor of her in laws house along with her husband. So question of demanding money for construction of 1st floor does not arise

16. From the aforesaid discussion, I am unable to come to any conclusion that the petitioner was subjected to torture on demand of money for constructing 1st floor of her in laws house and ultimately she was driven out in the year 2014.

17. For the reason, I am unable to interfere with impugned judgment and order dated 25.07.2018 passed by Ld.

Additional Sessions Judge, Fast Track Court No. 1, Howrah
in connection with criminal revision no. 100 of 2017.

- 18.** The revision application being C.R.R No. 2911 of 2018 stands dismissed.
- 19.** All parties to this revisional application shall act on the server copy of this order downloaded from the official website of this Court.
- 20.** Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]