

27.3.2023
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SB
Ct. No.236

CRR 3082 of 2010

In the matter of : Ashok Karmakar

Mr. Saptarshi Chakraborty ... for the petitioner

Mr. Usuf Ali Dewan
Mr. Asif Dewan ... O.P. No. 2

Mr. Bidyut Kr. Roy
Mr. Sima Biswas ... for the State

Affidavit-in-service is taken on record.

This revisional application challenges the order passed in the proceeding under Section 125 of the Code of Criminal Procedure registered as M.R. Case No. 222/2000 filed by Munmun Karmakar depicting herself as neglected wife of Ashok Karmakar and seeking maintenance for herself and for her children before the learned Sub-Divisional Judicial Magistrate, Jangipur, Murshidabad.

It is contended that after giving birth to two children while she was carrying her third child, Smt. Karmakar was driven out from her matrimonial home by her husband and she was compelled to take refuge at her father's house. Though her husband is a man of means having sufficient income, he did not pay any maintenance in discharge of his obligation. The proceeding was contested by the husband by filing written objection. According to the husband, the petitioner / wife was not interested to live in the joint family. She left her matrimonial home on her own. Learned Sub-Divisional Judicial Magistrate, Jangipur,

Murshidabad as then was, by an order dated 15.3.2004 was pleased to allow the petition under Section 125 of Cr.P.C. directing the opposite party / husband to pay maintenance to the tune of Rs.800/- to the petitioner / wife and Rs.500/- each for maintenance to their three children.

Mr. Chakraborty, learned counsel representing the petitioner in this revisional application under consideration drawing my attention to Sub-section 4 of Section 125 of Cr.P.C. submits that the wife had no reason to live with her husband and husband was granted a decree under Section 9 of the Hindu Marriage Act by the competent Court of Law.

Under such circumstances, in view of the provision of Sub-section 4 of Section 125 of Cr.P.C. the wife is not entitled to maintenance.

Refuting such contention, learned counsel for the opposite party no. 2 submits that the order of maintenance was passed prior to the *ex parte* order regarding restitution of conjugal rights passed in Matrimonial Suit No. 69 of 2004 on 06.7.2004. Therefore, the learned Trial Court had no reason to refuse the prayer.

Be that as it may, as father the petitioner before this Court has the obligation to maintain his children. Since the order under Section 9 of the Hindu Marriage Act, was subsequently followed by an order of divorce on 07.3.2006 though passed *ex parte*, the opposite party no. 2 as on date should be considered as divorced wife of the petitioner who is still entitled for the maintenance under the law. Therefore, the submission of Mr. Chakraborty for all practical purposes does not hold water.

Upon perusal of record, I find that direction was given to the petitioner to keep paying a sum of Rs. 2,000/- month by month on succeeding month which has not been complied with.

Under such circumstances, I do not find any merit to invoke the provision of Section 482 of Cr. P.C.

The revisional application, is thus, dismissed without any order as to costs.

However, liberty is given to the petitioner / husband to agitate all points before the learned Trial Court or before the appropriate forum.

With this observation the criminal revision is disposed of along with application if any.

Let a copy of the order be sent to the learned Trial Court for information and necessary action.

(Siddhartha Roy Chowdhury, J.)