

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

Present:

Justice Bibhas Ranjan De

C.R.R. 3707 of 2017

Swadesh Kumar Paul.

Vs.

The State of West Bengal & Anr.

For the Petitioners

:Mr. Ranajit Roy, Adv.

Ms. Sushmita Ghosh, Adv.

Mr. Parashar Baidya, Adv.

For the opposite party no. 2

: Rajkrishna Mondal, Adv.

Mrs. Jayeta Mitra (Kaunda), Adv.

For the State

:Mr. Narayan Prasad Agarwala, Adv.

Mr. Patick Bose, Adv.

Heard on

:18.08.2023 & 18.09.2023

Judgment on

:29th September, 2023

Bibhas Ranjan De, J.

1. Judgement and order dated 10th day of August, 2017, passed by Ld. Additional Principal Judge, Family Court, Calcutta in connection with Miscellaneous Case No. 73 of 2012 under Section 125 of the Code of Criminal Procedure, 1973 (hereinafter referred to as CrPC) is under challenge in this revisional application.
2. The application under Section 125 of CrPC was filed by the opposite party no. 2/ wife contending, *inter alia*, that she got married with petitioner on 10th day of July, 2008 under Special Marriage Act, 1954 and started their conjugal life as husband and wife. At her matrimonial home she was forced to reside in a humid stuffy and unhygienic room alone and her husband never share the bed with her. Her mother in-law used to misbehave with her and maid servant was permanently released with intent to get her absorbed in doing all household works as maid servant. Above all, her husband returned home after consuming alcohol and abused her in filthy words without any reason and thereby she was subjected to constant physical and mental torture by the petitioner and his mother. Ultimately, she was driven out from

her in-laws house and she had to take shelter in her parental house and manage herself with help of her married sister and other relatives. Petitioner/ husband never paid any single farthing to her towards maintenance in spite of having income of Rs. 40,000/- per month.

- 3.** In opposition to that petitioner/husband contested the said application under Section 125 of CrPC by filing a written objection contending, *inter alia*, that he has no income and denied all the allegations of torture upon his wife who deserted on her own just after five days of their marriage.
- 4.** In support of the application under Section 125 of CrPC, opposite party no. 2/ wife examined three witnesses namely opposite party herself as PW1, one Gopal Chandra Ghosh as PW2 and her married sister Smt. Soma Nath as PW3. On the contrary, petitioner/husband examined himself as OPW1 and his brother in-law Amit Kumar Pal as OPW2.
- 5.** Ld. Additional Principal Judge, after evaluating the evidence on record, recorded an order of maintenance to the tune of Rs. 10,000/- with direction upon petitioner/husband to pay the same within 15 day of each succeeding month.

- 6.** Ld. Advocate, Mr. Ranajit Roy, appearing on behalf of the petitioner/husband has argued that the Ld. Judge failed to consider that the application under Section 125 of CrPC was filed by opposite party 2 (wife) on 18.10.2012 after 4 years from the date when she voluntarily left her matrimonial home.
- 7.** Mr. Roy contended that allowance of such prayer is on irrelevant considerations as the parameters relied upon by the Ld. Judge, while partially allowing the prayer of opposite party 2 (wife) are not in accordance with law.
- 8.** It is further submitted that the opposite party no. 2 (wife) had left her matrimonial house at her own volition after just 5 days from the date of her marriage with all her belongings, jewellery and other articles and for no willful latches on the part of either her husband(petitioner herein) or any of his relatives. It is further evident from the cross-examination of opposite party no. 2 that she refused to go back to her matrimonial house citing vague reasons. Under such circumstances, she is not entitled to any maintenance whatsoever.
- 9.** Mr. Roy has further contended that from the depositions of the witnesses it has been established that opposite party no. 2 (wife) was earning her livelihood from a job at a private sector

having an income of Rs. 10,000/- per month. Thus, opposite party 2 (wife) cannot fall within the class of wives, who are unable to maintain themselves, and thereby not entitled to any maintenance.

10. It is further argued that, Ld. Judge's, fixation of quantum of maintenance is out an out disproportionate to the petitioner's (husband) prevailing means. In addition to that the opposite party 2 could not give a specific reference to any jewellery shop as claimed by her but tried to make vague claims to misguide the Learned Court, when she admitted during her cross- examination that she is unable to produce any document in support of her contention regarding ownership of the said shops by her husband (petitioner).

11. Next, it is submitted that petitioner and his brother in-law had denied having any income from any source whatsoever and were unemployed. This fact remained unshaken during the extensive cross-examination also. In such premise the amount of maintenance fixed by the Ld. Judge, is too high for the petitioner's standard and thus the Ld. Judge in passing the impugned order had been totally oblivious of the well settled principle of law.

12. Per contra, Ld. Advocate, Mr. Rajkrishna Mondal, appearing on behalf of the opposite party no. 2 /wife has referred to evidence of OPW2 and contended that reason of leaving of matrimonial home has been clarified by testifying that opposite party no. 2 /wife faced problem in staying at her in-laws house. He has further referred to the evidence of opposite party no. 2 with regard to no effort on the part of the petitioner/ husband to take his wife back to his house.

13. Mr. Mondal further refers to the observation of the Ld. Judge, regarding failure of proving sufficient means of the opposite party 2 /wife earning Rs. 10,000/- per month by working in a private company.

Decision:-

14. It is not disputed that both the parties to this revisional application are a legally married couple.

Whether op no.2/wife willfully deserted petitioner/husband without any sufficient reason

15. In the application under Section 125 of the CrPC opposite party 2/wife alleged that she could reside in her matrimonial home only for a few days and during that period she was subjected to mental torture at the behest of her

husband and mother in-law. On the contrary, petitioner/husband denied the allegation in his written objection alleging inter alia that his wife/ opposite party no. 2 left her matrimonial home without any sufficient reasons that too within just 5 days of marriage.

- 16.** In the evidence opposite party 2 /wife (PW1) corroborated the contentions made in the petition under Section 125 of CrPC and petitioner/husband in his evidence denied all allegation labelled against him but OPW2 (brother in-law of petitioner) has specifically testified in his cross-examination as quoted below:-“ **The petitioner/wife faced problems to stay at her in- laws’ house. Thus, she left the house of O.P./husband.**”

- 17.** Therefore, it cannot even be presumed that opposite party no. 2/wife willfully deserted her husband/petitioner without any sufficient reasons.

Whether Opposite party 2/wife has sufficient means to maintain herself

- 18.** Opposite party no. 2 /wife in her application under Section 125 CrPC has stated that she has no sufficient means to maintain herself. But in written objection

petitioner/husband alleged that opposite party no. 2 /wife being an employee of one private company earned not less than Rs. 10,000/-per month. On scrutiny of the evidence I do not find any credible evidence in the form of documents to substantiate the sufficient means of the opposite party 2/wife. Therefore, failure on the part of the petitioner/husband to produce any document in support of income of opposite party no. 2/wife further buttressed the contention of the opposite party no. 2/wife that she had no sufficient means to maintain herself.

Whether petitioner/husband has sufficient income to maintain his wife/Opposite party 2

- 19.** Petitioner/husband in written objection to the petition under Section 125 of the CrPC disclosed that he is totally unemployed having no fixed income though opposite party 2/wife contended in application under Section 125 of CrPC that her husband/petitioner is owner of at least three shops and he earns from his own gold ornament shop and from the rent of other two shops and thereby earned Rs. 40,000/- per month.

20. It is true that during evidence opposite party 2/wife could not produce any single scrap of paper showing either ownership of those shops or income therefrom. But, from the evidence of petitioner (OPW1) it is found that he has stated in his cross-examination as follows:- **“ I am presently fully unemployed. I only do the household works in others’ house to earn my livelihood. I am an able bodied person but my petitioner/wife is sick and ill.”** Again brother in-law of petitioner herein was examined as OPW2 who stated in his cross examination as quoted below: **“ My brother in-law/ Op is presently fully unemployed. OP is fully dependent on the income of his other brothers.”** He further testified –**“It is fact that my Op/brother in-law is both mentally and physically fit and he is an able-bodied person.”**

21. Aforesaid contradictory evidence of O.P.W 1 and O.P.W 2 has created a reasonable doubt in the mind of this Court as to the income/sufficient means of petitioner/husband. The evidence of O.P.W 1/husband cannot suggest any presumption of no income. If it is so, petitioner/husband is duty bound to disclose his actual income before the Court. Suppression of income can be a vital tool to come to a

conclusion that petitioner/husband being an able-bodied person has sufficient income to maintain his wife/opposite party 2.

22. Regard being had to the above as well as growing inflation of price, I am unable to interfere with the order of maintenance and quantum thereof passed by Ld. Additional Principal Judge, Family Court, Calcutta in connection with Miscellaneous Case No. 73 of 2012 under Section 125 of the Code of Criminal Procedure.

23. Thus, the revision application being no. CRR 3707 of 2017 stands dismissed.

24. All parties to this revisional application shall act on the server copy of this order downloaded from the official website of this Court.

25. 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.]