

26.09.2023  
Sl. No. 18  
Court No.30  
Aloke

**CRR 1490 of 2020**

**Prabir Mohanta**  
**Vs.**  
**Antara Mukherjee**

Mr. Malay Bhattacharyya  
Mr. S. Ghosh  
Mr. S. Mondal  
... for the petitioner

Affidavit-of-service showing due service is filed. Let it be kept with the record.

In spite of due service there is no representation on behalf of the opposite party.

The learned counsel for the petitioner moves the revisional application challenging the order dated 20.02.2020 passed by the Learned Additional District & Sessions Judge, Bishnupur, in Criminal Revision No. 42 of 2018 thereby affirming the order dated 11.07.2018 passed by the Learned Additional Chief Judicial Magistrate, Bishnupur, in Misc. Case No. 40/2016.

It is submitted that the petitioner was married to the opposite party on 27.02.2015 and left her matrimonial home without any just and sufficient cause within one year of marriage and filed a complaint against the petitioner and his family, under Sections 498A/406/506/34 of the Indian Penal Code. It is further submitted by the learned counsel for the petitioner that during pendency of the said G.R. Case No. 282 of 2016, pending before the Court of the Learned Additional Chief Judicial Magistrate,

Bishnupur, the opposite party filed an application under Section 125 Cr.P.C. praying for maintenance. The petitioner/husband entered appearance and filed his objection.

The Learned Magistrate considering the materials on record held that as the husband/opposite party's income had not been proved and the fact of adulteration is yet to be proved, the petitioner/wife is not entitled to maintenance at the interim stage.

The further case of the petitioner herein husband is that the petitioner found a diary written by the opposite party/wife that she has an illicit affair with another person. It is thus submitted that if the same is proved, then the opposite party/wife's claim/maintenance will be barred under Section 125 (4) & (5) of Cr.P.C. And in order to prove the said handwriting in the diary, the petitioner/husband made an application praying for examination of the said hand writing in the diary by an handwriting expert and also prayed for calling of the original case diary in G.R. Case No. 282 of 2016 to compare the hand writing of the wife/complainant with the hand writing in the said diary, but the learned Magistrate was pleased to reject both the applications.

The petitioner/husband being aggrieved with the said rejection order, preferred a revision before the Learned Sessions Judge, who also was pleased to reject the said applications and thereby affirmed the order of the learned Magistrate.

The present revision has been preferred against the said order.

The relevant portion of the order of the learned Magistrate is as follows :

*“.....After careful consideration of the materials on record and the submission of both sides, I am of the view that the above stated fact as to the love affair of the petitioner Antara Mukherjee (Mahanta) as alleged by the O.P., if proved, should not constitute any disqualification on the part of the petitioner to get maintenance from her husband (O.P.). Again if the present petitions are allowed, then it will give birth of a separate co-lateral proceeding which is completely unnecessary and irrelevant to determine the present case for maintenance and will serve no purpose other than to cause delay. Therefore, in the light of the foregoing discussion, I am of the view that the above petitions filed by the O.P. have got no merit under the law and accordingly are liable to be rejected.”*

On revision, **the learned Sessions Judge** was pleased to reject the revisional application with the finding that :

*“..... At the same time prudent court should not forget that section 125 Cr.PC is enacted for social justice and specially to protect women and children as also old and infirm poor parents within the constitution sweep of Article 15(3) reinforced by Article 39 of the Constitution. The provision given effect to the natural and fundamental duty of a man to maintain his wife, children and parents so long they are unable to maintain themselves. It further appears to me that the Ld. Trial court has rightly followed the spirit of provision of section 125 of Cr. PC to render disposal at its earliest opportunity.”*

And the learned Sessions Judge was pleased to affirm the finding of the trial Court.

Section 125 (4) and (5) reads as follows :

*“.....*

(4) No wife shall be entitled to receive an [allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be,] from her husband under this section **if she is living in adultery, or if, without any sufficient reason, she refused to live with her husband, or if they are living separately by mutual consent.**

(5) On proof that any wife in whose favour an order has been made under this section **is living in adultery, or that without sufficient reason she refused to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order.**

.....”

Thus, in view of the said provisions of law, the prayer of the petitioner becomes relevant in the proceedings under Section 125 of Cr.P.C. The findings of the learned Sessions Judge and the learned Magistrate is thus not in accordance with law as it is against the provisions of Section 125 (4) and (5) of the Cr.P.C. which requires necessary adjudication on the points raised by the petitioner/husband.

Accordingly, the order under revision of the learned Sessions Judge and also the order of the learned Magistrate are both set aside.

The learned Magistrate shall reconsider the said prayer of hand writing expert and any other procedure/evidence which is required to prove the said contention of the petitioner in accordance with law with due notice to the petitioner/wife before the trial Court and on taking the said evidence and the materials

on record, the learned trial Court shall proceed to dispose of the application under Section 125 Cr.P.C. finally keeping with the guidelines of the Hon'ble Supreme Court in **Rajnesh vs. Neha (Criminal Appeal No. 730 of 2020)**, in accordance with law.

The revisional application is disposed of.

Application, if any, connected thereto, stands disposed of.

Interim order, if any, stands vacated.

Let a copy of the order be sent to the learned trial court for compliance and to proceed with the trial in accordance with law.

( **Shampa Dutt (Paul), J. )**