

29.08.2023
sl No.33
Court No.3
sk

***Circuit Bench of Calcutta High Court
At Jalpaiguri***

CRR 49 of 2022

In the matter of : Shib Chanda

-Petitioner.

Mr. Santi Ranjan Das
Mr. P. Roy Basunia
Ms. Binapani Singha
...for the petitioner.

Mr. A. Biswas
...for the State.

Mr. Mayank Roy
...for the O.P.

This application under Section 482 of the Code of Criminal Procedure challenges the proceeding in M.R.Case No. 185 of 2019 now pending in the court of learned Judicial Magistrate, 3rd Court at Siliguri under Section 125 of the Code of Criminal Procedure.

From the attending facts of the case it is admitted that the petitioner and the opposite party no.1 got there marital knot dissolved by a decree of divorce on mutual consent under Section 13-B of the Hindu Marriage Act, on 8th June, 1994.

Mr. Das, learned counsel for the petitioner, it is submitted by that after nearly 30 years, the divorced wife is not entitled to any maintenance from her divorced husband. This belated application under Section 125 of the Code of Criminal Procedure amounts to abuse of process of law. Therefore, according to Mr. Das this is a

fit case to invoke the provision of Section 482 of the Code of Criminal Procedure to quash the proceeding.

It is further submitted by Mr. Das, learned counsel that according to Sub- Section 4 of Section 125 of the Code of Criminal Procedure his erstwhile wife is not entitled to maintenance as the parties have been living separately on mutual consent.

Section 125 of the Code of Criminal Procedure says:-

“S. 125 Order for maintenance of wives, children and parents

1. If any person having sufficient means neglects or refuses to maintain;
 1. his wife, unable to maintain herself, or
 2. his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or
 3. his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or
 4. his father or mother, unable to maintain himself or herself,

A Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate as such magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct;

Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means.

Provided further that the Magistrate may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this Sub-Section, order such person to make a monthly allowance for the interim maintenance of his wife or such child, father or mother, and the expenses of such proceeding which the Magistrate considers reasonable, and to pay the same to such person as the Magistrate may from time to time direct;

Provided also that an application for the monthly allowance for the interim maintenance and expenses of proceeding under the second proviso shall, as far as possible, be disposed of within sixty days from the date of the service of notice of the application to such person.

For the purposes of this Chapter“

- a) “minor” means a person who, under the provisions of the Indian Majority Act, 1875 (9 of 1875) is deemed not to have attained his majority;
- b) “wife” includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.

2. Any such allowance for the maintenance or interim maintenance and expenses of proceeding shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance or interim maintenance and expenses of proceeding, as the case may be.
3. If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole, or any part of each month’s allowance allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made;

Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due;

Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing.

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 refuses 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 refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order”.

My attention is drawn to the contest of the joint application for divorce under Section 13B of the Hindu Marriage Act, filed by Shibu Chanda and Smt. Mita Chanda Dutta there is no whisper regarding quantum of permanent alimony given to the petitioner.

It goes without saying even a divorced wife is entitled to maintenance, if it is found that she does not have sufficient means to maintain herself. There is no legal impediment for a

divorced wife to approach the court even after 30 years for maintenance if it is proved that she needs such support. The erstwhile husband cannot disown the liability only the ground of delay. The proceeding cannot be considered as abuse of process of law. There is whisper in the application that the opposite party/wife has married for the second time to a bus driver without even indicating the name of that person.

Be that as it may, I do not consider it a fit case to quash the proceeding for maintenance by invoking the provision of Section 482 of the Code of Criminal Procedure. However, this finding shall not preclude the petitioner/husband to challenge the application on its own merit. The husband will be at liberty to take each and every point that can be taken to deny the objection to maintain his divorced wife in the proceeding under Section 125 of the Code of Criminal Procedure and decide the application.

Learned Magistrate shall not get influenced by this order while deciding the application.

The revisional application is thus disposed of, however without cost.

Urgent Photostat certified copy of this order, if applied for, be given to the parties on priority basis.

(Siddhartha Roy Chowdhury,J)