

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

PRESENT:

THE HON'BLE JUSTICE AJOY KUMAR MUKHERJEE

CRR 1110 of 2018

Doli Karmakar
Vs.
Swarup Karmakar & anr.

For the Petitioner	:	Mr. Maloy Bhattacharya Mr. Pradip Paul Ms. Renesa Dey
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For the Opposite Parties	:	Mr. Ranadeb Sengupta Mr. Sachit Talukdar Mr. Saurav Biswas
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Heard On	:	08.08.2024
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Judgment on	:	10.09.2024
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Ajoy Kumar Mukherjee, J.

1. This application under section 482 of the Code of Criminal Procedure has been directed against the order dated November 13th 2017 passed by learned Additional Sessions Judge, 2nd Court Jhargram in Criminal Revision No. 02 of 2016. By the impugned order, learned court below has affirmed the judgment and order dated 23rd December, 2015 passed by learned judicial Magistrate 1st Court, Jhargram in MR case No. 47 of 2012, by which

the trial court dismissed petitioners application under section 125 of the Code of Criminal Procedure on contest.

2. Petitioner contended that the petitioner married opposite party no.1 on 12th December, 2009 and it is alleged by the petitioner that after two/three months from the date of marriage, she was subjected to physical and mental torture by the opposite party no. 1 and his family members.

3. It is further alleged by the petitioner that the opposite party no. 1 and his family members demanded Rs. 100,000/- from the father of the petitioner and when she could not meet that demand, She was driven out from her matrimonial home on 23.12.2011 and the custody of the child was forcefully kept with the petitioner no.1 and his family members. Petitioner further submits that since then the petitioner is residing at her paternal house at Shilda, Paschim Medinipur. She further stated that as she was not provided any maintenance since December, 2011, she filed maintenance application under section 125 of the Code of Criminal Procedure with a prayer for payment of Rs. 12,000/- per month for her maintenance.

4. By a judgment and order dated 23.12.2015 the Trial Court dismissed the said Misc. Case filed under section 125 Cr.P.C., on contest invoking his jurisdiction under section 125(4) of the Cr.P.C., on the ground that she failed to prove that she is living separately from the opposite party no.1 for any satisfactory reason.

5. Being aggrieved and dissatisfied with the said judgment and order dated 23rd December, 2015, the petitioner filed Criminal Revision being no. 02 of 2016 and learned Revisional Court below dismissed the said Revisional Application on contest on 13 November, 2016 and thereby affirmed the

order of the Trial Court dated 23rd December, 2015 with the observation that the order impugned does not suffer from any illegality/irregularity or impropriety and therefore, is not liable to be interfered.

6. Being aggrieved by the said order of dismissal Mr. Bhattacharya, learned counsel appearing on behalf of petitioner herein submits that petitioner being a house wife tried her level best to resolve the family dispute without making it public and she never attempted to lodge any police complain against the mental and physical torture inflicted by opposite party no.1 and his family members, only to save the prestige and dignity of the family

7. It is further submitted on behalf of the petitioner that the courts below failed to appreciate that the petitioner expressed her inability to get back her minor ill daughter on the reason of financial crisis, as she herself is a burden of her father, though every mother is willing to keep her child with her. Accordingly the reason of rejection of the prayer for maintenance on the grounds as stated in the impugned orders are not sustainable in the eye of law. The courts below have also failed to appreciate that the petitioner was ousted from her matrimonial home and for which there exist just and reasonable cause for living separately. He further submits that the court below did not consider that the object of section 125 of Cr.P.C. is meant to achieve a social purpose and the main object is to prevent vagrancy and destitution and provide speedy remedy for the supply of food, clothing and shelter to the deserted wife. Accordingly petitioner has prayed for setting aside the order impugned.

8. Mr. Sengupta learned counsel appearing on behalf of the opposite party argued that the present Criminal Revisional application filed under section 482 read with section 401 of the Code of Criminal Procedure is not maintainable in the eye of law, in view of statutory bar provided under section 397(3) of the Code.

9. Mr. Sengupta referring judgment in ***Rajan Kumar Machananda Vs. The State of Karnataka*** reported in **1990 SCC (Cri) 537**, argued further that the bar of section 397(3) of the Code cannot be circumvented by invoking inherent jurisdiction by the High Court. While passing the order impugned Trial Court specifically observed that there were inconsistencies in the pleading and the evidence deposed in the court by the petitioner/wife and she failed to corroborate any of the facts pleaded by her in support of her claim for maintenance. While passing the order impugned learned Magistrate had also taken into account the non corroboration of the allegations levelled by the petitioner quo the conduct of the opposite party and his family members at the time the petitioner was expecting their child.

10. Mr. Sengupta further pointed out that the petitioner in her evidence had stated that she does not intend to go back to her matrimonial home. Learned Trial Court came to a clear finding that the petitioner had been living separately without any sufficient reasons and as such section 125(4) of the Code clearly attracts in the present context. He further argued that the proceeding initiated by the petitioner herein under section 498A /34 against the opposite party/husband and his family members ended in acquittal, which clearly establishes that the allegations of torture levelled against the petitioner by the complainant stood disproved and establishes

the fact that petitioner left her matrimonial home without any sufficient cause. He further pointed out that the conduct of the petitioner shows that she never took any step to get custody of the minor child. It is further submitted that the concurrent finding of the courts below does not suffer from any illegality or impropriety and for which the orders impugned do not call for interference by this court invoking jurisdiction either under section 482 or under section 401 of the Code of Criminal Procedure.

11. I have considered submissions made by both the parties.

12. The short point involved in the present context is whether courts below were justified in refusing to grant maintenance to the petitioner on the ground that petitioner's refusal to reside with her husband is not based on sufficient reason. Both the Trial Court and the Revisional Court below has come to a definite finding that the petitioner herein left her matrimonial home, not as a result of any physical or mental torture nor she was driven out therefrom and on the contrary she left her matrimonial home on her own accord and she is residing separately without any reasonable excuse.

13. In this context the relevant portion of the observation of the Trial court may be quoted. While dismissing petitioners application under section 125 Cr.P.C., the trial court held

"But quiet astonishingly petitioner failed to prove any positive effort from her end for taking back of her child. Even she failed to bring any case showing that she prayed redressal for infliction of torture upon her or getting back her baby, in any other forum. In absence of such evidence the positive case of opposite party that petitioner left him voluntarily gets a good presumption.

Section 125(4) Cr.P.C. provides that no wife shall be entitled to receive an allowance for the maintenance.....without any sufficient reason she refuses to live with her husband. Here in this case the most vital ingredient of living with opposite party is present i.e. an inborn ill child. Here in this case according to petitioner the reason of her separate staying is infliction of martial torture upon her and driving out. Nothing has come to show that

petitioner agitated against infliction of marital torture upon her and driving out in any other forum except this case. Her pleading lacks corroboration.”

14. When the matter came up before the Revisional Court, learned judge after scanning the evidence came to a finding that even in her deposition petitioner stated that she is not willing to go with the opposite party and to keep her child in her custody on the excuse that she is in hand to mouth condition, though she has not alleged that she was not getting food and shelter in her father’s house and on the contrary she herself deposed that she use to give private tuition. The relevant portion of the Revisional Courts observation may be reproduced below:-

“ I also consider the submission of the Ld. Advocate for the respondent which has legs to stand that the pleadings of the revisionist clearly at variance with her evidence. The reason behind alleged torture upon her as mentioned in the petition is totally different from her evidence. The revisionist even did not care to raise serious imputations against the characters of her unmarried sister-in-laws alleging their involvement in illicit relations protest against which is main cause behind the alleged physical torture. But surprising enough she is totally silent in this regard in her evidence.

So, I consider and hold that the Ld. Court below has rightly come to a conclusion that the revisionist left her matrimonial house not as a result of any physical torture or that she was not driven out but she left her matrimonial house on her own accord and that she is residing separately from her husband without any just and reasonable cause and as such she is not entitled to get any awarded maintenance.”

15. When both the fact finding courts after review of the evidence on record came to the conclusion that the petitioner left her matrimonial house on her own accord and she is residing separately from her husband without any just and reasonable cause, the High Court would not be justified to disturb such finding in exercise of its inherent power under section 482 of the Code of Criminal Procedure unless it is shown that the order impugned suffers from illegality or perversity. If the inherent power of the High Court is used where it is not proper to exercise, it may become counter productive

and such power may lose its vitality. It is apparent from the concurrent finding of the courts below that there is nothing to show that the said orders are either illegal or irrational or suffering from procedural impropriety. Section 125(4) applies to such cases in which wife without any sufficient cause denies to live with her husband and in such cases she is not entitled to get maintenance from her husband, unless she proves that she was compelled to leave her matrimonial house. Thus, the merit of the concurrent finding of the courts below as court of fact that the wife petitioner is residing separately without any reasonable excuse and for which she is not entitled to get maintenance, hardly requires interference by the High Court in exercise of his power under section 482.

16. There is one more aspect in this matter. Section 397 (3) of the Code of Criminal Procedure puts a bar in preferring second Revisional Application before High Court when the same has been disposed of by the sessions judge or the High Court previously. In ***Rajan Kumar Machnanda Vs. State of Karnataka*** reported in ***1990 Supp SCC 132***, where a second Revisional Application was preferred in the garb of section 482 of the Code, it was clearly held that merely by saying that the jurisdiction of the High Court for exercise of its inherent power was being invoked, the statutory bar could not have been overcome because every Revisional Application facing the bar of section 397 (3) of the Code, could be labelled as one under section 482 of the code.

17. In ***Samita Saha Vs Mohan Saha and another***, reported in ***2010 SCC Online Cal 298***, this High Court observed in this context that two courts have concurrently found that the petitioner has failed to establish

his/her case by adducing cogent consistent and corroborative evidence and material on record in respect of her claim, the High Court in its Revisional jurisdiction cannot go into the question of fact in order to examine whether concurrent findings of the Trial Court and Revisional Court are correct or not. Of course in exceptional circumstances High Court can interfere on the question of fact, if it is satisfied that the Trial Court or revisional court has committed an error of law or procedure as a result of which there has been serious miscarriage of justice and in such a compelling situation only High Court in its inherent jurisdiction could interfere with the concurrent findings of the Revisional court and Trial court.

18. In the present context as mentioned above there is nothing to show in record from the side of the petitioner that any substantial injustice has been done which can call for interference by this court, in case of concurrent findings, in exercise of section 482 of the Code. On the contrary it appears that to overcome the bar stipulated in section 397(3) of the Code petitioner has preferred present application under section 482 of Cr.P.C.

19. In view of aforesaid discussion I am constrained to conclude that in the present context I am convinced from the submissions made by the parties that the essential legal requirements warranting invocation of inherent jurisdiction of this court under section 482 of the code has not been satisfied and as such the concurrent findings of the court below does not call for interference specially when after careful consideration of entire evidence and circumstances on record, both the courts have arrived at a concurrent finding that the petitioner wife is not entitled to any maintenance

in view of her failure to prove reasonable and sufficient cause to reside separately from her husband and her own daughter.

20. In such view of the matter **CRR 1110 of 2018** stands dismissed.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, on priority basis on compliance of all usual formalities.

(AJOY KUMAR MUKHERJEE, J.)