

10.04.2024
Item No.11
BR

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
Appellate Side

CRR 2952 of 2017
Atasi Mondal
-vs-
Nirmal Mondal

Nobody appears on behalf of either of the parties on call.

This case pertains to year 2017. This instant application filed under Section 401 read with Section 482 of the Code of Criminal Procedure, 1973 challenging the correctness, legality and propriety by an order dated 31.05.2017 passed by the learned Additional Chief Judicial Magistrate, Basirhat, North 24-Parganas thereby rejecting the petitioner's prayer for maintenance for herself in case no. M-328/2012.

Considering the nature of prayer and to avoid further delay, the instant case is taken up for disposal on merit.

The brief facts of the instant case are relevant for the purpose of disposal of the instant case as under:

It is the case of the petitioner that she married with opposite party in the year 2008 according to Hindu Rites and Customs. At the time of marriage, her father had given the gold ornaments and other household articles as dowry. After marriage, she went to the matrimonial home to lead conjugal life. From the said wedlock, one male child was born but after few days of marriage, the opposite party/husband and other in-laws inflicted physical and mental torture upon the petitioner and even they did not provide her proper food. The degree of torture upon the petitioner was increased day by day which was unable to bear the same. She was compelled to leave the

matrimonial home and she started living at her parental home along with her child. It is further alleged that the husband and in-laws misappropriated the stridhan properties. During stay at her parental house, she could not maintain herself and her child. Accordingly, she filed an application for maintenance case being M-328/2012 under Section 125 of the Cr. P. C. before the learned Additional Chief Judicial Magistrate, Basirhat, North 24-Parganas praying for maintenance for herself and her minor child to the tune of Rs. 9,000/- in total per month. In the said proceeding, the husband contested and finally after going through the evidence led by the parties, the learned Magistrate refused to allow the prayer for maintenance for the petitioner/wife. However, the learned Magistrate allowed maintenance of Rs. 1,500/- per month towards maintenance of her minor son till attaining majority. It was further directed

to pay the arrear from the month of July, 2012 to May, 2017 within 8 months from the date of order in addition to current maintenance and the amount of maintenance paid earlier, if any, shall be adjusted from the amount of arrear maintenance.

Being aggrieved by and dissatisfied with the said order of refusal of maintenance, the petitioner/wife preferred this revisional application.

Accordingly, the instant case has come up before this Court for disposal.

In spite of giving opportunity, no one turns up on behalf of petitioner. No accommodation was sought for.

Upon perusal of the applications and annexures thereto, this Court finds both parties led their evidence before the learned Court below and after completion of evidence from both parties, the learned Court below considered and after

appreciation of evidence held, inter alia, as under:

When she was staying in the parent house, the husband used to visit at her father's house and looked after his son and his wife and used to take care of herself and her child but she had filed a case under Section 125 CrPC when the husband/opposite party stopped visiting her at her father's house and he stopped paying for maintenance both for herself and her minor son.

It also transpired from their evidence that her husband stayed at the parent's house of the wife for a long period. Even in her cross-examination, she stated that when the age of her son was one month, her mother took her back to her matrimonial house. She started leading conjugal life at the matrimonial home. But due to their ill-treatment, she had not possible to stay with her husband at her matrimonial home though PW 2 stated in

his evidence that the petitioner was driven away from her matrimonial house as the opposite party/husband used to assault her by putting cloth on her face and also strangulating her but all these facts are not mentioned by the petitioner either in her application filed under Section 125 of CrPC or in her evidence. The Learned Court below found when he tried to bring her back to her matrimonial home, the opposite party/husband has been driven out by the petitioner though opposite party/husband stayed in the house of his father-in-law for about 3 to 4 years and opposite party/husband tried to maintain his family even by separating himself from his home and stayed in the house of father-in-law. The learned Court below further held that the petitioner is guilty by concealing material facts before the learned Court as she did not disclose that the opposite party/husband stayed in her father's house for about 3 to 4 years as

such the petitioner has not approached before the Court with clean hands. Not only that, the wife had manhandled and insulted the husband and his family members. The opposite party/husband has been able to prove that he tried his level best to maintain a good family life even by staying at the house of his father-in-law for a considerable period. He even tried to bring her and son back to lead conjugal life but the petitioner did not do so, rather the opposite party/husband was assaulted and insulted for which he left the house of his father-in-law.

Finally, the learned Court below held that the petitioner/wife has refused to stay with opposite party/husband without any sufficient reasons. Accordingly, she is not entitled to get any amount of maintenance for herself.

Upon perusal of observation of the learned Court below, it reveals the petitioner left the matrimonial home

without any sufficient reasons. Furthermore, she refused to live with her husband without showing sufficient cause as such she is not entitled to get maintenance from husband.

However, the learned Magistrate allowed maintenance to the minor son at the rate of Rs. 1,500/- each per month till attaining his majority.

Under the above facts and circumstances, this Court does not find any illegality or any error in jurisdiction or law.

Consequently, the instant revisional application has devoid of merit. Hence, **CRR 2952 of 2017** is, thus, dismissed without order as to costs.

Interim order, if any, stands vacated

Let a copy of this order be communicated to the learned Court below for information and taking necessary steps in accordance with law.

Urgent xerox certified copy of this order, if applied for, be given to the learned advocate for the parties on usual undertakings.

(Ajay Kumar Gupta , J.)