

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

C.R.R. 3904 of 2016

Smt. Sunita Das

Versus

State of West Bengal & Another

For the Petitioner : Mr. Subhamoy Bhattacharya, Adv.
Mr. Shankar Mukherjee, Adv.

For the Opposite Party No. 2

: Mr. Apalak Basu, Adv.
Mr. Steven Biswas, Adv.
Ms. Sanghamitra Mridha, Adv.

Heard on : 07.10.2024

Judgment on : 27.11.2024

Ajay Kumar Gupta, J:

1. By filing this Criminal Revisional application, the Petitioner/wife has challenged the correctness, legality and propriety of the Impugned Judgment/Order dated 16.11.2016 passed by the Learned Additional Sessions Judge, Fast Track Court, 1st Court, Tamruk, Purba Medinipur in Criminal Revision No. 47 of 2015 (Sri Santanu Kumar Das Vs. Smt. Sunita Das & Anr.) arising out of Order dated 11.02.2015 passed by the Learned 3rd Judicial Magistrate at Tamruk, Purba Medinipur in Misc. Case No. 360 of 2007.

2. By the said Judgment/Order, the Learned Additional Sessions Judge allowed the Criminal Revision application in part and the order passed by the Learned 3rd Judicial Magistrate was modified by directing the Opposite Party No. 2/husband to pay a sum of Rs. 3,000/- only per month as maintenance allowance to the daughter of the Petitioner from the date of passing of the Order of the Learned 3rd Judicial Magistrate i.e. on and from 11.02.2015 till her marriage and the said maintenance allowance to be paid within 7th day of every succeeding English calendar month and set aside the maintenance allowance allowed by the Learned Court below in favour of the wife on the ground that she failed to prove that she is married wife of the Opposite Party No. 2.

3. The brief facts of the Petitioner's case are as under: -

3a. The Petitioner was earlier married to one Anjan Kumar Samanta according to Hindu Rites and Customs on 14th July, 2002. Out of the said wedlock, no child was born. Subsequently, the said marriage was dissolved on mutual consent vide consented Order and Decree dated 20th December, 2005 passed by the Learned Additional District and Sessions Judge, Contai, Purba Medinipur in MAT Suit No. 79/2005.

3b. Thereafter, the Petitioner started residing with her parents at the address mentioned in the cause title. The Opposite Party No. 2 also resides in the same village. The Opposite Party No. 2 and his father, Mr. Bhakti Kumar Das were in the business of money lending and, in such connection, the father of the Petitioner took a loan from them in order to purchase land in the said village.

3c. When the Opposite Party No. 2 visited the house of the Petitioner in order to collect the interest of the said loan, the Petitioner first time got introduced to him. Thereafter, the Opposite Party No. 2 began visiting the house of the Petitioner frequently and gradually a love affair developed between the Petitioner and the Opposite Party No. 2. The Opposite Party No. 2 started lured the Petitioner and proposed to marry her. Due to such proposal, she

eloped with him. The Opposite Party No. 2 took the Petitioner to Kolkata and, thereafter, on 10.09.2006 they got married at Kalighat Temple as per Hindu Rites and Customs in presence of the priest. Their marriage was consummated in Kolkata.

3d. Thereafter, the Opposite Party No. 2 returned the Petitioner to her parental home assuring her that he would convince his parents and would very soon take her to her matrimonial home. The Opposite Party No. 2 and the Petitioner started living as husband and wife at the parental residence of the Petitioner. The Opposite Party No. 2 always used to give the Petitioner false assurance about taking her to the matrimonial home. During this period, the Petitioner discovered that she became pregnant. When it was informed to the Opposite Party No. 2, that he is the father of such child, the Opposite Party No. 2 became enraged and refused to accept the Petitioner as his wife and denied paternity of the child.

3e. On 15.07.2007, the Petitioner went to her matrimonial home where her father-in-law, Bhakti Kumar Das, mother-in-law, Smt. Tapati Das and Opposite Party No. 2/husband were present. At that point of time, the parents of the Opposite Party No. 2 demanded a dowry of Rs. 1,00,000/- failing which, they will not allow the Petitioner to enter her matrimonial home and would also not accept

her as their daughter-in-law. The Petitioner failed to meet the demands of her in-laws. Accordingly, she was forcibly driven out from the matrimonial home.

3f. The Opposite Party No. 2 along with his friends and relatives began threatening the Petitioner and her family members. The Opposite Party No. 2 further threatened the Petitioner to abort the child, which she was carrying in her womb. Subsequently, on 06.08.2007, the Petitioner gave birth to a girl child, namely, Srabani Das at New Sebyan Nursing Home, Barasat, Kolkata - 700 124. The Opposite Party No. 2 denied accepting the Petitioner and her new born child as his wife and daughter. Furthermore, he also stated that he never married her and also that he is not the father of the new born girl, namely, Srabani Das.

3g. Having no means of supporting herself and her child, the Petitioner filed an application under Section 125 of the Code of Criminal Procedure, 1973 against the Opposite Party No. 2 before the Learned Chief Judicial Magistrate at Tamluk, Purba Medinipur praying for maintenance for herself and her minor daughter. The case was registered as Misc. Case No. 360 of 2007. Subsequently, it was transferred to the Court of the Learned 3rd Judicial Magistrate at Tamluk, Purba Medinipur for trial and disposal.

3h. The Petitioner also lodged a complaint against the Opposite Party No. 2 and her in-laws on 2nd January, 2008 before Chandipur Police Station. The same was registered as Chandipur Police Station Case No. 1108 of 2008 dated 02.01.2008 under Sections 498A/406/506 of the Indian Penal Code, 1860 and Section 4 of the Dowry Prohibition Act, 1961. After completion of the investigation, the Investigating Officer submitted the Charge Sheet being Charge Sheet No. 14 of 2008, dated 27.02.2008 under Sections 498A/406/506 of the Indian Penal Code, 1860 and Section 4 of the Dowry Prohibition Act, 1961 against the Opposite Party No. 2, Bhakti Kumar Das and Smt. Tapati Das.

3i. On 07.03.2008, the Opposite Party No. 2/ husband filed a suit for declaration that no marriage was held between the parties before the Learned Civil Judge (Junior Division), 2nd Court at Tamruk, Purba Medinipur being O.S. No. 08 of 2008.

3j. The Learned 3rd Judicial Magistrate finally decided the main application filed under Section 125 of the Code of Criminal Procedure, 1973. After considering the evidence adduced by both the parties, vide Order dated 11.02.2015 the Learned Magistrate held that the Petitioner was entitled to get a maintenance allowance of Rs.

2,000/- only per month for herself and Rs. 2,000/- only per month for her minor daughter from the date of passing of the Order.

3k. Being aggrieved by and dissatisfied with the said Impugned Order dated 11.02.2015, the Opposite Party No. 2 filed a Criminal Revision Application before the Learned Additional Sessions Judge, Fast Track Court, 1st Court, Tamruk, Purba Medinipur and the same was registered as Criminal Revision No. 47 of 2015.

31. Upon hearing the parties, the Learned Judge was pleased to modify the Order dated 11.02.2015 vide Order dated 16.11.2016. Learned Judge directed the Opposite Party No. 2 herein to pay the Petitioner herein a sum of Rs. 3,000/- only per month after enhancing amount of maintenance allowance for only her minor daughter, namely, Srabani Das from the date of passing of the Order by the Learned Magistrate i.e. on and from 11.02.2015 until her marriage. However, the Learned Judge held that the Petitioner is not entitled to any maintenance at all as she failed to establish that she is the wife of the Opposite Party No. 2 though the contention of the Petitioner is that she is also entitled to maintenance from the Opposite Party No. 2. The Learned Judge committed an error in holding such finding without any sufficient reasons or grounds. Hence, this instant application.

SUBMISSION ON BEHALF OF THE PETITIONER: -

4. Learned counsel appearing on behalf of the Petitioner filed written notes of arguments and further submitted that the Opposite Party No. 2 had married the Petitioner at Kalighat temple under the Hindu Rites and Customs in presence of a priest. All Hindu Rites and Customs were followed at the time of marriage according to Hindu marriage practices. Their marriage was consummated in Kolkata, while they were residing as husband and wife. A female child was born from the said wedlock.

5. It was further submitted that there are sufficient documentary evidences to show the Opposite Party No. 2 is the husband and father of the new born child. The Learned Civil Judge (Junior Division), 2nd Court, Tamluk, Purba Medinipur vide Judgment and Order dated 30th day of March, 2017 dismissed the Suit for declaration and permanent injunction. In the said suit, the Opposite Party No. 2 had prayed for declaration that no-marriage had been solemnized in between the Petitioner and Opposite Party No. 2 according to Hindu Rites and Customs and also minor child was not his legitimate child. However, the Learned Judge declared Petitioner as legally married wife and the female child is legitimate child of the Opposite Party No. 2/husband. If the Civil Court declared Petitioner is legal wife and her

child is legitimate then both of them are entitled to get maintenance from the Opposite Party No. 2. The xerox copy of the aforesaid Judgment and Order dated 30.03.2017 passed in Other Suit No. 08/2008 has been filed by the learned counsel appearing on behalf of the Petitioner to support his contention.

6. Finally, it was submitted that the Learned Judge was pleased to record that from the evidences placed before him, prima facie it can be held the Petitioner is the Wife of the O.P. No. 2 but the Learned Sessions Judge failed to appreciate finding of the Learned Trial Court and disregarded the same. The maintenance amount was not allowed to the Petitioner holding therein whimsically and mechanically, the Petitioner is not the wife of Opposite Party No. 2. The said finding was without any sufficient reasons as such same is liable to be set aside and maintenance amount may be allowed to her because the Petitioner and her child are living in dire conditions and struggling to meet their day to day essential needs. They are burden upon the old ailing father, who is aged about 80 years.

SUBMISSION ON BEHALF OF THE OPPOSITE PARTY NO. 2: -

7. The learned counsel appearing on behalf of the Opposite Party No. 2 vehemently opposed the prayer of the Petitioner and filed brief notes of arguments and further submitted that the Opposite

Party No. 2 is an unmarried young man and residing with his parents and was never married with the Petitioner. The birth certificate of the child shown him as her father is procured by the Petitioner through illegal means. He did not sign any papers/documents in the hospital or authority before obtaining the same as such same is legally invalid. The Petitioner has failed to prove the marriage and is wife of the Opposite Party No. 2. Therefore, the Learned Sessions Judge partly set aside the Order of maintenance and refused to grant maintenance to the Petitioner/wife. However, the Learned Sessions Judge enhanced the maintenance amount to the tune of Rs. 3, 000/= per month from Rs. 2,000/= though Rs. 3,000/= was excess to the prayer made by the Petitioner in an application filed under Section 125 of the Code of Criminal Procedure, 1973.

8. It was further submitted that the Learned Revisional Court exceeded its jurisdiction by enhancing the maintenance amount to the child @ Rs. 3,000/= more than the prayer made by the Petitioner. She had no dissatisfaction regarding the quantum of maintenance expressed by the Learned Trial Court. The Learned Revisional Court could not have exceeded the scope of Petitioner's prayer and passed practically a non-speaking order so far as the enhancement of quantum of maintenance is concerned.

9. Finally, it was submitted that Section 103 of the Indian Evidence Act, 1872 corresponding to Section 106 of the Bharatiya Sakshya Adhiniyam, 2023 clearly establishes that the burden of proving a fact lies on the person who asserts its existence. In the present case, the Petitioner claims to be a lawful wife of Opposite Party No. 2 and, therefore, seeks maintenance from him. Consequently, the burden lies on the Petitioner to prove that she is indeed the legal wife of the Opposite Party No. 2. Without proving *prima facie*, she is not entitled to claim maintenance. The fact of the marriage must be proven. The Learned Sessions Judge clearly observed that she failed to prove the same. She failed to produce even an iota of evidence to support her claim of legal marriage as such she is not entitled to maintenance.

10. Apart from that, the Learned Civil Judge has violated the settled position of law that the burden of proving the existence of a fact lies on the party asserting it. The Learned Judge while deciding the Suit, made a negative presumption and shifted the burden onto the Petitioner to prove that the Opposite Party No. 2 was not married and saddled the Petitioner with the reverse burden to prove that the Opposite Party No. 2 was not married with the Petitioner and ultimately dismissed the Suit. Same is under challenge by way of filing an Appeal before the Learned Appellate Court and same is still

pending before the Learned Additional District Judge, 2nd Court, Tamluk as such she is not entitled to any maintenance and further the amount enhanced by the Learned Revisional Court in favour of the child needs to be reduced to Rs. 2,000/= per month. Learned counsel has placed reliance of the judgments in as under: -

i. Rajasthan Art Emporium Vs. Kuwait Airways and Another¹;

ii. Lakhi Hazra wife of Gopal Hazra Vs. Gopal Hazra son of Shyam Charan Hazra²

iii. Anju Sharma Vs. Binod Kumar Sharma and Another³.

DISCUSSIONS, ANALYSIS AND CONCLUSION OF THIS COURT:

11. Having heard the submissions of the learned counsels appearing on behalf of the parties and on perusal of the record, it appears Petitioner claims herself as legal wife of the Opposite Party No. 2. She filed an application under Section 125 of the Code of Criminal Procedure, 1973 claiming maintenance @ Rs. 2,000/= per month for herself and Rs. 2,000/= per month for her female child from her husband/Opposite Party No. 2.

¹ (2024) 2 SCC 570;

² 2000 SCC OnLine Cal 334 : (2001) 3 CHN 604;

³ 2024 SCC OnLine Cal 2085.

12. Learned Magistrate, after considering the evidence adduced by the parties and upon hearing, awarded a sum of Rs. 2,000/= each in favour of her and her female child from the date of passing of the Order i.e. on and from 11.02.2015.

13. The said order has been challenged by the Opposite Party No. 2 before the Learned Additional Sessions Judge, Fast Track Court, 1st Court, Tamluk, Purba Medinipur by filing revisional application being Criminal Revision No. 47 of 2015 (Sri Santanu Kumar Das Vs. Smt. Sunita Das & Anr.). The Learned Sessions Judge partly set aside the order of maintenance and disallowed the maintenance to the Petitioner observing that she failed to prove her marriage. However, the Learned Sessions Judge enhanced the maintenance amount to the tune of Rs. 3,000/= per month from Rs. 2,000/= to the female child only from the date of passing Order of the Learned Trial Court.

14. Feeling aggrieved with the order of rejection of maintenance to her, the Petitioner approached before this Hon'ble High Court praying for setting aside the Impugned Order dated 16.11.2016 passed by the Learned Sessions Judge and praying for maintenance allowance as awarded by the Learned Trial Court.

15. Now, the question arises whether she is entitled to any maintenance from the Opposite Party No. 2 or not?

16. To decide this issue, this Court would like to quote Section 125 of the Code of Criminal Procedure, 1973 for the purpose of ready reference, proper and fair disposal of this case as under: -

“125. Order for maintenance of wives, children and parents. —(1) If any person having sufficient means neglects or refuses to maintain—

(a) his wife, unable to maintain herself, or

(b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or

(c) 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

(d) 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.]

Explanation.—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 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.

Explanation. —If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife's refusal to live with him.

(4) No wife shall be entitled to receive an 1 [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 in living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent."

17. From careful perusal of the aforesaid provision, it reveals that it is the obligation and bounded duty of the husband to maintain his wife and children, if he has sufficient means and neglects or refuses to maintain them in case wife is unable to maintain herself

and her child. However, she is not entitled to maintenance on following grounds: -

1. She must not have remarried.

2. Wife is living in adultery or that without sufficient cause she refused to live with her husband or that they are living separately by mutual consent.

18. The meaning of the provisions of Section 125 of the Code of Criminal Procedure, 1973 has to be understood, in the light of the scope and object of the provisions of Section 125 of the Code of Criminal Procedure, 1973. The object behind the benevolent provision is to prevent vagrancy and ensure that the destitute woman and neglected children are provided promptly with sustenance. Section 125 of the Code of Criminal Procedure, 1973 is meant to achieve a social purpose. It provides speedy remedy for the supply of food, clothing and shelter to the wife and the children.

19. Where a man and woman have been living together as husband and wife for a reasonable long period of time, strict proof of marriage should not be a pre-condition for maintenance under Section 125 of the Code of Criminal Procedure, 1973. In proceedings under Section 125 of the Code of Criminal Procedure, 1973 strict proof of marriage is not required. Wife has to prove prima facie case of marriage so as

to fulfil the true spirit and essence of the beneficial provision of the maintenance under Section 125 of the Code of Criminal Procedure, 1973.

20. Furthermore, the Learned Civil Court already declared Petitioner is legally married wife and the female child is legitimate child of the Opposite Party No. 2/husband in O.S. No. 08 of 2008 vide Judgment and Order dated 30th March, 2017. When the Learned Civil Court declared Petitioner is legal wife and her child is legitimate, then both of them are entitled to get maintenance from the Opposite Party No. 2. It is not disputed by the Opposite Party No. 2 with regards to the aforesaid Judgment passed by the Learned Judge. Pendency of appeal does not preclude to pay maintenance awarded by the Trial Court unless any stay. No stay is granted by the Appellate court in this regard.

21. With regard to enhancement of the maintenance allowed from Rs. 2,000/= to Rs. 3,000/= has not been challenged either by the Petitioner or by the Opposite Party No. 2. Hence, maintenance amount awarded by the Learned Sessions Judge is not required to be interfered and the same is affirmed.

22. Accordingly, **CRR 3904 of 2016** is, thus, **allowed** without order as to costs. Connected applications, if any, are also, thus, disposed of.

23. Consequently, the Impugned Judgment/Order dated 16.11.2016 passed by the Learned Additional Sessions Judge, Fast Track Court, 1st Court, Tamluk, Purba Medinipur in Criminal Revision No. 47 of 2015 (Sri Santanu Kumar Das Vs. Smt. Sunita Das & Anr.) is partly set aside to the extent that the Petitioner is not the legal wife of the Opposite Party No. 2 and she is not entitled to get maintenance and the Judgment and Order dated 11.02.2015 passed by the Learned 3rd Judicial Magistrate at Tamluk, Purba Medinipur in Misc. Case No. 360 of 2007 is hereby affirmed. Opposite Party No. 2 is hereby directed to pay the maintenance allowance of Rs. 2,000/= as awarded by the Learned Trial Court to the Petitioner/wife in the mode and manner stipulated by the Learned Trial Court in addition to maintenance allowance awarded by the Learned Sessions Judge in favour of her daughter @ Rs. 3000/= per month. In default, Petitioner is at liberty to put it in execution.

24. Let a copy of this Judgment and Order be sent to the Learned Court below for information.

25. Interim order, if any, stands vacated.

26. All parties will act on the server copies of this Judgment and Order uploaded on the website of this Court.

27. Urgent photostat certified copy of this Judgment and Order, if applied for, is to be given as expeditiously to the parties on compliance of all legal formalities.

(Ajay Kumar Gupta, J)

P. Adak (P.A.)