

05.12.2024

Sl. No.: 27

Court No.30
BM

CRR 5015 of 2023

Nasima Begum

Vs.

State of West Bengal & Anr.

Mr. Habibur Rahaman

Mr. Anisur Rahaman

Mr. Archisman Sing

... for the petitioner

Mr. Sayan Kanjilal

... for the opposite party no.2

1. The present revisional application has been preferred praying for setting aside of the order dated 14.09.2023 passed by the learned Additional Sessions Judge, 1st Court at Sealdah, South 24 Parganas, in Criminal Revision No.33 of 2023 whereby the Court dismissed the said Criminal Revisional Application arising out of M. Case No.12/2018, disposed of by the learned Judicial Magistrate, 2nd Court, Sealdah and was further pleased to affirm the order dated 07.06.2023 passed by the learned Judicial Magistrate, 2nd Court at Sealdah in M. Case No.12 of 2018 whereby the learned Judicial Magistrate was pleased to reject the prayer for recall of the order of dismissal for default restoration application.

2. By the order dated 7.6.2023 in Misc. Case No.12 of 2018, the learned **Magistrate** considering the prayer for restoration of the maintenance case, which was dismissed for default on 26.11.2021, **rejected the prayer for restoration.**

3. It is on record that Misc. Case filed under Section 125 of the Cr.P.C was dismissed for default on 26.11.2011.

4. Learned Magistrate vide order dated 07.06.2023 refused to recall the said order considering the conduct of the petitioner.

5. The said order being challenged before the learned Additional Sessions Judge, the learned Session Judge applied the provision of Section 362 of the Cr. P.C and dismissed the revisional application.

6. **Section 362 of the Cr.P.C, lays down:-**

“362. Court not to alter judgment.- Save as otherwise provided by this Code or by any other law for the time being in force, no Court, when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error.”

7. It is evident from Section 362 of the Cr.P.C that it clearly applies to a proceeding which has been finally concluded on merit.

8. In **Sanjeev Kapoor vs Chandana Kapoor & Ors., Criminal Appeal Nos. 286 of 2020 (arising out of SLP (Crl.) No. 1041 of 2020, decided on February 19, 2020**, the Supreme Court held:-

*“22. Before we proceed to look into the Legislative Scheme of Section 125 Cr.P.C., we need to notice few rules of interpretation of statutes when court is concerned with interpretation of a social justice legislation. Section 125 Cr.P.C. is a social justice legislation which order for maintenance for wives, children and parents. Maintenance of wives, children and parents is a continuous obligation enforced. This Court had occasion to consider the interpretation of Section 125 Cr.P.C. in **Badshah versus Urmila Badshah Godse and another, (2014) 1 SCC 188**. In paragraphs 13.3 to 18, following has been laid down:-*

“13.3. Thirdly, in such cases, purposive interpretation needs to be given to the provisions of Section 125 Cr.P.C. While dealing with the application of a destitute wife or hapless children or parents under this provision, the Court is dealing with the marginalised sections of the society. The purpose is to achieve “social justice” which is the constitutional vision, enshrined in the Preamble of the Constitution of India. The Preamble to the Constitution of India clearly signals that we have chosen the democratic path under the rule of law to achieve the goal of securing for all its citizens, justice, liberty, equality and fraternity. It specifically highlights achieving their social justice. Therefore, it becomes the bounden duty of the courts to advance the cause of the social justice. While giving interpretation to a particular provision,

the court is supposed to bridge the gap between the law and society.

14. Of late, in this very direction, it is emphasised that the courts have to adopt different approaches in “social justice adjudication”, which is also known as “social context adjudication” as mere “adversarial approach” may not be very appropriate. There are number of social justice legislations giving special protection and benefits to vulnerable groups in the society. Prof. Madhava Menon describes it eloquently:

“It is, therefore, respectfully submitted that ‘social context judging’ is essentially the application of equality jurisprudence as evolved by Parliament and the Supreme Court in myriad situations presented before courts where unequal parties are pitted in adversarial proceedings and where courts are called upon to dispense equal justice. Apart from the social-economic inequalities accentuating the disabilities of the poor in an unequal fight, the adversarial process itself operates to the disadvantage of the weaker party. In such a situation, the Judge has to be not only sensitive to the inequalities of parties involved but also positively inclined to the weaker party if the imbalance were not to result in miscarriage of justice. This result is achieved by what we call social context judging or social justice adjudication.”

15. The provision of maintenance would definitely fall in this category which aims at empowering the destitute and achieving social justice or equality and dignity of the individual. While dealing with cases under this provision, drift in the approach from “adversarial” litigation to social context adjudication is the need of the hour.

16. The law regulates relationships between people. It prescribes patterns of behaviour. It reflects the values of society. The role of the court is to understand the purpose of law in society and to help the law achieve its purpose. But the law of a society is a living organism. It is based on a given factual and social reality that is constantly changing. Sometimes change in law precedes societal change and is even intended to stimulate it. In most cases, however, a change in law is the result of a change in social reality. Indeed, when social reality changes, the law must change too. Just as change in social reality is the law of life, responsiveness to change in social reality is the life of the law. It can be said that the history of law is the history of adapting the law to society’s

changing needs. In both constitutional and statutory interpretation, the court is supposed to exercise discretion in determining the proper relationship between the subjective and objective purposes of the law.

17. Cardozo acknowledges in his classic

“... no system of *jus scriptum* has been able to escape the need of it.” and he elaborates:

“It is true that codes and statutes do not render the Judge superfluous, nor his work perfunctory and mechanical. There are gaps to be filled. ... There are hardships and wrongs to be mitigated if not avoided. Interpretation is often spoken of as if it were nothing but the search and the discovery of a meaning which, however obscure and latent, had nonetheless a real and ascertainable pre-existence in the legislator’s mind. The process is, indeed, that at times, but it is often something more. The ascertainment of intention may be the least of a Judge’s troubles in ascribing meaning to a statute. ...

Says Gray in his lectures:

“The fact is that the difficulties of so-called interpretation arise when the legislature has had no meaning at all; when the question which is raised on the statute never occurred to it; when what the Judges have to do is, not to determine that the legislature did mean on a point which was present to its mind, but to guess what it would have intended on a point not present to its mind, if the point had been present.”

18. The court as the interpreter of law is supposed to supply omissions, correct uncertainties, and harmonise results with justice through a method of free decision — *libre recherche scientifique* i.e. “free scientific research”. We are of the opinion that there is a non-rebuttable presumption that the legislature while making a provision like Section 125 Cr.P.C., to fulfil its constitutional duty in good faith, had always intended to give relief to the woman becoming “wife” under such circumstances. This approach is particularly needed while deciding the issues relating to gender justice. We already have examples of exemplary efforts in this regard. Journey from Shah Bano to Shabana Bano guaranteeing maintenance rights to Muslim women is a classical example.

30. We have noticed the judgment of this Court in **Mahua Biswas (Smt) (supra)** where this Court had activated the wife’s claim of maintenance to put her at same position before parties

*compromised in proceeding under Section 125 Cr.P.C. Although learned counsel for the appellant submits that the judgment of this Court in **Mahua Biswa (Smt)** is not applicable, we do not agree with the submission. In the above case, order was passed by the Magistrate giving maintenance of token amount against which she moved to the High Court for revision where it was noticed that matrimonial case between the parties had stood compromised and one of the terms was that wife would go and live with her husband. The wife went to live with husband but later the spouse fell apart. Husband contended that the orders of maintenance could not be revived as there had arisen a fresh cause of action. The High Court had set aside the order of maintenance leaving the wife to approach again the Criminal Court for appropriate relief. This Court allowing the appeal had activated the wife's claim of maintenance and put her in the same position as before. The above judgment clearly indicates that this Court adopted the Course which avoided injustice to the wife.*

31. *We, thus, are of the considered opinion that the order passed in present case by Family Court reviving the maintenance application of the wife under Section 125 Cr.P.C. by setting aside order dated 06.05.2017 passed on settlement **is not hit by the embargo contained in Section 362 Cr.P.C. The submission of learned senior counsel for the appellant that Section 362 Cr.P.C. prohibit the Magistrate to pass the order dated 05.01.2019 cannot be accepted.***

9. The learned Session Judge considering the provision of Section 362 Cr.P.C. was pleased to reject the prayer. The prayer before the learned Session Judge was by way of a revisional application and such a prayer being in respect of a beneficial legislation should have been considered by the learned Session Judge.

10. Learned counsel for the opposite party/husband submits that he is suffering since long due to laches and negligence on the part of the petitioner/wife herein who is not diligent in conducting the proceeding before the trial Court.

11. On going through the materials on record, it appears that the **matter was fixed for hearing during Covid pandemic period and as such, it appears that prima facie, it was difficult for the petitioner/wife to attend the court.**

12. Learned counsel for the opposite party submits that a cost be imposed if the matter is being restored.

13. Considering that the proceeding sought to be restored is a maintenance proceeding and under a beneficial legislation, this court is not inclined to grant any cost but on **setting aside the orders dated 14.09.2023 passed by the learned Additional Session Judge, 1st Court, Sealdah in Criminal Revision No.33 of 2023 and the order dated 07.06.2023 passed by the learned Judicial Magistrate, 2nd Court, Sealdah in Misc. Case No.12 of 2018 and the order dated 26.11.2021 in Misc. Case No.12 of 2018, restores the maintenance case being Misc Case 12/2018 to its file and number, with the direction that the said Misc. Case being no. 12/2018 is to be disposed of within a period of six months from the date of this order, following the guidelines of the Hon'ble Supreme Court in *Rajnesh vs. Neha & Anr. (2021) 2 SCC 324* on hearing both the parties.**

14. The learned Magistrate shall ensure that none of the parties pray for adjournment, without any valid cause and ensure that the matter is disposed of within the time frame as directed.

15. **Relying upon the judgment in *Sanjeev Kapoor vs Chandana Kapoor & Ors.(Supra)*, CRR 5015 of 2023 is allowed.**

16. All applications connected thereto stand disposed of.

17. Interim order, if any, stands vacated.

- 18.** Let a copy of the order be sent to the learned trial court for compliance.
- 19.** Urgent Xerox certified copies of this order, if applied for, shall be supplied to the learned counsel for the parties as expeditiously as possible, in compliance of usual formalities.

(Shampa Dutt (Paul), J.)