

22.04.2025
Item No.02
Ct. No.446
RP

CRR 1763 of 2011

Smt. Saraswati Paul vs. Sri Alope Pal & Anr.

Mr. Kaushik Gupta, Sr. Adv.
Ms. Srimoyee Mukherjee
.... For Petitioner

1. Learned advocate appears for the petitioner.
2. None appears for the opposite parties.
3. A letter dated 16th April, 2025 showing necessary communication by the learned advocate-on-record of the petitioner to Mr. Aniket Maitra, learned advocate who appeared for the opposite party on 6th February, 2024 is placed before this Court. Let the same be kept with the record.
4. The matter is pending since 2011 and it pertains to an application under Section 125 of the Code of Criminal Procedure filed by the wife/petitioner, whose claim for maintenance for herself and her minor daughter has been refused by the learned trial Court. Therefore, this Court is of the view that the matter should be taken up for hearing in absence of the opposite parties.
5. The instant application under Article 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 is directed against the order dated 4th August, 2008 passed by the learned 1st Judicial Magistrate, Barasat, North 24

Parganas and the order dated 28th March, 2011 passed by the learned Judicial Magistrate, Barasat, North 24 Parganas in connection with M Case No.245/2001 under Section 125 of the Code of Criminal Procedure with a prayer to pay maintenance to the tune of Rs.1500/- for herself and Rs.1500/- for her minor daughter. It is the specific case of the petitioner that she is the legally married wife of the opposite party no.1. The marriage was solemnized on August 13, 1999 and out of the said wedlock a female child was born on 11th October, 2000. There was a marital discord between the parties and the petitioner along with her minor daughter were driven out by the opposite party in the month of December 2000 after snatching all her gold and silver ornaments and other valuable articles which she received as Streedhan and since then she is residing with her parents. It is further stated that the opposite party is an employee under Indian Railways and earns salary to the tune of Rs.15,000/- per month and the petitioner/wife has no means to maintain either for herself or her minor daughter and accordingly she had to file an application under Section 125 of the Code of Criminal Procedure. The learned Court below after hearing the petitioner the opposite party/husband was pleased to dismiss the said petition under Section 125 of the Code of

Criminal Procedure with the observation that the petition under Section 125 of the Code of Criminal Procedure is devoid of any such statement regarding maintenance by the husband of the petitioner/wife. Being aggrieved thereby the instant revisional application was filed before this Court in the year 2011. It is submitted by the learned advocate for the petitioner that after such order was passed on 4th August, 2008 a revisional application was filed before the Court of the learned Additional Sessions Judge, Barasat, North 24 Parganas and the learned Additional Court Sessions Judge after hearing the parties was pleased to observe that the learned Court of Judicial Magistrate, 1st Court without completing the evidence of the PW 1 dated 12th February, 2008 passed a final order and accordingly directed the learned Court to give PW1 an opportunity to complete deposition on 12th February, 2020 and was further directed to dispose of the case within two months from such date.

6. Learned advocate appearing for the petitioner draws attention of this Court to the order of the learned 1st Court of Judicial Magistrate which was also challenged before this Court, on 20th March, 2011 whereby it was observed by the learned trial Court that "since nothing is on record to allow that the order dated 04/08/08 and order dated 07/1/09 is

set aside till date, the instant case is disposed of as per order dated 04/8/08” and accordingly rejected the prayer of the petitioner on contest.

7. It is argued before this Court by the learned Advocate that pursuant to the hierarchy followed by the judiciary when a direction was passed by a superior Court with specific direction upon the learned trial Court to complete the evidence on a particular date within specific time, the learned trial Court ought to have followed the said direction instead of that the learned Court below refused to follow such direction which is something unheard of.
8. On careful perusal of the impugned order and the application under Section 125 of the Code of Criminal Procedure filed by the petitioner the fact, which are found to be admitted are the marriage between the petitioner and the opposite party no.1 and the birth of a female child from such wedlock. It is also found from the specific averments made in the petition that the petitioner is unable to maintain herself as well as minor daughter. It is also apparent from the order passed by the learned Additional District Judge that a specific direction was given to the learned Judicial Magistrate to complete the evidence within a particular date which was not followed by the learned court. However the learned Court gave a reasoning for non-compliance of such

order. It is also seen that after the order dated August 4, 2008 the order was passed long after 3 years on 20th March, 2011. Even for the sake of argument it is construed that the maintenance order is not given to the present petitioner/wife the responsibility lies upon the parents to maintain their child and in a plethora of judgments it is decided by the Hon'ble Apex Court that such responsibility should be borne by both parents even when the wife is not having sufficient means to maintain herself. It is apparent from the entire facts and circumstances, the learned trial Court failed to assign any such reason as to why the entire application under Section 125 of the Code of Criminal Procedure was disposed of and without making any provision for the female child who was minor at that very relevant point of time. Be that as it may, several years have passed and the minor is at present a major unmarried lady. The petitioner has also not taken any such step to move the petition before this Court. Therefore, without making any specific provision regarding the maintenance of the daughter this Court is of the view that the matter should be remitted back to the learned 1st Court of Judicial Magistrate, Barasat, North 24 Parganas to give a fresh a hearing after giving an opportunity of hearing to both parties and also following the judgment of Rajanesh vs. Neha

reported in 2021(2) SCC 324 and to pass a reasoned order. It goes without saying that the learned trial Court will make all endeavour to hear out the application under Section 125 of the Code of Criminal Procedure afresh within a reasonable period of time and dispose of the same as early as possible.

9. With the aforesaid observations and directions, this revisional application is disposed of.

10 Let a copy of this order be sent to the learned Trial Court for compliance.

[CHAITALI CHATTERJEE (DAS), J.]