

Criminal Revision

Present: **The Hon'ble Justice Ashim Kumar Roy**

C.R.R. No. 2124 of 2009
With
CRAN No. 2949 of 2009
Judgment On: 16-04-2010

Sushil Das
versus
Sonali Das (Halder) & Ors.

POINTS:

MAINTENANCE- Marriage and the paternity of the child disputed-Parties live together as husband and wife-Able bodied person whether liable to pay maintenance to the wife and child-Code of Criminal Procedure, 1973 S.125-Evidence Act 1872 S.112

FACTS:

This is a case where both the marriage and the paternity of the child has been disputed. In connection with a proceeding under Section 125 of the Code of Criminal Procedure, the trial Court rejected the prayer of the opposite party/wife for maintenance for herself and her minor daughter. The said order being challenged in a revision, the revisional Court reversed the same and directed the petitioner to pay a monthly maintenance at the rate of Rs. 400/- for the wife and at the rate of Rs. 300/- for her minor daughter, hence this criminal revision.

HELD:

The learned revisional Court is absolutely correct. In connection with a maintenance proceeding under Section 125 of the Code of Criminal Procedure, no strict proof of marriage is necessary. Similarly, it would be sufficient for a lady to claim maintenance from any person if she is able to prove that they lived together as husband and wife and society at large accepted them as such and the Court should proceed, until contrary is proved, that they were living together in consequence of

a valid marriage and not in a state of concubinage. The Court finds the evidence that both the parties lived together as husband and wife went unshaken and as such, the Learned Judge has not committed any mistake in allowing the opposite party's prayer for maintenance. Para-4

The opposite party/wife has been able to prove that both the parties lived together as husband and wife and during such period she conceived and gave birth to the child therefore the presumption under Section 112 of the Evidence Act ought to be drawn. Accordingly, the Learned Judge rightly awarded maintenance in favour of the child. Para-5

In the question of quantum of maintenance, the Court finds that the petitioner/husband in his evidence claimed that he is a carpenter and used to earn only Rs. 50/- per day. However, the facts remain that he is an able-bodied person and has capacity to earn. The Court is not going to accept that his daily income is Rs. 50/- per day. Thus, the quantum of maintenance as fixed by the Learned Trial Court does not deserve to be interfered with. Para-6

For Petitioner : Mr. Debobrata Roy
Mr. Biswaroop Chowdhury
Mr. Hiranmoy Paik

For O.P. No. 1: Mr. Sandip Kundu

For State: Mr. Sobhendu Sekhar Roy

THE COURT:

1. In connection with a proceeding under Section 125 of the Code of Criminal Procedure, the trial Court rejected the prayer of the opposite party/wife for maintenance for herself and her minor daughter. The said order being challenged in a revision, the revisional Court reversed the same and directed the petitioner to pay a monthly maintenance at the rate of Rs. 400/- for the wife and at the rate of Rs. 300/- for her minor daughter, hence this criminal revision.

2. Heard Mr. Debabrata Roy for the petitioner as well as Mr. Sandip Kundu for the wife/opposite party and Mr. Sobhendu Sekhar Roy for the State. Perused the judgments of both the Courts below as well as the deposition of the witnesses filed along with this criminal revision.

This is a case where both the marriage and the paternity of the child has been disputed and according to the case of the husband/petitioner, one Rina Das is his legally married wife and they have their own children.

3. It appears from the perusal of the judgment of the Trial Court, the Learned Magistrate refused to allow the prayer for maintenance on the ground that the wife has failed to prove performance of 'Saptapadi' which is one of the essential rites of the Hindu Marriage, therefore, there was no valid marriage in the eye of law and, accordingly, wife is not entitled to any maintenance. However, the learned revisional Court upset the said order on the ground in a case relating to a proceeding under Section 125 of the Code of Criminal Procedure strict proof of marriage is not necessary. The Learned Judge further found from the evidence of the witnesses examined by the wife, it has been established both the petitioner and the wife lived together as husband and wife.

4. Now, having regard to the materials on record, I find that the learned revisional Court is absolutely correct. In connection with a maintenance proceeding under Section 125 of the Code of Criminal Procedure, no strict proof of marriage is necessary. Similarly, it would be sufficient for a lady to claim maintenance from any person if she is able to prove that they lived together as

husband and wife and society at large accepted them as such and the Court should proceed, until contrary is proved, that they were living together in consequence of a valid marriage and not in a state of concubinage. In this particular case, I find the evidence that both the parties lived together as husband and wife went unshaken and as such, the Learned Judge has not committed any mistake in allowing the opposite party's prayer for maintenance.

5. In view of the fact, in this case the opposite party/wife has been able to prove that both the parties lived together as husband and wife and during such period she conceived and gave birth to the child the presumption under Section 112 of the Evidence Act ought to be drawn. Accordingly, the Learned Judge rightly awarded maintenance in favour of the child.

6. Now, coming to the question of quantum of maintenance, I find that the petitioner/husband in his evidence claimed that he is a carpenter and used to earn only Rs. 50/- per day. However, the facts remain that he is an able-bodied person and has capacity to earn. I am not going to accept that his daily income is Rs. 50/- per day. Thus, the quantum of maintenance as fixed by the Learned Trial Court is not deserved to be interfered with.

7. This criminal revision has no merit and stands dismissed.

8. In view of dismissal of main criminal revisional application, the application for expeditious hearing being CRAN No. 2949 of 2009 stands disposed of accordingly.

9. Criminal Section is directed to deliver urgent Photostat certified copy of this Judgment to the parties, if applied for, as early as possible.

(Ashim Kumar Roy, J.)