

CRIMINAL REVISION

Present : The Hon'ble Mr. Justice Prasenjit Mandal

C.R.R. No.2254 of 2006

Judgement On: June 23, 2010.

Smt. Arati Naskar

Versus

Sri Keshorimohan Naskar

POINTS

MAINTENANCE – Maintenance claimed by the wife for herself, and for her two sons, who attains majority during pendency of the proceeding–Whether Magistrate can grant Maintenance only for the wife- Code of Criminal Procedure 1973, S 125

FACTS

This is application under Section 401 read with Section 482 of the Code of Criminal Procedure, 1973 arising out of an order dated 27.12.2005 passed by the learned Judicial Magistrate, Second Court, Diamond Harbour, District – South 24 Parganas in Misc. Case No.282 of 2003 thereby allowing the maintenance in favour of the wife at the rate of Rs.1,250/- per month from the date of filing of the application under Section 125 of the Cr.P.C. Being aggrieved by the said order of maintenance, the wife has preferred this revisional application.

HELD

The Learned Magistrate held that the wife is residing in the house of the husband at his native place and in such circumstances the husband was directed to pay maintenance at the rate of Rs.1,250/- per month while the claim of the wife was Rs.1,500/- per month for herself. So far as the maintenance of the wife is concerned, that such findings of the learned Magistrate does not call for any interference. Para 9

As regards maintenance for the two children, it is the observation of the learned Magistrate that the two children of the wife had attained majority in the meantime and so the petitioner is not entitled to claim any maintenance for the two children against her husband. In this regard, the learned Magistrate has laid down the correct proposition of law. Para 10

For the petitioner: Mr. Debajyoti Deb.

For the Opposite Party: Mr. Shyam Sundar Manna.

Prasenjit Mandal, J:

THE COURT 1.This is application under Section 401 read with Section 482 of the Code of Criminal Procedure, 1973 arising out of an order dated 27.12.2005 passed by the learned Judicial Magistrate, Second Court, Diamond Harbour, District – South 24 Parganas in Misc. Case No.282 of 2003 thereby allowing the maintenance in favour of the wife at the rate of Rs.1,250/- per month from the date of filing of the application under Section 125 of the Cr.P.C. Being aggrieved by the said order of maintenance, the wife has preferred this revisional application.

2.The fact leading to the filing of the revisional application is that the wife/petitioner filed an application under Section 125 of the Cr.P.C. against the husband/opposite party before the learned Additional Chief Judicial Magistrate, Diamond Harbour praying for maintenance in favour of the wife at the rate of Rs.1,500/- per month for herself and Rs.1,500/- per month for each of her two children, thus, totalling Rs.4,500/- per month and the litigation cost of Rs.5,000/-. Admittedly, the marriage between the two was held in April, 1978 according to Hindu customs and rites and after marriage they lived together and two sons were born in the wedlock. The wife contended that unfortunately after one year from the date of marriage the husband subjected the petitioner to torture both, physically and mentally. He also demanded more dowry. Ultimately he left the house and he began to live elsewhere with another lady. He was landed properties. He is also a Government service holder and thus he earns Rs.15,000/- per month. He did not pay maintenance to them. So the case under Section 125 of the Cr.P.C. has been filed.

3.The husband contested the maintenance claim petition. His contention is that the wife and the 2 sons had beaten him. Thereafter he left his house. The 2 sons are major. They are residing in the house constructed by the husband. The wife is cultivating paddy and vegetables on the bastu land of the husband.

4.Upon consideration of evidence of both the sides, the learned Magistrate granted maintenance at the rate of Rs.1,250/- per month in favour of the wife only. He did not grant any maintenance for the two sons of the petitioner on the ground that they have attained majority. So they are not entitled to get any maintenance.

5.Now, the contention of Mr. Deb, the learned Advocate for the petitioner, is that the husband is bound to maintain the wife and his two children so long as the wife and the children are

unable to maintain themselves. Therefore, the order passed by the learned Magistrate is not a correct one. Maintenance should also be granted in favour of the two sons of the wife.

6. On the other hand, the learned Advocate for the opposite party /husband has supported the judgment.

7. Now the point for consideration is whether the wife is entitled to get further maintenance from her husband.

8. So far as the maintenance for the wife is concerned, I find that the learned Magistrate, upon due consideration of the evidence on record, has opined that the wife has been residing in the house of the husband at his native place at village Raghunathpur, P.O. Beresharpur under P.S. Mandirbazar, District : South 24 Parganas and the husband has been residing at Garia with one lady. The court also found from evidence on record that the husband is a Group – D employee of the C.P.W. and he gets a salary of Rs.5,264/- per month. Upon analysing the evidence, the learned Magistrate also found that the prayer for maintenance for the wife should be allowed for the interest of justice and accordingly he granted Rs.1,250/- per month for the wife herself with effect from the date of filing of the application.

9. I have observed above that the learned Magistrate held that the wife is residing in the house of the husband at his native place and in such circumstances the husband was directed to pay maintenance at the rate of Rs.1,250/- per month while the claim of the wife was Rs.1,500/- per month for herself. So far as the maintenance of the wife is concerned, I hold, that such findings of the learned Magistrate does not call for any interference.

10. As regards maintenance for the two children, it is the observation of the learned Magistrate that the two children of the wife had attained majority in the meantime and so the petitioner is not entitled to claim any maintenance for the two children against her husband. In this

regard, I hold that the learned Magistrate has laid down the correct proposition of law. So, I am of the view that the learned Magistrate has rightly rejected the prayer of the wife for maintenance of the two children.

11.The order as passed by the learned Magistrate contains reasons for decision. The learned Magistrate has given reasons upon analysing the evidence on record. The judgment cannot be said to be perverse or without any evidence. Therefore, I am of the view that there is nothing to interfere with the impugned order.

12.So the revisional application is without any merit. It is, therefore, dismissed.

13.Considering the circumstances, there will be no order as to costs.

14.Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.

(Prasenjit Mandal, J.)