

CRIMINAL REVISION**Present :The Hon'ble Mr. Justice Prasenjit Mandal****C.R.R. No.2759 of 2009**

Judgement On: June 23, 2010.

Sukumar Sardar

Versus

Aparna Sardar & Anr.

POINTS

MAINTENANCE –Husband is an able bodied person –Whether he is bound to maintain his wife –
Code of Criminal Procedure 1973, S 125

FACTS

This application under Section 401 read with Section 482 of the Code of Criminal Procedure, 1973 has arisen out of an order dated 30.06.2009 passed by the learned Judicial Magistrate, First Court, Diamond Harbour in Misc. Case No.511 of 2006 thereby granting maintenance at the rate of Rs.900/- month in favour of the wife/opposite party herein. Husband claims that he earns Rs.300/- per month as pocket money by working as an assistant in the tea stall run by his father. Being aggrieved by the said order of maintenance, the husband /petitioner has preferred this revisional application.

HELD

The wife is at present residing at her father's house and that the husband did not pay any maintenance. As regards steps for mutual divorce, the wife has categorically denied that she signed

of any petition of divorce on mutual consent. Whatever may be, the steps for mutual divorce could not succeed. The result is that the marriage tie is still subsisting. The husband is an able bodied person. So he is bound to maintain his wife. Upon analysing the evidence on record, the learned Magistrate disbelieved the contention of the husband that he is a mere helper of his father's tea stall. The learned Magistrate considered the entire evidence on record and then he came to a conclusion. This being the situation, the impugned order cannot be said to be perverse at all or without any evidence.

Para 6

For the petitioner: Mr. Gurusaday Dey.

For the Opposite parties: Mr. Abdul Hamid,
Mr. Abdul Hossain.

Prasenjit Mandal, J:

THE COURT 1.This application under Section 401 read with Section 482 of the Code of Criminal Procedure, 1973 has arisen out of an order dated 30.06.2009 passed by the learned Judicial Magistrate, First Court, Diamond Harbour in Misc. Case No.511 of 2006 thereby granting maintenance at the rate of Rs.900/- month in favour of the wife/opposite party herein. Being aggrieved by the said order of maintenance, the husband /petitioner has preferred this revisional application.

2.The fact of the case in brief is that the wife was married to the husband on 2nd December, 2004 according to Hindu customs and rites. After marriage, the wife went to the house of the husband to lead the matrimonial life. Initially, the husband and other members of his family behaved well with the wife but after some days they pressurized the wife to bring Rs.50,000/- from

her father's house, though at the time of marriage gifts were made according to the customs. Ultimately, the wife was driven away from her matrimonial home. She has no income. On the other hand, the husband earns Rs.12,000/- per month. So she has claimed maintenance at the rate of Rs.3,000/- per month.

3.Upon due consideration of the evidence on record adduced by both the parties, the learned Magistrate allowed the maintenance at the rate of Rs.900/- month from the date of order dated 30.06.2009. Being aggrieved by the order impugned, the husband has come up with the revisional application.

4.The contention of the learned Advocate for the husband is that though the marriage between the parties is an admitted fact, the learned Magistrate did not consider the fact that husband earns Rs.300/- per month as pocket money by working as an assistant in the tea stall run by his father. In fact, after marriage the wife stayed at the house of the husband for 10/12 days only and during this short span of time, the wife used to go to her father's house frequently. Thereafter on 17.12.2004 she left the house wilfully and began to stay at her father's house. He submitted that one suit for divorce under Section 13B was filed, but on the date of hearing the wife did not attend the Court and as such that suit is dismissed. So the wife is not entitled to get any maintenance from the husband.

5.On the other hand, the learned Advocate for the opposite parties, supported the order by stating that due consideration of the evidence on record has been made and the order has been properly passed. So there is no ground of interference.

6.Upon due consideration of the submission of the learned Advocate of both the sides and on perusal of the materials on record, I find that the marriage between the husband and the wife is an admitted fact. It is also an admitted fact that the wife is at present residing at her father's house

and that the husband did not pay any maintenance. As regards steps for mutual divorce, I find that the wife has categorically denied that she signed of any petition of divorce on mutual consent. Whatever may be, I find that the steps for mutual divorce could not succeed. The result is that the marriage tie is still subsisting. The husband is an able bodied person. So he is bound to maintain his wife. Upon analysing the evidence on record, the learned Magistrate disbelieved the contention of the husband that he is a mere helper of his father's tea stall. The learned Magistrate considered the entire evidence on record and then he came to a conclusion. This being the situation, the impugned order cannot be said to be perverse at all or without any evidence. Therefore, I find no ground to interfere with the impugned order. Accordingly, the revisional application fails to succeed.

7.It is, therefore, dismissed.

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

9.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.)