

In Re: Rabindra Nath Roy

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Court : Kolkata

Decided On : Jul-21-1994

Reported in : II(1995)DMC91

Judge : A.K. Chatterjee, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Section 125 and 125(4)

Appeal No. : Criminal Revn. No. 677 of 1994

Appellant : In Re: Rabindra Nath Roy

Advocate for Pet/Ap. : Sehkar Bose and ; Debjanj Sengupta, Adv.

Disposition : Petition dismissed

Judgement :

A.K. Chatterjee, J.

1. The petitioner Rabindra Nath Roy had married the Opposite Party No. 2 Anjana Roy sometime in 1960 and in 1969, the petitioner filed a suit against her for restitution of conjugal rights on the allegation that she had left the matrimonial home without any just cause. This suit was decreed ex-parte on the 26th February, 1970 and as the said opposite party did not comply with it, the petitioner brought a suit for dissolution of marriage which was decreed also ex-parte on the 12th March, 1976. About 16 years thereafter, sometime in 1992 the said opposite

party started a proceeding against the petitioner under Section 125, Code of Criminal Procedure claiming a sum of Rs. 500/- per month on account of maintenance, which is now pending in the Second Court of judicial Magistrate at Durgapur being Misc. Case No. 153/92. The present petitioner filed a petition before the learned Magistrate for dismissal of the case on the ground that the present opposite party having been found guilty of desertion by a competent Matrimonial Court, she was not entitled to claim any maintenance. This petition did not find favour with the learned Magistrate who after considering two apparently conflicting Single Bench decisions of this Court, took the view that the petitioner before him i.e. Anjana Roy was entitled to get maintenance even though a decree of divorce was passed against her on ground of desertion, as held in the Single Bench decision earlier in point of time which was not referred to in the later decision. It is this order which has been challenged and the present petitioner seeks to quash the proceedings before the learned Magistrate. None has appeared on behalf of the Opposite Party Anjana Roy though duly notified.

2. Mr. Bose the learned Advocate for the petitioner has urged that a Magistrate cannot ignore the finding of a competent Civil Court between the same parties relating to a matter which await adjudication before him and it was incumbent upon him to accept the finding of the Civil Court. Indeed, the learned Single Judge, on whose decision the learned Magistrate has relied (*Biswanath Saha v. Sikha Saha*, 1986 Cri. L.J. 1199 (Cal) has observed that when the Matrimonial Court decreed a suit for divorce on the finding that the wife has deserted the petitioner for a continuous period of more than 2 years, it has to be accepted that she refused to live with her husband without any sufficient cause. Normally the finding of a competent Civil Court on a relevant issue is binding upon the Magistrate and, therefore, there cannot be any manner of doubt that at least during the subsistence of marriage, a husband can successfully resist the claim of his wife for maintenance on the ground that he has obtained a decree for restitution of conjugal rights on the ground of desertion. On the basis of such a decree the learned Magistrate is bound to hold that the wife without any sufficient reason has refused to live with her husband and the application claiming maintenance is liable to be lost, looking to the provisions of the Section 125(4) Code of Criminal Procedure. The question which now arises for determination is whether, it would

be open to the wife to claim maintenance after the marriage is dissolved by a decree of divorce following her refusal to comply with the decree for restitution of conjugal rights. The answer in our view is clearly in the negative notwithstanding the fact that the expression wife within the meaning of Section 125, Cr.P.C. includes a divorcee, for the reason stated below. A wife, who during subsistence of marriage is disentitled to claim maintenance because of a decree for restitution of conjugal rights on the ground of desertion against her, commits a wrong if she refuses to comply with the decree and, therefore, if after the dissolution of marriage because of her not complying with the decree for restitution of conjugal rights, she is allowed to claim maintenance, it would tantamount to allowing her to take advantage of her own wrong which law has always viewed with disfavour. It is no doubt true that the benign provision of Section 125, Cr.P.C. was enacted to ameliorate the economic condition of neglected and discarded wives and the object was to prevent destitution and vagrancy. But if in spite of such statutory object, the claim of the wife for maintenance during subsistence of marriage can be defeated on the basis of a decree for restitution of conjugal rights on the ground of desertion, it does not stand to reason that she should be allowed to claim maintenance after the marriage is dissolved because of her flouting the decree for restitution of conjugal rights passed against her.

3. The conclusion must, therefore, be that in the instant case the present opposite party No. 2 Anjana Roy cannot claim maintenance and the proceeding pending against the petitioner referred to previously is quashed.

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