

In Re: SamsuddIn Mohalat

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SooperKanoon Citation : sooperkanoon.com/865200

Court : Kolkata

Decided On : Oct-01-1996

Reported in : I(1997)DMC584

Judge : Nripendra Kumar Bhattacharyya, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 125, 401 and 482

Appellant : In Re: SamsuddIn Mohalat

Advocate for Pet/Ap. : Falguni Sarkar and ; Srikumar Sinha, Advs.

Disposition : Petition dismissed

Judgement :

Nripendra Kumar Bhattacharyya, J.

1. This is a combined application under Section 401 read with Section 482 of the Cr.P.C., 1973, and under Section 5 of the Limitation Act for condonation of the delay. No ground has been made out showing the cause of delay. Be that as it may, the main revisional application is taken up for hearing alongwith the prayer for condonation of delay and is disposed of by the following order.

2. Heard the submission of the learned Advocate for the petitioner Mr. Falguni Sarkar being assisted by Mr. Srikumar Sinha. Considered the materials on record.

3. This is a case arising out of an application under Section 125 of the Cr.P.C. filed by the wife-petitioner in the Trial Court wherein she alleged that after torcher as she had fallen ill, she sent information to her father and her father took her back to his house. After treatment she came round and came to her matrimonial home only to be driven out again after assault. It was further alleged in the petition of the wife that the opposite party husband failed and neglected to maintain her and she had no independent source of income to maintain herself and had to remain under chill penury. She is maintaining herself from the bounty given by her father. On such allegation the application for maintenance was filed. In order to substantiate the case, the wife laid evidence through her witnesses numbering 4 of whom P.W.1 was the wife herself. P-W.2 was her father and other witnesses, namely, P.W.3 and 4 are the independent witnesses. They all deposed supporting the petitioner-wife's case. P.W.3 deposed about the assault of the petitioner-wife when she was brought back to the house of the opposite party-husband. P.W.4 also deposed that he witnessed that the husband poured some poison in the mouth of the wife for which she had fallen ill and the wife was saved by the co-villagers and her father. Regarding the income of the husband, it was deposed that he had a monthly income of Rs. 1,000/- from the land belonging to the opposite party-husband, measuring about 4/5 Bighas. But it came out from the evidence that in order to avoid payment, the opposite party-husband transferred his land in favour of his son through his first wife. In consideration of the evidence on record and the materials available thereon the learned Chief Judicial Magistrate, Daksh in Dinajpur, allowed the petition of the wife and awarded maintenance of Rs. 250/- per month in favour of the wife on and from October, 1987 and gave certain direction regarding the mode of payment in his judgment and order dated 29th March, 1996 in M.R. Case No. 127/87. This judgment and/or order gives rise to the present petition.

4. Mr. Sarkar submits that the husband is not bound to pay anything to the wife as she was living an adulterous life. In this connection he invited my attention to the order impugned where from it appears that in the written objection, the opposite party took the plea of adultery against the wife. It further appears from the order impugned that such plea was not proved before the Court. In other words, no evidence was laid by the husband to prove that allegation. The Supreme Court in

number of cases awarded a greater amount of maintenance where an imputation regarding the character has been made against the wife and also held that such allegation itself is a ground for living separate for the husband. This is one of such cases. It appears that the husband is not at all willing to make any payment to the wife and wants her to starve to death. The Court cannot shut its eye to such plight of a wife. This is not only a ground need based on law but this is also a ground based on human rights. In such circumstances, I reject the petition with a direction upon the Trial Court to reconsider the enhancement of the monthly maintenance of the wife in view of the imputation made against the wife about bad character. I am also of the view that in order to avoid payment, the land of the opposite party-husband that has been transferred to his son through his first wife alone which cannot be done according to Mohammedan Law. The Court should make all endeavour to realise the sum to the wife as awarded by the Court so that the wife should not starve to death and for that, if it is necessary, to attach the land of the husband and sale it out any pay the money to the wife.

5. Let a copy of .this order be sent to the Trial Court as early as possible by the department and the department shall take all endeavour in that direction.

6. The revisional application stands rejected.