

Kumarjit Roy Chowdhury Vs. Gopa Roy Chowdhury

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Court : Kolkata

Decided On : Aug-07-1998

Reported in : II(1999)DMC280

Judge : Sidheshwar Narayan, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Section 125 and 125(1)

Appeal No. : C.R.R. No. 276 of 1997

Appellant : Kumarjit Roy Chowdhury

Respondent : Gopa Roy Chowdhury

Advocate for Def. : Debabrata Roy, Adv.

Advocate for Pet/Ap. : M. Palit and ;D. Mazumder, Adv.

Judgement :

Sidheshwar Narayan, J.

1. This revisional petition arises out of an order dated 31.2.1996 passed by Shri B. Mukherjee, S.D.J.M., Durgapur, in Misc. Case No. 138 of 1990 under Section 125 of the Code of Criminal Procedure. The petitioner- husband has been directed to pay maintenance to the opposite party-wife @ Rs. 1,500/- per month w.e.f. the month of June, 1990 beside costs of Rs. 5,000/-.

2. As against a claim of maintenance, initiated as long back as in the year 1990, the parties joined issue and, after a long pendency, the impugned order was passed of the late as on 31.12.1996. There was, however, no controversy raised that the opposite party was the legally married wife of the petitioner. The claim of maintenance was challenged on the ground that the opposite party was a lady of ill-behaviour and she had no adjustment in family life, meaning thereby, that the conjugal life was not to the choice of the husband-petitioner. On such a plea raised on behalf of the petitioner husband, the Court below arrived at a definite conclusion that the opposite party-wife has entitled to maintenance, obviously, also because the opposite party-wife had no independent source of income so as to maintain herself.

3. The main thrust on behalf of the petitioner-husband was mostly on the point of quantum of maintenance, granted by the Court below. Be it, however, noted here that though the petitioner-husband joined issue on the point, he did not adduce any evidence to refute the claim of the petitioner.

4. Therefore, it was only on the basis of the evidence adduced on behalf of the opposite party-wife that, upon hearing the Counsel for the parties, the learned Magistrate arrived at a decision as noted above.

5. The learned Counsel appearing on behalf of the petitioner-husband urged before this Court that even though the opposite party-wife (being petitioner in the proceeding under Section 125 of the Criminal Procedure Code) claimed maintenance @ Rs. 500/- per month, the Magistrate granted maintenance at a much enhanced rate being Rs. 1,500/- per month. In this context, it was significant to note that as per Sub-section (1) of Section 125 of the Code of Criminal Procedure, the quantum of maintenance was earlier prescribed at Rs. 500/- per month but the same has since been changed by the West Bengal Amendment being the Criminal Procedure Code (W.B. Amendment Act, 1992). By this Amendment, which came into effect from August 2, 1993, the amount of maintenance as mentioned in the sub- clause has been raised to Rs. 1,500/- per month.

6. The proposition of law before the Amending Act of 1992 would thus lead to an irresistible inference that what was in fact urged on behalf of the opposite party-wife was only this much that she should be granted maintenance at the rate prescribed under the law. The quantum fixed under the provision of Section 125 was the maximum limit which could be granted by way of maintenance depending upon the income of the husband. The limit prescribed under the law could be reduced if the income of the husband did not permit the maximum limit.

7. Therefore, looking with the angle of view as noted in the preceding paragraph, it was to be seen whether the income of the petitioner-husband permitted payment of Rs. 1,500/- per month or not. The Court below appears to have considered the oral evidence adduced on the record as also the document, Exbt. 1, in right perspective and, therefore, on the basis of the unchallenged testimony of as many as four witnesses examined on behalf of the opposite party- wife, it arrived at a definite conclusion on the point of quantum of maintenance. The monthly income of the husband as determined by the Magistrate was Rs. 5,584.46. The opposite party-husband was a Senior E.D.P. Operator of Information Technology of Calcutta Electric Supply. Casually, one pay-slip of the petitioner for the month of January, 1997 was shown during the course of hearing from the side of the petitioner which depicts basic salary as Rs. 2,136/- and the total salary being Rs. 5,912.64. Even in view of this pay-slip I do not think, the quantum determined by the Magistrate could be interfered with. Be it also recorded as submitted by the Counsel for the opposite party-wife that in the proceeding under Section 125 of the Criminal Procedure Code there was already a petition filed to raise the claim from Rs. 500/- to Rs. 1,500/- in the light of the amendment in the Act, which came into effect from August 2, 1993 i.e. during the course of the pendency of the proceeding.

8. Therefore, in view of what has been noticed above, the impugned order simply needs modification so as to give effect of the maximum limit of the maintenance, which could be enforced prior to the Amendment in the Act coming into force from August 2, 1993 which did prescribe limit of Rs. 500/- as monthly maintenance.

9. This petition is thus allowed in part and the rate of maintenance for the period from the date of filing of the petition under Section 125 of the Criminal Procedure Code i.e. some time in the month of June, 1990 upto August 1,1993 would be @ Rs. 500/- per month but, subsequently, it would be most certainly at the rate as determined by the Court below i.e. being Rs. 1,500/- (Rupees one thousand and five hundred only) per month. In order to liquidate the arrears of the maintenance, the number of instalments would be 12 equal instalments. The amount of cost as determined by the Court below, however, needs no interference. It shall be open to the Court below to determine the actual amount of arrear of maintenance at the time of executing the order of maintenance as per modification made above.

10. No order as to cost.

11. On the prayer of the learned Counsel for the parties, the xerox certified copies, if applied for, be given to the parties at the earliest.

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