

Tanushree Naskar Vs. Asit Naskar

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Court : Kolkata

Decided On : Aug-09-2000

Reported in : I(2002)DMC642

Judge : Amit Talukdar, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Section 125; ;[Constitution of India](#) - Article 39

Appeal No. : C.R.R. No. 1746 of 2000

Appellant : Tanushree Naskar

Respondent : Asit Naskar

Advocate for Def. : Subrata Bose, Sr. Adv. and ;Nabanita Pal, Adv.

Advocate for Pet/Ap. : Pratik Bhattacharjee, Adv.

Disposition : Revision allowed

Judgement :

Amit Talukdar, J.

1. An order dated 4.5.2000 passed by the learned Chief Judicial Magistrate, Alipore in Misc. Case No. 527 of 1999 falls for consideration of this Court. Smt. Tanushree Naskar, the petitioner approached the learned Chief Judicial

Magistrate, Alipore with a prayer for maintenance under Section 125 of the Code of Criminal Procedure (hereinafter referred to as the said Code) at the rate of Rs. 1,500/- per month from her husband/opposite party.

2. During the pendency of the said proceeding the petitioner on 15.1.2000 filed a prayer for interim maintenance at the rate of Rs. 1,000/- from her husband.

3. The learned Chief Judicial Magistrate by his impugned order refused such prayer at that stage and fixed 29.6.2000 for evidence of P.Ws. as-

'The petition for interim maintenance is not supported by an affidavit which is mandatory.'

The learned Chief Judicial Magistrate further held-

'In the absence of affidavit the claim of the petitioner can be determined only after evidence. As such, the petition for interim maintenance is rejected at this stage.'

This order has prompted the petitioner to move this Court.

4. Mr. Pratik Bhattacharjee, learned lawyer appearing in support of the application has submitted that the learned Chief Judicial Magistrate was entirely wrong in refusing the prayer of the petitioner as it was not supported by an affidavit and Mr. Bhattacharjee further submitted that the provisions of Section 125 of the said Code is a piece of social legislation.

5. Accordingly Mr. Bhattacharjee prayed for setting aside the impugned order as the learned Chief Judicial Magistrate, was not correct in refusing the prayer of the petitioner.

6. Opposing the prayer of the petitioner Mr. Subrata Bose, learned Senior Advocate appearing with Mrs. Nabanita Pal relied on the decision of the Supreme Court reported in 1986 Cri. LJ 41, Smt. Savitri v. Govind Singh Rawat. Mr. Bose relying on the said decision of Smt. Savitri v. Govind Singh Rawat (supra), submitted that according to the said decision the interim maintenance should be accompanied by the affidavit and as the claim made by the petitioner was unaccompanied by an affidavit the learned Chief Judicial Magistrate rightly refused

the prayer.

7. I have heard the submissions of Mr. Bhattacharjee in support of the application and Mr. Bose for the opposite party. I have considered the rival contentions of Mr. Bhattacharjee and as well as of Mr. Bose. I have also gone through the decision of Smt. Savitri v. Govind Singh Rawat (supra). The provisions for interim maintenance is to provide succour to the destitute women who have been wronged in the hands of their erring husbands so as to ensure that they live to taste the fruits of the result of the proceeding. No doubt the provisions of Section 125 of the said Code is a beneficial piece of legislation aimed at ameliorating the plight of hapless women and to prevent vagrancy. A proceeding under Chapter IX of the Cr.P.C. falls within the MAJESTIC sweep of Article 39 of the [Constitution of India](#) as has been held by the Supreme Court in the case of Captain Ramesh Chandra Kaushal v. Veena Kaushal (Mrs.), reported in : 1979 CriLJ3 .

8. I am sorry, I cannot subscribe to the view of Mr. Bose that in the absence of an affidavit, the application for interim maintenance should be thrown out. I have carefully gone through the decision of Smt. Savitri v. Govind Singh Rawat (supra), and I find that the Supreme Court has held :

'There is no room for the apprehension that the recognition of such implied power would lead to the passing of interim orders in a large number of cases where the liability to pay maintenance may not exist. It is quite possible that such contingency may arise in a few cases but the prejudice caused thereby to the person against whom it is made is minimal as it can be set right quickly after hearing both the parties. The Magistrate may, however, insist upon an affidavit being filed by or on behalf of the applicant concerned stating the grounds in support of the claim for interim maintenance to satisfy himself that there is a prima facie case for making such an order. Such an order may also be made in an appropriate case ex-parte pending service of notice of the application subject to any modification or even an order of cancellation that may be passed after the respondent is heard.'

9. The Supreme Court in the said decision has given the learned Magistrate a discretion and have also held that an order for interim maintenance can even be

passed ex-parte without hearing the opposite party. As such, the submission of Mr. Bose that the prayer for interim maintenance made by the petitioner for want of an affidavit is liable to be discarded does not find any favour with this Court.

10. In the light of the discussion held hereinabove I set aside the order dated 4.5.2000 passed by the learned Chief Judicial Magistrate, Alipore and directed that the learned Chief Judicial Magistrate to allow the prayer for interim maintenance made by the petitioner from the date of filing of the proceeding under Section 125 of the said Code in Misc. Case No. 527 of 1999.

11. However, this order shall not debar the learned Chief Judicial Magistrate if he thinks fit and proper to award without a higher award at the final stage than the amount of interim maintenance as prayed for by the petitioner is required to be passed. He shall be absolutely free to do so without being guided by this order.

12. The revisional application is accordingly allowed.

Later

Urgent xerox certified copy, if applied for, office is directed to deliver the same within two days from date to both parties.

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