

Sudarshan Agarwal Vs. the State of West Bengal and anr.

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Court : Kolkata

Decided On : Mar-05-2010

Judge : Ashim Kumar Roy, J.

Acts : Code of Criminal Procedure (CrPC) - Sections 125, 125(2), 313, 342 and 465

Appeal No. : C.R.R. No. 257 of 2005

Appellant : Sudarshan Agarwal

Respondent : The State of West Bengal and anr.

Advocate for Def. : Asish Sanyal, Adv. for O.P. No. 2

Advocate for Pet/Ap. : Debasish Roy and; Supriyo Chattopadhyay, Advs.

Judgement :

Ashim Kumar Roy, J.

1. In connection with a proceeding under Section 125 of the Code of Criminal Procedure, the petitioner has been directed to pay a sum of Rs. 2,000/- per month to the wife/opposite party and a sum of Rs. 1,000/- per month to his minor son as their monthly maintenance. It was further directed that the order of maintenance will be effective from the date of the application. The said order of maintenance is under challenged in this criminal revision on the limited points that without

assigning any reason no order of payment of maintenance can be made from the date of application.

2. Mr. Debasish Roy, learned advocate appearing on behalf of the petitioner in support of this application heavily relied on the decision of the Hon'ble Supreme Court in the case of Shail Kumari Devi and Anr. v. Krishan Bhagwan Pathak @ Kishun B. Pathak reported in (2008) 2 C Cr LR (SC) 817.

On the other hand, Mr. Asish Sanyal, learned advocate appearing on behalf of the opposite party submitted, according to the provisions of Section 125(2) of the Code of Criminal Procedure, maintenance allowance may always be made payable even from the date of application for maintenance if so ordered and for the same no reason is required to be recorded.

3. I have given my anxious consideration to the rival submissions of the parties as well as taken into consideration the case law cited by Mr. Roy.

In this connection the observation of the Hon'ble Supreme Court in paragraph 38 and 40 of the aforesaid decision would be very relevant and the same is quoted below;

So far as the contention of the learned Counsel to the effect that the Trial Judge has failed to discharge his mandatory duty while recording the statement of appellant under Section 313, Cr.P.C., we find some substance in it. We have carefully gone through the statement recorded under Section 313, Cr.P.C. by the learned Trial Judge and having done so we see though the learned Trial Judge had put material question to the appellant affording him opportunity to explain the circumstances alleged against him, but he failed to put any question regarding the medical evidence. Omission to put any question regarding the testimony of the Autopsy Surgeon in our opinion could only amount to an irregularity which is curable under Section 465 of the Cr.P.C. particularly when the appellant having full knowledge about the testimony of the Autopsy Surgeon given during the course of examination-in-chief had totally declined to cross-examine him as also when the learned trial Court put question to the appellant whether he wants to adduce evidence in support of his defence and in reply to the said question, the appellant

stated as follows:- 'No'. In such circumstances, the aforesaid irregularity has not occasioned injustice nor it has caused any prejudice to the appellant. In this connection, a reference may be made in the case of Ramshankar Singh v. State of W.B. : AIR 1962 SC 1239 where the Apex Court held that there may be error or omission in complying with Section 342 of the Cr.P.C. (corresponding to new Section 313 of the Cr.P.C.) correctly but that not vitiates the trial unless injustice is shown to have resulted therefrom. (Para 38)

Therefore, having given anxious consideration to the entire matter in issue, we are of the clear view that the impugned judgment and order of conviction and sentences passed by the learned Trial Judge warrant no interference in the appeal. (Para 40)

4. Thus, according to the observation of the Hon'ble Supreme Court both in cases when the maintenance is directed to be payable from the date of application or from the date of order, the Court has to record the reason for the same. However, having gone through the impugned order, I find the Learned Magistrate has not recorded any reason while directing that the maintenance be payable from the date of application. In such view of the matter, the impugned order so far that relates to a direction for payment of maintenance from the date of order is set aside. The matter is remitted back to the Learned Court below to pass an appropriate order in accordance with law after giving reasonable opportunity of hearing to both the parties. This order will not however exonerate the liability of the husband/petitioner to maintain his wife and his minor son as directed by the Learned Court below from the date of the order.

Criminal Section is directed to deliver urgent Photostat certified copy of this Judgment to the parties, if applied for, as early as possible.

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