

Subrata Banerjee Vs. the State of West Bengal

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Court : Kolkata

Decided On : Oct-17-2012

Judge : Dipak Saha Ray

Appeal No. : C.R.R. No. 1910 of 2011

Appellant : Subrata Banerjee

Respondent : The State of West Bengal

Judgement :

Dipak Saha Ray, J.

The present case arises out of an application Under Section 397/401 read with Section 482 of the Code of Criminal Procedure, 1973.

It is directed against the Judgment and Order dated 13.4.2011 passed by the Learned Additional District and Sessions Judge, Fast Track, 1st Court Birbhum, in Criminal Revision No. 18 of 2010 affirming the order dated 22.6.2010 passed by the learned Additional Chief Judicial Magistrate, Rampurhat, Birbhum, in Misc. Case no. 392 of 2006.

The relevant facts of the present case are, in a nutshell, as follows:

Opposite Party No. 2/Wife as petitioner filed an application Under Section 125 of the Code of Criminal Procedure for maintenance against her Husband/Petitioner

herein. The said case was registered as Misc. Case No. 392 of 2006. In the said application for maintenance, the petitioner has alleged inter alia that she was the legally married wife of the Opposite Party. Sometimes after the marriage she was inflicted torture both mentally and physically by her husband and in-laws. Ultimately, she was driven out from her matrimonial home on 13.12.2001. It has been further alleged in the said application that the Opposite Party having sufficient means refused and/or neglected to maintain her who had no independent source of income and was unable to maintain herself.

The learned Trial Court, after considering the facts and circumstances and the evidence on record both orally and documentary allowed the prayer for maintenance of the wife and directed the husband to pay a sum of Rs. 2000/- per month as maintenance.

Being aggrieved by the said order the petitioner herein filed revisional application which was registered as Criminal Revisional No. 18 of 2010. The learned Additional District and Sessions Judge First Track, 1st Court, Rampurhat, Birbhum, dismissed the said revisional application and affirmed the order dated 22.6.2010 passed by the learned Trial Court in Misc. Case No. 392 of 2006.

Being aggrieved by and dissatisfied with the impugned Judgment and Order dated 13.4.2011, the petitioner herein/husband has preferred the instant revisional application.

The grievances of the Petitioner/Husband may be capsulated in a few sentences as follows:

Both the learned Trial Court and the learned Additional District and Sessions Judge, Fast Track, 1st Court Rampurhat, failed to appreciate the case in its proper perspective and approached the case from a wrong angle and this has resulted in failure of justice. Both the learned Courts without considering the written objection filed by the husband, passed the impugned orders. Both the learned Courts failed to take notice of the fact that the wife without any sufficient reason started living separately from her husband. Both the learned Courts also without considering the income of the husband and status of the parties allowed the maintenance in favour

of the wife.

It is submitted by the learned Counsel for the Petitioner/Husband that neither the learned Trial Court nor the learned Revisional Court has considered the written objection filed by the husband at the time of passing the impugned order granting the maintenance in favour of the wife and as such both the said orders of the learned Courts suffer from illegality, inherent impropriety and material irregularity which create miscarriage of justice and as such the same is required to be set aside and/or quashed. It is further argued that as per the provision of Section 125(4) of the Code of Criminal Procedure, 1973 the wife was not entitled to get any maintenance as she left her matrimonial home at her own accord and refused to live with her husband without any sufficient reason.

The learned counsel for the Wife/Opposite Party No.2 has submitted that this is the Second Revisional Application filed on behalf of the petitioner husband and as such this Second Revisional application is not maintainable as per Section 397(3) and Section 399(3) of the Code of Criminal Procedure.

Admittedly, against order of the learned Trial Court the Petitioner/Husband preferred a revisional application before the learned Additional District and Sessions Judge, Fast Track, 1st Court, Rampurhat. The said Revisional Application was dismissed and the order of the learned Trial Court was affirmed; against the said Judgment of the Revisional Court this application has been filed.

Now according to Section 397(3) of the Code of Criminal Procedure second Revisional Application by the same person cannot be entertained. Section 399(3) of the Code of Criminal procedure also debar the High Court or any other Court to entertain any Revisional Application by which the decision of the Sessions Judge passed in respect of the Revisional Application. However, the instant application has been filed Under Section 397/401 read with Section 482 of the Code of Criminal Procedure. So, as per the provision of Section 482 of the Code of Criminal Procedure by invoking the inherent power, this Court has jurisdiction to interfere with the order of the Sessions Judge if it is manifestly illegal, irregular or improper or perverse or without jurisdiction.

In the instant case, on careful perusal of the order of the learned Trial Court as well as the order of the learned Revisional Court it appears that both the learned Courts at the time of passing the respective orders considered the application of the petitioner and the written objection filed by the husband and the evidence both oral and documentary of the parties. So, it appears that there was no illegality or impropriety in passing the said orders passed by either the learned Trial Court or the learned Revisional Court. It further appears that at the time of fixing the amount of maintenance the learned Courts also considered the income of the husband, status of the parties and the present market price of essential commodities. It also appears that the provision of Section 125(4) of the Code of Criminal Procedure was also considered at the time of passing the said orders.

In the concerned application for maintenance the petitioner/wife alleged that she was subjected to torture by her husband and in-laws. There is also no dispute that the wife initiated a criminal Case Under Section 498A of the Indian Penal code against her husband and in laws.

It is well settled that torture or ill-treatment, cruelty and/or inhuman behavior to wife by the husband have been held to be sufficient reason for refusing to live with the husband.

In the instant case, there is nothing on record to establish that the petitioner herein has been paying anything towards the maintenance of Opposite Party No. 2 herein.

It is well settled that if a man is healthy and able bodied, he must be held to be possessed or means to support his wife, child etc. Even the husband may be insolvent or a professional beggar or a minor or a monk but he must support his wife so long as he is able bodied and to eke out his livelihood.

The husband cannot keep away his liability to maintain his wife who has no independent source of income on the mere ground that she is living separately.

It has been held in a decision reported in 1995 SCC [Cri] 836 (Mannava Satyawati and Ors Vs. Mannava Malleswara Rao and Ors.) that "...we are of the view that

the District Judge and the High Court fell into patent error in denying the maintenance to the appellants. The High Court fell into patent error in reaching the finding that since the wife and the children left the house on their own they were not entitled to the maintenance. In the facts and circumstances of this case the respondent was bound to maintain his wife and children....”

Considering the said decision, it appears that living separately from the husband cannot be the ground of refusing the prayer of the petitioner/wife for her maintenance.

Having regard to the above facts and circumstances of this case and the discussions made above, I do not find any reason to interfere into the observations made by the learned Sessions Judge in the impugned Order dated 13.4.2011 as I find no illegality, irregularity or impropriety in the said order.

In view of the above I find no merit in the present application Under Section 397/401 read with Section 482 of the Code of Criminal Procedure which accordingly must be dismissed.

In the instant application Under Section 397/401 read with Section 482 of the Code of Criminal Procedure accordingly fails.

The impugned order dated 13.04.2011 passed by the learned Additional District and Sessions Judge, Fast Track 1st Court Burdwan in Criminal Revision No. 18 of 2010 is hereby affirmed.

C.R.R. No. 1910 of 2011 is dismissed. There is no order as to the costs

Let a copy of this judgment be sent to the learned trial court for information and necessary action.

Urgent Photostat certified copy of this judgment be supplied to the parties, if applied for, subject to compliance with all necessary formalities.

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