

Sima Majhi Vs. State

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Court : Kolkata

Decided On : Jun-22-2012

Judge : Dipak Saha Ray

Appeal No. : CRR. NO. 1949 OF 2011

Appellant : Sima Majhi

Respondent : State

Judgement :

Dipak Saha Ray, J.:

The present case arises out of an application under Section 401 of the Code of Criminal Procedure read with Section 482 of the Code of Criminal Procedure.

It is directed against the Order dated 21.5.2011 passed by the learned Additional Sessions Judge, Fast Track Court No.II, Barrackpore, North 24 Paraganas in Criminal Revision No. 123 of 2011 modifying the Order dated 26.3.2010 passed by the learned Judicial Magistrate, 2nd Court, Barrackpore in Misc. Case No. 12 of 2001 under Section 127 of the Code of Criminal Procedure arising out of Misc. Case No. 171 of 1990 under Section 125 of the Code of Criminal Procedure.

The relevant facts of the present case are, in a nutshell, as follows: The present petitioner/wife initiated a proceeding under Section 125 of the Code of Criminal Procedure against her husband/Opposite Party No. 2 herein for her maintenance

as well as for the maintenance of her children. The said proceeding was registered as Misc. Case No. 171 of 1990. In the said Misc. Case, the learned Magistrate, 2nd Court, Barrackpore on 23.11.1995 allowed the prayer for maintenance of the petitioner and the husband was directed to pay Rs. 300/- p.m. to the petitioner and also Rs. 300/- each p.m. for her minor sons as maintenance.

Subsequently, the petitioner/wife filed an application under the provisions of Section 127 of the Code of Criminal Procedure for enhancement of the maintenance so passed by the learned Magistrate, 2nd Court, Barrackpore on 23.11.95 and the said case was registered as Misc. Case No. 12 of 2001. The said case was allowed in part on 26.3.2010 and the maintenance of Rs. 300/- p.m. which was allowed previously on 23.11.1995 in favour of the petitioner/wife, was enhanced to Rs. 2500/- p.m.; but the prayer for maintenance in respect of the sons of the petitioner was rejected as the said sons in the mean time became major.

Being aggrieved by the said order of enhancement of maintenance, the husband/opposite party No. 2 herein filed a revisional application which was registered as Criminal Revision No. 123 of 2010 and in the said case the learned Additional Sessions Judge, Fast Track Court No.II, Barrackpore, North 24 Paraganas has modified the order dated 26.3.2010 by the order dated 21.5.2011 directing the husband/opposite party No. 2 to pay the maintenance of Rs. 900/- p.m. to the petitioner/wife instead of Rs. 2500/- p.m.

Being aggrieved by and dissatisfied with the impugned order dated 21.5.2011, the petitioner/wife has preferred the instant revisional application.

The grievances of the petitioner/wife are, in short, as follows:

The learned trial court failed to appreciate the judgment of the learned Magistrate in the matter of enhancement of maintenance in its proper perspective and approached the case from a wrong angle and this has resulted in failure of justice. The learned trial court without assigning any reason whatsoever modified the order dated 26.3.2010 though the learned Magistrate in the said order assigned the reasons why the previous amount of maintenance was enhanced. The learned trial court without considering the income of the husband and status of the parties

reduced the amount of maintenance.

After taking into consideration of all relevant facts and materials and giving due regard to the submission made by the learned counsel for the petitioner/wife, I think that the only point requiring adjudication is whether or not the impugned order dated 21.5.2011 passed by the learned trial court is liable to be set aside.

In the instant case, it is to be kept in mind that the order dated 23.11.1995 granting maintenance of Rs. 300/- in favour of the petitioner/wife was not challenged. Subsequently, the said amount of maintenance of Rs. 300/- was enhanced by the learned Magistrate in Misc. Case No. 12 of 2001 on the basis of the application under Section 127 of the Code of Criminal Procedure.

On careful perusal of the order dated 26.3.2010, it appears that the learned Magistrate at the time of enhancing the maintenance of the petitioner/wife from Rs. 300/- to Rs. 2500/- considered the evidence and materials on record and also considered the income and liabilities of the husband/opposite party No. 2 and also the status of the parties.

It further appears that at the time of passing of the said order, the learned Magistrate has also considered the high market price which is increasing day by day due to fall of the value of money. The Id. Trial Court in its impugned judgment dated 21.5.2011 pointed out that "... and the Id. Court considering their evidences as well as facts and circumstances of the case held that the order of maintenance allowance passed on 23.11.95 in favour of the petitioner/wife and in the meantime there has been changed circumstances of price rise of the essential commodities in the market ...". So, the observation of the learned Additional Sessions Judge, Fast Track Court No.II, Barrackpore, North 24 Paraganas as made in that judgment that "... Ld. Court allowed the prayer of the petitioner/wife by enhancing the monthly maintenance allowances from Rs. 300/- to Rs.2500/- without any reasonable reason and justification as there is a prayer from the side of the petitioner for enhancement of monthly maintenance allowances from Rs. 300/- to Rs. 1500/- P.M. for herself and Rs. 1000/- P.M. for each of her two sons. ... " is not proper.

On the other hand, the learned trial court in passing the impugned order dated 21.5.2011 has not assigned any reason as to why the order of enhanced maintenance passed by the learned Magistrate on 26.3.2010 has been reduced to Rs. 900/- from Rs. 1500/-.

Considering the above facts and circumstances and in view of the discussion made earlier, it appears that the learned trial court was not justified to modify the order of enhancement dated 26.3.2010 passed by the learned Magistrate by allowing the Criminal Revision No. 123 of 2010.

Considering all such facts and circumstances, I am of the opinion that the said order dated 21.5.2011 suffers from inherent illegality and impropriety and thus, justifies interference by this court.

Accordingly, the instant revisional application succeeds.

CRR No. 1949 of 2011 be allowed and in the nature and background of the case without cost.

The impugned order dated 21.5.2011 passed by the learned Additional Sessions Judge, Fast Track Court No.II, Barrackpore, North 24 Paraganas in Criminal Revision No. 123 of 2010 be set aside.

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

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