

(2000) 03 CAL CK 0031
In the Calcutta High Court
Case No : C.R.R. No. 2483 of 1999

Bijoy Bhusan alias Mihir Roy Chowdhury APPELLANT
Vs
Smt. Ratna Roy Chowdhury RESPONDENT

Date of Decision : 08-03-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125, 128
Family Courts Act, 1984 — Section 7(2)

Citation : (2000) 2 ALD(Cri) 553 : (2001) 2 CALLT 386 : (2001) 1 DMC 70 :
(2000) 3 RCR(Criminal) 554

Hon'ble Judges : Basudeva Panigrahi, J

Bench : Single Bench

Advocate : Mr. S.S. Majumdar, for the Appellant; Mr. Purnasish Gupta, for the Respondent

Judgement

B. Panigrahi, J.—This revisional application is directed against the order dated 6.11.99 whereby the revision-petitioner was asked to pay an amount of Rs. 4000/- as maintenance towards the opposite party.

2. The essential facts leading to this revisional application is as follows:

3. The revision-petitioner married the opposite party on 2nd July, 1995 according to Hindu Rites and Customs. After such lawful marriage both the parties remained as husband and wife for some time. Thereafter there was a family dissension, as a result of which the private respondent was forced to leave the matrimonial home and lived with her parents. Since she did not have sufficient means to maintain herself, she filed an application u/s 125 Cr.PC against the present revision-petitioner and, inter alia, prayed for payment of Interim maintenance. The learned Judicial Magistrate, 6th Court, Howrah was, however, inclined to allow the prayer of the private respondent by directing the petitioner to pay interim maintenance of Rs. 250V per month. Since the petitioner defaulted in paying the Interim maintenance as directed by the learned Magistrate, the respondent had, therefore, preferred an execution case being

Execution Case No. 12/99 before the Court below u/s 128 Cr.PC. The revision petitioner filed a separate application in Execution Case No. 12/99 but the learned Court as submitted by the revision-petitioner, did not take such application into consideration and directed the petitioner to pay an amount of Rs. 4000/- towards the arrear maintenance. Therefore, being aggrieved by and affected with such order of the learned Magistrate this revision-petition has been filed.

4. The learned advocate appearing for the petitioner has strongly contended that the learned Magistrate has no jurisdiction to award maintenance for more than a period of 12 months even if it was by way of the interim maintenance of final order. The learned Court below has erroneously come to the conclusion that since it was an interim maintenance, therefore, there was no period of limitation. So far the power of the Court to award interim maintenance is concerned, although the statute does not provide specifically any power upon the Magistrate but it has been decided by the apex Court in the case of Savitri Rawat Vs. Govind Singh Rawat, wherein it has been held as follows:

"In view of the foregoing it is the duty of the Court to interpret the provisions in Chap IX of the Code in such a way that the construction placed on them would not defeat the very object of the legislation. In the absence of any express prohibition, it is appropriate to construe the provisions in Chapter IX as conferring an implied power on the Magistrate to direct the person against whom an application is made u/s 125 of the Code to pay some reasonable sum by way of maintenance to the applicant pending final disposal of the application, it is quite common that applications made u/s 125 of the Code also take several months for being disposed of finally. In order to enjoy the fruits of the proceedings u/s 125, the applicant should be alive till the date of final order and that the applicant can do in a large number of cases only)f an order for payment of interim maintenance is passed by the Court. Every Court must be deemed to possess by necessary intendment all such powers as are necessary to take its orders effective. This principle is embodied in the maxim "ibi liquid conceditur, conceditur et id sine quo res ipsa esse non potest (where anything is conceded, there is conceded also any thing without which the thing itself cannot exist.) Vide Earl Jowitt's Dictionary of English Law 1959 Edn. 1897). Whenever anything is required to be done by law and it is found impossible to do that thing unless something not authorised in express terms be also done then that something else will be supplied by necessary intendment. Such a construction though it may not always be admissible in the present case however would advance the object of the legislation under consideration. A contrary view is likely to result in grave hardship to the applicant, who may have not means to subsist until the final order is passed. 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. If a civil Court can pass such interim orders on affidavits, there is no reason why a Magistrate should not rely on them for the purpose of issuing directions regarding payment of interim maintenance. The affidavit may be treated as supplying prima facie proof of the case of the applicant. If the allegations in the application or the affidavit are not true. It is always open to the person against whom such an order is made to show that the order is unsustainable. Having regard to the nature of the jurisdiction exercised by a Magistrate u/s 125 of the Code, we feel that the said provision should be interpreted as conferring power by necessary implication on the Magistrate to pass an order directing a person against whom an application is made under it to pay a reasonable sum by way of interim maintenance subject to the other conditions referred to the pending final disposal of the application. In taking this view we have also taken note of the provisions of section 7(2)(a) of the Family Courts Act, 1984 (Act No. 66 of 1984) passed recently by Parliament proposing to transfer the jurisdiction exercisable by Magistrates u/s 125 of the Code to the Family Courts constituted under the said Act."

5. Therefore, in so far as the interim maintenance directed by the learned Magistrate is concerned, the petitioner shall be duty bound to pay at such rate till the disposal of the application month by month.

6. The next question shall arise for consideration is whether in case of default to pay the maintenance amount for a period of more than 12 months by the revision-petitioner, can the respondent seeks to recover the said amount by executing the warrant of arrest.

7. On a careful read in of section 125, sub-clause (3) it is found that no such distinction has been noted as regards the interim or the final order directing payment of maintenance. In case any person so ordered fails to comply with the order, the Magistrate for every such breach of the order, issue a warrant for levying fines and may sentence such person. Therefore, from the text of the provisions it appears that in case the default is made for more than 12 months, the party who wants to enforce the order should file application for each such breach to realise the said amount as directed by the learned Magistrate. Although the learned Magistrate has directed to pay the amount of Rs. 4000/ to the private respondent but It is not before me as to this amount represented for more than one year or not. Thus, I hereby direct the learned Magistrate to cause an enquiry to determine the amount for the period of one year just preceding from the date of application. The respondent is also at liberty to file such application If he so desired as envisaged u/s 125, clause (3) for any future

defaults within the period of limitation.

8. Accordingly, I vacate the order dated 6.11.99 and direct the learned Magistrate to cause an enquiry with regard to the maintenance for the period of one year preceding to the date of execution application and thereafter appropriate procedure enforcing the petitioner to pay the amount can be resorted to by the learned Magistrate.

9. With the observation made above the revision-petition is disposed of. Parties are permitted to take down the gist of the order.

Office is directed to communicate this order by special Messenger at the cost of the petitioner and the requisition be put in within a week.

10. Petition disposed of