
(2015) 10 CAL CK 0044
In the Calcutta High Court
Case No : C.R.R. No. 3313 of 2013

Dipanwita Roy

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 07-10-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125, 125(1), 397(3), 401, 482
Penal Code, 1860 (IPC) — Section 403, 406, 498A

Citation : (2015) 10 CAL CK 0044

Hon'ble Judges : Siddhartha Chattopadhyay, J.

Bench : Single Bench

Advocate : Tapash Kr. Ghosh and Tanmay Chaudhury, for the Appellant

Final Decision : Dismissed

Judgement

Siddhartha Chattopadhyay, J.—Having lost the legal battle in connection with Miscellaneous Case No. 108 of 2007 and Criminal Motion No. 21 of 2011/Criminal Motion No. 22 of 2011, the petitioner wife filed this application under Section 401 read with Section 482 of Cr.P.C. with a prayer to set aside the order dated 28th Day of June 2013 passed by the Learned Additional Sessions Judge, 1st Court at Asansol and the order dated 21.01.2011 passed by the Learned A.C.J.M., Asansol.

2. The petitioner's case in capsulated form is such that she is the legally married wife of the opposite party. Their marriage was solemnized on 9th December, 2011 according to Hindu Rites & Ceremonies. Her father tried his level best to satisfy all the dowry demand of the opposite party and his family members which includes cash, jewellery, furnitures, utensils, wooden showcase, washing machine etc. After the initial charm was over, her in-laws looked askance about the quality of articles given at the time of marriage and put pressure upon her for bringing cash of Rs. 1 lakh more. She was subjected to mental and physical torture. Petitioner's father, being informed, went to the house of the opposite party and then the opposite parties had stated that unless Rs. 1 lakh is not paid, the petitioner will not be allowed to reside with them.

3. Degree of torture being increased time to time she was compelled to desert her husband on 20th February, 2006 with a loin cloth. A case under Section 498A of the Indian Penal Code was filed on 17.01.2007 followed by another case under Section 403 /406 of the Indian Penal Code. She categorically stated in her application under Section 125 Cr.P.C. that she has no income on the other hand opposite party earns Rs. 20,000 as salary and Rs. 5,000 from other sources. Ventilating her such grievances, she has prayed for maintenance to the tune of Rs. 10,000 per month.

4. As against this, the main contention of the opposite party is such that there was no such torture as alleged. They categorically stated that there was no dowry demand on their part because it was a love marriage. He had taken a specific plea that after the marriage he was asked to reside in the house of the petitioner at Asansol as "domesticated son-in-law" which he had refused. This apart, the main apple of discord was the opening of a bank locker. He denied all other allegations as stated by the petitioner. Disclosing this he had prayed for rejection of the said application.

5. The said case was initially heard by the Learned A.C.J.M., Asansol. He had given opportunity to both sides to adduce evidence. He had considered the evidence adduced by both sides and after a threadbare discussion he had rejected the prayer of the petitioner. Learned Court held that since the petitioner has voluntarily left the company of the opposite party without any lawful excuse she is not entitled to get any sort of maintenance from him. Accordingly Learned Court below had rejected the said application. The judgment of the Learned A.C.J.M., Asansol was challenged before the Learned Additional Sessions Judge, 1st Court at Asansol. Learned Revisional Court had considered the evidence adduced by both parties and concurred with the findings of the Learned Court below. Learned Additional Sessions Judge held that it was a clear case of desertion without any lawful excuse and hence the petitioner is not entitled to get any kind of maintenance.

6. Challenging the findings of both the Learned Courts below, the petitioner herein contended that the impugned judgment of the Courts are totally erroneous and those Courts did not take into consideration the legal position as has been laid down by our Hon'ble Court in connection with Rina Khatik Vs. Rajesh Khatik (2011) 1 C.C.R.L.R. (Cal) 395 wherein Hon'ble High Court held that when a wife is compelled to reside separately due to torture inflicted upon her and when she does not have any income, she is entitled to maintenance. It does not matter for the opposite party husband if he has any income or not. Only this is to be considered that if opposite party husband is an able embodied person or not and whether he is capable of earning. In that case torture inflicted by her husband was established and for which the Hon'ble Court had passed that order. He has also referred to a decision reported in connection with Smt. Soma Sarkar (Bal) Vs. Biswanath Bal, wherein this Hon'ble Court held that when a physical and mental torture was proved then it will be treated as compelling

circumstances for the wife to live separately from the opposite party husband.

7. Challenging the contention of the petitioner wife, Learned Counsel appearing on behalf of the opposite party has referred to a decision reported in *Deb Narayan Halder Vs. Smt. Anushree Halder*, wherein the Hon''ble Apex Court held that in that case two reasons were given by the petitioner wife one ill-treatment by her husband for dowry and that the respondent was not good looking but in course of evidence those grounds were not proved. On the basis of that Hon''ble Apex Court did not respond to the petitioner wife's claim. Learned Counsel also referred to a decision reported in connection with *Smt. Somita Saha Vs. Mohan Saha* 2011 (2) CLJ (Cal) wherein our Hon''ble Court held that the petitioner wife failed to prove torture or neglect as is required under Section 125(1) of Cr.P.C. and also for her refusal to reside with her husband without any sufficient reason. So she is not at all entitled to any maintenance allowance from her husband. Hon''ble Court went further holding that concurrent finding of the Learned Court below need not be disturbed. In fact, in the given circumstances there is no scope for interference in exercise of inherent jurisdiction of this Court. Relying on the observation of the Hon''ble Apex Court in connection with *Rajan Kumar Machananda Vs. State of Karnataka*, which is as such "merely by saying that the jurisdiction of the High Court for exercise of its inherent power was being invoked, the statutory bar could not have been overcome. If that was to be permitted, every revision application facing the bar under Section 397(3) of the Code of Criminal Procedure could be labelled as one under Section 482 of the Code of Criminal Procedure." Our Hon''ble Court relied on the observation of the Hon''ble Apex Court and held that the application under Section 401 and 482 of the Code of Criminal Procedure is not maintainable. Since the petitioner wife has sought to take recourse to an application under Section 401 and 482 of the Cr.P.C. to avoid statutory bar of filing second revision under Section 397(3) of the Cr.P.C. Referring this judgment Learned Counsel appearing on behalf of the opposite party contended that it is a second revisional application filed by the applicant, which is not at all maintainable. Learned Counsel appearing on behalf of the opposite party relied on the decision reported in *Subrata Deb Vs. Rina Deb*, . Our Hon''ble Court held that alleged torture and cruelty as reasons for not staying with the husband has not been proved and in such circumstances maintenance cannot be granted in her favour as it will be amount to desertion or not living with the husband without any sufficient reason.

8. Learned Counsel also relied on a decision reported in *Ram Karan Vs. Gyarsi and Another*, wherein Hon''ble Apex Court held that High Court in exercise of its inherent jurisdiction not empowered to set aside concurrent finding of facts of Courts below without advertting to evidence on records and reasons therefore. On perusal of the impugned judgment I find that the petitioner herself admitted in her cross examination "I was quite well treated by the opposite party after my marriage. The problem began after opening of the locker". Rest part of the cross examination was in the form of denial of assault and torture. Learned Counsel appearing on behalf of the respondent has furnished a document which he had

received in connection with application under "Right to Information Act". The said document speaks that locker was opened lastly in 2003. According to the petitioner due to dowry demand she had left the house of the opposite party on 15.07.2003. It was suggested to the P.W. 2 while he was examined in connection with 125 Cr.P.C. proceeding that the petitioner had been living in his house since 2003 but he denied the said suggestion. According to the opposite party, petitioner used to pick up quarrel and in one occasion she had assaulted his mother-in-law. Such quarrel took place on 14th July, 2003 and GDE was lodged before Sonarpur Police Station. Thereafter, her matrimonial relations of the opposite party came for a settlement and on 15th July the petitioner left. On 14.09.2013 the petitioner took back her articles. If we go through the statement of this PW 1 and the allegation which she has raised in her petition under Section 498A of the Indian Penal Code in that case we will find that there are substantial variations in her testimony so far as alleged demand of dowry is concerned. In the proceeding under Section 125 Cr.P.C. She alleged dowry demand and due to non-payment of dowry demand torture was inflicted. But it is quite unnatural that during this period of torture she did not divulge her agonies to anybody even not to her parents. This is evident from her statement. Considering the contradictory statements made in application under Section 125 Cr.P.C. and the case under Section 498A of the Indian Penal Code followed by another case under Section 403 /406 of the Indian Penal Code, I am of the view that the concurrent finding of the Learned Court below should not be disturbed. At the same time, application under Section 482 of Cr.P.C. is in disguise of "second revision" is not permissible in the eye of law.

9. Considering all these aspects I am of the view that there is no error committed by the Learned Courts below. Accordingly I put my seal of approval in the orders impugned. However, I make it clear that the amount already received by the petitioner wife as interim maintenance need not be refunded.

10. In the result, the revisional application stands dismissed on contest but without cost.

11. Let a copy of this order be sent to the Learned Court below for information and taking necessary action in accordance with law.

12. Urgent certified photocopy of this Judgment and order, if applied for, be supplied to the parties upon compliance of all requisite formalities.