

(2012) 04 CAL CK 0029
In the Calcutta High Court
Case No : C.R.R. No. 1569 of 2011

Manowara Begum @ Manowara Khatun	APPELLANT
Vs	
The State of West Bengal and Another	RESPONDENT

Date of Decision : 24-04-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125

Citation : (2012) 3 CALLT 165 : (2012) CriLJ 3870

Hon'ble Judges : Prasenjit Mandal, J

Bench : Single Bench

Advocate : Rupam Mukhopadhyay, for the Appellant; Chittapriya Ghosh, for the Respondent

Final Decision : Dismissed

Judgement

Prasenjit Mandal, J.—This application is directed against the Order dated February 25, 2011 passed by the learned Sessions Judge, Birbhum in Criminal Motion No.53 of 2010 thereby enhancing the maintenance granted in Misc. Case No.129 of 2003. The petitioner instituted the aforesaid Misc. Case u/s 125 of the Criminal Procedure Code (in short "Cr.P.C") contending, inter alia, that in June, 1980, she was married to the opposite party No.2 according to Mahamaddan Law. The husband gave up Talak subsequently and he paid her maintenance for the Iddat period. The petitioner has not married as yet. On the other hand, the opposite party No.2 married and he has four children by his second wife. She has no source of income, on the other hand, opposite party has means to provide maintenance. Under the circumstances, she filed an application for maintenance and that application was allowed ex parte granting maintenance at the rate of Rs.500/-.

2. Being aggrieved by such order of maintenance of Rs.500/-only, the wife filed a revision being Criminal Motion No.532 of 2001 and that motion was disposed of by the impugned order by the learned Sessions Judge granting alimony at the rate of Rs.1000/-per month from the date of passing of the order by the learned

Chief Judicial Magistrate, that is, with effect from June, 2010. Being aggrieved by such orders, this application has been preferred.

3. Now, the question is whether the prayer for further enhancement could be granted or not.

4. Upon hearing the learned Counsel for the parties and on going through the materials-on-record, there is no dispute that the petitioner is a divorced wife of the opposite party No.2, that she has not married again, that the opposite party married again and that he has children by his second wife. Admittedly, the husband provided maintenance for the Iddat period to the wife.

5. Mr. Rupam Mukhopadhyay, learned Counsel appearing for the petitioner has assailed the judgment on two grounds, namely, the quantum of maintenance granted by the Revisional Court is lower and that the date of effect should be given from the date of filing of the maintenance case. So far as the quantum of maintenance is concerned, I find that though the petitioner tendered evidence ex parte, the petitioner has stated that she has no income, on the other hand, the opposite party has business on manufacturing of shelf, dynamo, battery, etc. of the motor vehicles and he is also engaged in selling and repairing of the same and thus, he earns Rs.12,000/-/13,000/- per month.

6. The learned Magistrate upon analysis of the materials-on-record has come to a finding that the petitioner has not stated anywhere that the opposite party No.2 has any business for battery, etc. of the vehicles. She has simply stated that the opposite party No.2 manufactures battery, shelf, dynamo and repairs the same but no paper has been filed in support of such statement. On interrogation, the petitioner has stated that her husband married for the second time and he has three daughters and one son by his second wife and they all are students.

7. Under the circumstances, the learned Magistrate has observed that the husband could earn at best Rs.5,000/- /6,000/- per month. While disposing the revisional application, the learned Sessions Judge has observed that the grant of maintenance of Rs.500/- per month is too meagre to cope with both hands made together now-a-days. Accordingly, the amount of maintenance has been enhanced from Rs.500/- to 1,000/- per month. I think in consideration of the income as analyzed by the learned Magistrate, the quantum of maintenance as granted by the Revisional Court is quite justified and there is no scope of further enhancement.

8. As regards the date for commencement of the maintenance, the Revisional Court did not assign any reason but the learned Magistrate has recorded reasons to the effect that the petitioner did not pray for interim maintenance at the time of filing or during the pendency of the application for maintenance.

9. On the other hand, it revealed from the materials-on-record that the husband paid maintenance to the wife for the period of Iddat. Under the circumstances, the maintenance has been granted from the date of passing of the order, that is,

with effect from June, 2010. I do not find that the Lower Courts have made unreasonable order in granting maintenance with effect from June, 2010 under the circumstances.

10. Mr. Mukherjee, learned Advocate for the petitioner has referred to the decision of Tanushri Das Roy v. State of West Bengal reported in 2010(1) Cal Cri.LR 161 and thus, he submits that according to this decision, order of maintenance shall be granted with effect from the date of filing of the application. With due respect to the learned Advocate for the petitioner, I am of the view that this decision is not applicable in the instant case. In that case, the prayer for interim maintenance was sought for and that was not considered at all. While disposing of the application u/s 125 of the Cr.P.C. granted maintenance with effect from the date of order and in that situation, the maintenance was granted with effect from the date of filing of the application. In the instant case, I am of the above observations to the effect that no interim order of maintenance was sought for and the petitioner got maintenance for the Iddat, the learned Trial Judge granted maintenance with effect from the date of the order and this has been affirmed by the Revisional Court. So, this decision is not applicable in the instant case.

11. In that view of the matter, I am of the view that in exercising the jurisdiction of superintendence, the impugned order should not be interfered with when the impugned order does not suffer from any perversity. Both the Courts below have come to a finding on the basis of materials-on-record and it is not a case that the findings of the Courts below are without any materials.

12. Under the circumstances, there is no scope of interference with the impugned order. The revisional application is devoid of merits and is, therefore, dismissed.

13. Considering the circumstances, there will be no order as to costs. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocate for the parties on their usual undertaking.