

(2024) 05 CAL CK 0001

In the Calcutta High Court

Case No : Criminal Revision No. 3014 Of 2019, 868 Of 2020

Md. Shariful Islam Malita @ Shariful Islam Malita @ Shariful Islam

APPELLANT

Vs

State Of West Bengal & Anr.

RESPONDENT

Date of Decision : 01-05-2024

Acts Referred:

Constitution Of India, 1950 — Article 142
Muslim Women (Protection of Right on Divorce) Act, 1986 — Section 3, 5
Code Of Criminal Procedure, 1973 — Section 125, 127, 401, 482

Citation : (2024) 05 CAL CK 0001

Hon'ble Judges : Shampa Dutt (Paul), J

Bench : Single Bench

Advocate : Golam Mostafa, Samirul Sardar, Arindam Jana, Mobidur Hossain, Arhan Sengupta, Partha Pratim Sinha

Final Decision : Dismissed

Judgement

Shampa Dutt (Paul), J

1. The present revision has been preferred against the Judgment and Order dated 23.12.2019 passed by the Learned Additional Session Judge, 1st Court, Murshidabad at Berhampore, in Criminal Revision No. 175 of 2018 arising out of order dated 29.05.2018 passed by the Learned Chief Judicial Magistrate, Murshidabad at Berhampore in M.R. Case No. 51(4) of 2015 under Section 3 of the Muslim Women (Protection of Right on Divorce) Act, 1986.

2. The petitioner states that it was alleged by the opposite party No. 2 that:-

The marriage was solemnized between the petitioner and the opposite party no.2 by Islamic rites and customs. In the course of marriage, gifts and Den Mahar were duly met by the guardian of the opposite party no.2. After marriage, both the petitioner and opposite party no. 2 started living as husband and wife and out of the said wedlock one male child namely Sahir Kharita born. Thereafter, the

petitioner and his family members demanded further dowry from the opposite party no.2 and due to failure from her part to meet such demand, the opposite party became the subject matter of physical and mental torture and cruelty. As a consequences of the same, on 05.04.2015, the petitioner tried to kill the opposite party no.2 by suffocating her. Getting information of the same, the father of the opposite party no.2 brought the opposite party no.2 and arranged for medical treatment on 08.04.2015. After the opposite party no.2 and her child were driven out from the house of the petitioner, the opposite party is staying at her father's house and the petitioner made no arrangement for the maintenance of the opposite party. The opposite party is unable to maintain herself as well as her child and the petitioner having sufficient means and being an able bodied person, refused to and neglects to maintain the opposite party and their child.

3. It is further stated the opposite party no.2 filed a case under Section 125 Cr.P.C. seeking maintenance for herself and her minor child which was registered as MR No.1252/15 being filed on 25.06.2015. After filing of the case under Section 125 Cr.P.C. the opposite party no. 2 took option to also proceed as Divorced Wife under the provision of Muslim Women (Protection of Right on Divorce) Act, 1986. The case under Section 3 of the said Act was filed just after one month of the filing of the maintenance case under Section 125 Cr.P.C.

4. The case under Section 3 of the MWPRD Act was filed on 14.07.2015 and registered as MR No. 51(4)/15.

5. The opposite party no.2 adduced evidence in the said case no. MR-51(4)/15 stating that the marriage with petitioner was resolved by divorce but the petitioner did not return the stridhan articles and also did not pay the maintenance during the period of Iddat as well as Denmahar amount. The opposite party also adduced evidence in maintenance proceeding under Section 125 Cr.P.C. claiming maintenance.

6. The petitioner filed an application under Section 401 & 482 of Cr.P.C. before Hon'ble High Court at Calcutta seeking quashing of the proceeding which is numbered as CRR No. 3636 of 2015 and the Hon'ble High Court, vide Order dated 01.04.2016 has been pleased to pass an order that the relief under Section 125 Cr.P.C. and under Section 3 of the MWPRD Act overlap and it is open to a party to proceed with the matter and the relief if any granted in one proceeding may be taken into account in the other proceeding.

7. The case under Section 3 of the MWPRD Act was finally disposed of on merit directing the present petitioner to pay 'Den Mahar' and maintenance and at the same time the case under Section 125 Cr.P.C. was finally disposed of on merit directing the petitioner to pay maintenance under Section 125 Cr.P.C. i.e. double relief in two different proceedings was granted to opposite party simultaneously.

8. The petitioner has preferred a revision vide Cr. Rev. 120/18 under Section 125 Cr.P.C. passed in MR Case No. 1252/15 which is pending against the order dated 29.05.2018 under Section 3 of the MWPRD Act. The opposite party also preferred

a revision before District & Session Court which was registered as Criminal Revision No. 175/18.

9. After due hearing the Learned Court was pleased to direct the petitioner to deliver the Gold made ornaments to the opposite party and also to pay Rs. 1,64,000/- (money value of the article of the opposite party).

10. That after passing of the judgment under Section 125 Cr.P.C., the petitioner has filed a petition under Section 127 Cr.P.C. praying for cancellation/modification of the judgment under Section 125 Cr.P.C. in as much as the opposite party in terms of provision of Section 5 of MWPRD Act has already taken option to proceed to get relief as a divorced wife but the Learned Magistrate was pleased to dismiss the case on the ground that, the Hon'ble High Court had already decided the subject in dispute and passed an order that the wife is entitled to get relief Cr.P.C. or under Section 3 of MWPRD Act.

11. It is further stated that the said finding is erroneous as it is not in accordance with the direction of the Hon'ble Court.

12. It is also stated that being aggrieved by and dissatisfied with Judgment and order dated 07.08.2019 passed by the Chief Judicial Magistrate, Berhampore, Murshidabad in Misc. Case No.244 of 2018 (CIS No. M/244/2018 under Section 127 of Criminal Procedure Code arising out of Order and Judgment dated 05.02.2018 passed by the Learned Chief Judicial Magistrate, Murshidabad at Berhampore in M.R. Case No. 1252 of 2015 under Section 125 of Criminal Procedure Code, the petitioner filed a Revisional application before the Hon'ble High Court at Calcutta and same was registered as CRR No. 3014 of 2019, which is being heard with CRR 868 of 2020 (the present revision).

13. From the materials on record, the following orders are relevant:-

i) In a proceedings under Sections 125 Cr.P.C. being MR case no. 1252 of 2015 vide order dated 05.02.2018, the Learned Chief Judicial Magistrate, Murshidabad directed as follows:-

"ORDERED

That the petition under section 125 of the Criminal Procedure Code is allowed on contest and without cost. Opposite party is directed to pay monthly maintenance of Rs. 6000/- to the petitioner no.1 and the minor son (Petitioner no. 2) shall get monthly maintenance of Rs. 4,000/- from the date of the filing of the case. Opposite party is directed to pay the maintenance within 15 days of this order including the arrear maintenance, failing which the petitioner is at liberty to put this order into execution. A copy of the order will be supplied to the petitioner free of cost.

Sd/-

Chief Judicial Magistrate

Murshidabad.”

ii) In M.R. case no. 51(4) of 2015, the Chief Judicial Magistrate in an application under Section 3 of the Muslim Women (Protection of Right on Divorce) Act vide order dated 29th Day of May, 2018 directed as follows:-

“ORDERED

That the respondent is directed to pay Rs. 30,000/- as fair and reasonable amount of maintenance to the petitioner within one month of this order. Thus, the petition filed under Section 3 of the Muslim Women (Protection of Right on Divorce) Act is disposed of on contest without cost.

Let a copy of this order be given to the petitioner, free of cost.

D/C by me

Sd/-

Chief Judicial Magistrate

Murshidabad.”

iii) In a Revision against the said order, the Learned Appellate Court being the Learned Additional Sessions Judge, 1st Court, Murshidabad vide order dated 23.12.2019 directed as follows by setting aside the order under revision dated 29.05.2018 in M.R. 51(4)/15.

“ORDERED

That the revisional application bearing no.175/18 filed by Renuka Bibi against Sariful Islam Malitha is allowed on contest.

Accordingly, the order passed in M.R. 51(4)/15 by the Ld. C.J.M., Murshidabad, dt. 29.05.18 is hereby set aside.

Accordingly, the petitioner wife Renuka Khatun shall get an amount of Rs. 3 Lakhs as her reasonable and fair provision of maintenance and the OP is hereby directed to pay a sum of Rs. 3 Lakhs to the petitioner's wife Renuka Khatun @ Malitha within one month from the date of this order and the petitioner Renuka Khatun shall also get her Gold made ornaments weighing 5½ bhories and wife shall also get an amount of Rs. 1,64,000/- being the monetary value of the marriage gifts (viz Rs. 60,000/-being the value of Hero Super Splendor Motorcycle bearing No. WB 52-S-3436 and Rs. 60,000/- for the value of one cot with bedding, pillows, bed-sheet and bed-cover etc. Rs. 15,000/- for Godrej Almirah and Rs. 9,000/- for Sofa-set and Rs. 20,000/- for Marriage related Daan Samagri/marriage gifts).

The Opposite party is directed to deliver the Gold made ornaments weighing 5½ bhoori to the petitioner Renuka Khatun and the Respondent husband is further directed to make payment of the above sum viz total amount of Rs. 1,64,000/-

(monetary value of the articles of the petitioner wife Renuka Khatun) within one month from the date of this order failing which the petitioner wife shall be at liberty to realize her claim in accordance with the provision of law.

Let a copy of this order together with the LCR be sent down to the court below.

Dictated & Corrected by me

Sd/-

Additional District Judge

1st Court, Murshidabad.”

14. Hence the revision (CRR 868 of 2020) by the husband/petitioner herein who has admitted that he is a teacher by profession. CRR 3014 of 2019 is also against the same order but by the wife/opposite party in CRR 868 of 2020.

15. The Supreme Court in *Rajnish vs Neha & Anr.*, (2021) 2 SCC 324, held as follows:-

“VI. Final Directions

97. In view of the foregoing discussion as contained in Part B— I to V of this judgment, we deem it appropriate to pass the following directions in exercise of our powers under Article 142 of the Constitution of India:

(a) Issue of overlapping jurisdiction

98. To overcome the issue of overlapping jurisdiction, and avoid conflicting orders being passed in different proceedings, it has become necessary to issue directions in this regard, so that there is uniformity in the practice followed by the Family Courts/District Courts/Magistrate Courts throughout the country. We direct that:

(i) Where successive claims for maintenance are made by a party under different statutes, the court would consider an adjustment or set-off, of the amount awarded in the previous proceeding(s), while determining whether any further amount is to be awarded in the subsequent proceeding;

(ii) It is made mandatory for the applicant to disclose the previous proceeding and the orders passed therein, in the subsequent proceeding;

(iii) If the order passed in the previous proceeding(s) requires any modification or variation, it would be required to be done in the same proceeding.

(b) Payment of Interim Maintenance.”

16. Supplementary affidavit filed by the opposite party is along with a copy of the Marriage Certificate (Nikhanama).

17. The said certificate shows that at the time of marriage gold ornaments of about five and a half bhoories and house hold articles were given by the opposite

party's family.

18. Copy of Salary slip of the petitioner/husband has also been filed.

19. The petitioner/husband has contended that they have returned the said gold ornaments but could not produce any documents or other materials to substantiate the said statement. The petitioner then contended that though it is written in the 'Nikhanama' that 5½ bhoris of gold ornaments was given, it was actually not done. This too is not supported by any prima facie materials. As such till date the said ornaments of 5½ bhoris of gold has not been handed over to the opposite party/wife.

20. The order under revision thus suffers from no irregularity and thus requires no interference. Taking into consideration the relief granted to the wife/opposite party under Section 125 Cr.P.C. and under Section 3 of the Muslim Women (Protection of Right on Divorce) Act, the same as a whole, is fair and reasonable and is in keeping with the guidelines of the Supreme Court in *Rajnesh vs Neha & Anr.* (Supra).

21. The Judgment and Order dated 23.12.2019 passed by the Learned Court of Additional Session Judge, 1st Court, Murshidabad at Berhampore, in Criminal Revision No. 175 of 2018 arising out of order dated 29.05.2018 passed by the Learned Chief Judicial Magistrate, Murshidabad at Berhampore in M.R. Case No. 51(4) of 2015 under Section 3 of the Muslim Women (Protection of Right on Divorce) Act, 1986, is thus affirmed.

22. CRR 868 of 2020 and CRR 3014 of 2019 are accordingly dismissed.

23. All connected applications, if any, stand disposed of.

24. Interim order, if any, stands vacated.

25. Copy of this judgment be sent to the learned Trial Court for necessary compliance.

26. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.